

111TH CONGRESS  
2D SESSION

# S. 3161

To establish penalties for servicers that fail to timely evaluate the applications of homeowners under home loan modification programs.

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IN THE SENATE OF THE UNITED STATES

MARCH 24, 2010

Mrs. SHAHEEN introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To establish penalties for servicers that fail to timely evaluate the applications of homeowners under home loan modification programs.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Mortgage Modification  
5       Reform Act of 2010”.

6       **SEC. 2. DEFINITIONS.**

7       In this Act—

8               (1) the term “covered trial loan modification”  
9       means a trial loan modification—

1 (A) offered by a servicer to a homeowner  
2 under a home loan modification program; and

3 (B) for which the servicer has received  
4 from the homeowner the information required  
5 for a trial loan modification;

6 (2) the term “home loan modification program”  
7 means a home loan modification program put into  
8 effect by the Secretary under title I of division A of  
9 the Emergency Economic Stabilization Act of 2008  
10 (12 U.S.C. 5211 et seq.), including the Home Af-  
11 fordable Modification Program;

12 (3) the term “homeowner” means an individual  
13 who applies for a home loan modification under a  
14 home loan modification program;

15 (4) the term “permanent loan modification”  
16 means any agreement reached between a homeowner  
17 and a servicer on a long-term basis, as determined  
18 by the Secretary, under a home loan modification  
19 program;

20 (5) the term “qualified counselor” means a  
21 qualified counselor described in section 255(f) of the  
22 National Housing Act (12 U.S.C. 1715z–20(f));

23 (6) the term “Secretary” means the Secretary  
24 of the Treasury;

1           (7) the term “servicer” has the same meaning  
2           as in section 129 of the Truth in Lending Act (15  
3           U.S.C. 1639a) (relating to the duties of servicers of  
4           residential mortgages), as added by section 201(b)  
5           of the Helping Families Save Their Homes Act of  
6           2009 (Public Law 111–22; 123 Stat. 1638);

7           (8) the term “servicer incentive payment”  
8           means a payment that is made by the Secretary to  
9           a servicer—

10                   (A) in exchange, or as an incentive, for  
11                   making a loan modification under a home loan  
12                   modification program; and

13                   (B) at the time the servicer makes an offer  
14                   of a trial or permanent modification to a home-  
15                   owner; and

16           (9) the term “trial loan modification” means  
17           any agreement reached between a homeowner and a  
18           servicer on a temporary basis, as determined by the  
19           Secretary, under a home loan modification program.

20   **SEC. 3. FORECLOSURE.**

21           A servicer may not initiate or continue a foreclosure  
22           proceeding with respect to the mortgage of a homeowner  
23           if—

1           (1) the homeowner submitted an application for  
 2           a loan modification under a home loan modification  
 3           program—

4                   (A) before receiving a notice of foreclosure  
 5                   from the servicer; or

6                   (B) not later than 30 days after the home-  
 7                   owner received a notice of foreclosure from the  
 8                   servicer; and

9           (2) the servicer has not made a determination,  
 10          as described in section 5(a) that the homeowner does  
 11          not qualify for a loan modification under a home  
 12          loan modification program.

13 **SEC. 4. PROCESS FOR REVIEW OF IMPROPER DENIALS.**

14          (a) PROCESS FOR REVIEW.—

15               (1) IN GENERAL.—The Secretary shall establish  
 16               a process by which a homeowner may request the  
 17               Secretary to review a denial by a servicer of an ap-  
 18               plication by the homeowner for a trial loan modifica-  
 19               tion or permanent loan modification.

20               (2) QUALIFIED COUNSELORS.—The process es-  
 21               tablished under paragraph (1) shall include the use  
 22               of qualified counselors to report wrongful denials of  
 23               trial loan modifications and permanent loan modi-  
 24               fications.

1           (3) SUPPORTING DOCUMENTATION.—The Sec-  
 2       retary shall require a servicer to submit supporting  
 3       documentation with respect to any denial by the  
 4       servicer of an application by a homeowner for a trial  
 5       loan modification or permanent loan modification  
 6       that is reviewed by the Secretary under the process  
 7       established under paragraph (1).

8       (b) PENALTIES.—If the Secretary determines after a  
 9       review under the process established under subsection (a)  
 10      that a servicer has wrongly denied the application of a  
 11      homeowner for a trial loan modification or a permanent  
 12      loan modification, the Secretary shall impose a penalty on  
 13      the servicer.

14   **SEC. 5. PENALTIES FOR SERVICERS THAT DO NOT TIMELY**  
 15                           **EVALUATE HOMEOWNERS.**

16       (a) TIME FOR EVALUATION OF HOMEOWNERS.—Not  
 17      later than 3 months after the date on which a homeowner  
 18      submits an application for a loan modification to a servicer  
 19      that participates in a home loan modification program, the  
 20      servicer shall—

21           (1) evaluate the application of the homeowner;

22           and

23           (2) notify the homeowner that—

24                   (A) the homeowner is qualified for a trial  
 25                   loan modification or a permanent loan modifica-

1           tion under the home loan modification program;  
 2           or

3           (B) the servicer has denied the application.

4       (b) PRIORITY FOR EVALUATING AMENDMENTS.—

5           (1) PRIORITY.—A servicer that participates in a  
 6       home loan modification program shall evaluate the  
 7       applications of homeowners for loan modifications in  
 8       the order in which the servicer receives the applica-  
 9       tions.

10          (2) PROHIBITION.—A servicer that participates  
 11       in a home loan modification program may not select  
 12       the order in which the applications of homeowners  
 13       are evaluated for loan modifications—

14           (A) on the basis of—

15               (i) the income of the homeowner that  
 16               made the application; or

17               (ii) the value of the loan for which a  
 18               modification is requested; or

19           (B) for any reason other than the time at  
 20       which the servicer receives the applications.

21       (c) LATE FEES FOR SERVICERS.—

22           (1) REDUCED SERVICER INCENTIVE PAYMENTS  
 23       FOR LOANS INDIVIDUAL HOMEOWNERS.—The Sec-  
 24       retary shall reduce the amount of any servicer incen-  
 25       tive payment with respect to the loan modification of

1 an individual homeowner by 10 percent for each full  
2 month that—

3 (A) follows the date that is 3 months after  
4 the date on which the homeowner submits an  
5 application for a loan modification to the  
6 servicer; and

7 (B) precedes the date on which the servicer  
8 notifies the homeowner under subsection (a)(2).

9 (2) REDUCED PAYMENTS FOR ALL LOANS.—If  
10 the Secretary determines that, on the date that is 3  
11 months after the date of enactment of this Act, less  
12 than 75 percent of all homeowners who applied to a  
13 servicer for loan modifications under a home loan  
14 modification program have been evaluated within 3  
15 months of the date of the application, the Secretary  
16 shall reduce by 25 percent the amount of any  
17 servicer incentive payment the servicer would other-  
18 wise be eligible to receive under the home loan modi-  
19 fication program.

20 (d) DELINQUENCY FEES CHARGED TO HOME-  
21 OWNERS.—No servicer may impose a fee on a homeowner  
22 due to delinquency during the period beginning on the  
23 date on which the homeowner submits an application to  
24 the servicer for a loan modification and ending on the date

1 on which the homeowner receives notice under subsection  
 2 (a)(2).

3 (e) COLLECTION AND REPORT OF DATA.—

4 (1) COLLECTION OF DATA.—Each servicer shall  
 5 report to the Secretary, at such time and in such  
 6 manner as the Secretary may determine, data relat-  
 7 ing to the processing by the servicer of applications  
 8 for loan modifications.

9 (2) REPORT OF DATA.—The Secretary shall  
 10 publish a monthly report containing the data col-  
 11 lected under paragraph (1).

12 **SEC. 6. REDUCED PAYMENTS FOR FAILURE TO EVALUATE**  
 13 **HOMEOWNERS FOR PERMANENT MODIFICA-**  
 14 **TIONS.**

15 If the Secretary determines that, on the date that is  
 16 3 months after the date of enactment of this Act, less than  
 17 70 percent of all covered trial loan modifications offered  
 18 by a servicer have been evaluated for conversion to perma-  
 19 nent loan modifications before the date that is 3 months  
 20 after the date on which the servicer and the homeowner  
 21 entered into an agreement for a trial loan modification,  
 22 the Secretary shall reduce by 25 percent the amount of  
 23 any servicer incentive payment the servicer would other-  
 24 wise be eligible to receive under the home loan modifica-  
 25 tion program. Such reduction shall be in addition to any



1 other reduction in payment that may have been imposed  
2 on the servicer for any other violation of this Act.

3 **SEC. 7. RULE OF CONSTRUCTION RELATING TO PAYMENTS**  
4 **TO HOMEOWNERS.**

5 Nothing in this Act may be construed to require a  
6 reduction of a payment by the Secretary made on behalf  
7 or for the benefit of a homeowner in connection with a  
8 loan modification.

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