

112TH CONGRESS
2D SESSION

H. R. 4848

To save neighborhoods and keep families in their homes by encouraging mortgage loan modifications and suspending foreclosures and evictions.

IN THE HOUSE OF REPRESENTATIVES

APRIL 26, 2012

Mr. CLARKE of Michigan (for himself, Mr. LEWIS of Georgia, Mr. CONYERS, Mr. GEORGE MILLER of California, Mr. CLEAVER, Ms. KAPTUR, Mr. GRIJALVA, Ms. WATERS, Mr. CARSON of Indiana, Mr. JACKSON of Illinois, Ms. CLARKE of New York, and Mr. ELLISON) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To save neighborhoods and keep families in their homes by encouraging mortgage loan modifications and suspending foreclosures and evictions.

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 “Save Our Neighbor-
5 hoods Act of 2012”.

1 **SEC. 2. STAYS OF FORECLOSURES.**

2 (a) CAUSE OF ACTION.—

3 (1) IN GENERAL.—A mortgagor of a property
4 subject to a federally related mortgage loan may file
5 a motion before a court in the jurisdiction in which
6 the property is located for an order under subsection
7 (d).

8 (2) INTERIM ORDER.—The court shall, on the
9 date of such filing, enter an order that shall—

10 (A) stay any foreclosure proceedings (in-
11 cluding proceedings before a State court) that
12 have been brought against the property that is
13 subject to the federally related mortgage loan;
14 and

15 (B) remain in effect for a period of 60
16 days, beginning on the date that the order is
17 entered.

18 (3) LIMITATION.—The mortgagor of the prop-
19 erty subject to a federally related mortgage loan is
20 only allowed to file one motion under subsection
21 (a)(1).

22 (b) CONSENSUAL REVISION OF MORTGAGE.—The
23 mortgagor and mortgagee shall meet not later than 30
24 days after the mortgagor files under subsection (a). Not
25 later than 15 days prior to that meeting, the mortgagee
26 shall provide the mortgagor with a list of local housing

1 counseling agencies approved by the Secretary of Housing
2 and Urban Development. The mortgagor may be accom-
3 panied by a counselor from such an agency. If the mort-
4 gagor and mortgagee execute a consensually modified
5 mortgage agreement within 60 days of the court granting
6 the stay, the order under subsection (a)(2) would termi-
7 nate. If at the end of the 60 days an agreement has not
8 been reached, the court may issue an order under sub-
9 section (d) in accordance with subsection (c). The mort-
10 gagor may request not more than 1 additional meeting
11 after the first meeting and before the end of the period
12 during which foreclosure proceedings are stayed pursuant
13 to an order under subsection (a) or (d). The mortgagee
14 shall comply with that request not later than 30 days after
15 that request.

16 (c) STANDARD OF PROOF.—The court shall grant a
17 motion under subsection (a)(1) for an order under sub-
18 section (d), if the mortgagor demonstrates by a preponder-
19 ance of the evidence the following:

20 (1) That the mortgagor has a reasonable ability
21 to make payments described under subsection (d)(5).

22 (2) Financial hardship of the mortgagor.

23 (3) That the property subject to the mortgage
24 would be the primary residence of the mortgagor.

1 (d) ORDER DESCRIBED.—An order under this sub-
2 section shall, beginning on the date that is 60 days after
3 the filing of the motion under subsection (a)(1)—

4 (1) stay any foreclosure proceedings that have
5 been brought against the property that is subject to
6 the federally related mortgage loan, including pro-
7 ceedings before a State court and eviction or de-
8 tainer proceedings in a non-judicial foreclosure
9 State;

10 (2) remain in effect for a period of up to 3
11 years beginning on the date that the order is en-
12 tered, except that the period shall terminate if an
13 agreement under subsection (b) is executed during
14 such period;

15 (3) prohibit the assessment or collection of any
16 late fees regarding payments on the federally related
17 mortgage loan;

18 (4) toll the statute of limitations for any other
19 applicable laws pertaining to the federally related
20 mortgage loan;

21 (5) require that the mortgagor make payments
22 in an amount the court determines appropriate,
23 which may include the fair market rental value of
24 the property (determined by the court in accordance

1 with subsection (f)), to the mortgagee at such times
2 as the court determines appropriate; and

3 (6) require that the mortgagee apply such pay-
4 ments—

5 (A) first, to any taxes owed on the prop-
6 erty;

7 (B) then, to any obligations relating to in-
8 surance, including homeowner's insurance on
9 the property;

10 (C) then, to any interest due on the mort-
11 gage for that period under the terms of the
12 mortgage; and

13 (D) finally, to the principal amount due on
14 the mortgage for that period under the terms of
15 the mortgage.

16 (e) RESULT OF FAILURE TO REVISE DURING STAY
17 OF FORECLOSURE.—If an order under subsection (d) ter-
18 minates and the mortgagor and mortgagee have not sub-
19 mitted an agreement described in subsection (b) to the
20 court on or before the date that the order terminates, the
21 court shall enter an order—

22 (1) ordering an appraisal to determine the fair
23 market value of the property to be performed by a
24 licensed appraiser approved by the Secretary of
25 Housing and Urban Development;

1 (2) if the fair market value of the property, as
2 determined by the appraiser is less than the prin-
3 cipal remaining on the mortgage loan, adjusting the
4 principal amount to the fair market value, giving
5 consideration to the appraisal and any other infor-
6 mation the court determines appropriate;

7 (3) ordering reasonable interest on the principal
8 as adjusted under paragraph (2) based on the aver-
9 age prime offer rate (as such term is defined in sec-
10 tion 129C of the Truth in Lending Act (15 U.S.C.
11 1639c)) for mortgages; and

12 (4) if the fair market value is greater than the
13 principal remaining on the mortgage loan, ordering
14 payments set at a reasonable interest rate on the re-
15 maining principal based on the average prime offer
16 rate for mortgages on that date.

17 (f) DETERMINATION OF FAIR MARKET RENTAL
18 VALUE.—In determining the fair market rental value of
19 a property for purposes of subsection (d)(5), the court
20 shall consider the following:

21 (1) The fair market rents for the market area
22 in which the property is located for similar property
23 calculated for other Federal rental housing pro-
24 grams.

1 (2) Any other information the court determines
2 appropriate.

3 (g) **AUTHORITY OF MAGISTRATE JUDGES.**—Any pro-
4 ceeding regarding a motion under subsection (a) may be
5 heard by a magistrate judge of the United States, and that
6 magistrate judge, notwithstanding section 636(b)(1)(A) of
7 title 28, United States Code, may issue an order in accord-
8 ance with this section.

9 (h) **LIMITATION ON REMEDIES.**—The mortgagee’s
10 remedies shall be limited to those that would be available
11 as if the proceeding were a foreclosure proceeding.

12 (i) **DEFINITIONS.**—In this Act:

13 (1) The term “federally related mortgage loan”
14 has the meaning given such term under section 3 of
15 the Real Estate Settlement Procedures Act of 1974
16 (12 U.S.C. 2602).

17 (2) The term “financial hardship” means any
18 financial burden of a mortgagor that causes that
19 mortgagor to be reasonably unable to make a pay-
20 ment on that mortgage, including—

21 (A) reduction in or loss of income that was
22 supporting the mortgage;

23 (B) change in household financial cir-
24 cumstances;

1 (C) recent or upcoming increase in the
2 mortgagor's monthly mortgage payment;

3 (D) an unavoidable increase in other ex-
4 penses;

5 (E) a lack of cash reserves to maintain
6 payment on the mortgage and cover basic living
7 expenses at the same time (cash reserves in-
8 clude assets such as cash savings, money mar-
9 ket funds, stocks or bonds, but exclude retire-
10 ment accounts);

11 (F) excessive monthly debt payments, in-
12 cluding if the mortgagor has been using credit
13 cards, a home equity loan or other credit to
14 make the mortgage payment;

15 (G) the mortgagor has been subject to
16 predatory lending practices; and

17 (H) other reasons for hardship identified
18 and explained by the mortgagor.

19 (3) In determining whether a lending practice is
20 predatory, the court shall consider whether the mort-
21 gagor has been subject to practices including but not
22 limited to: abusive collection practices; balloon pay-
23 ments; encouragement of default; repeat financing
24 where the equity is depleted as a result of financing;
25 excessive fees; excessive interest rates; fraud, decep-

1 tion, and abuse; high loan-to-value ratio; lending
2 without regard to ability to repay; loan flipping;
3 mandatory arbitration clauses; payday lending; pre-
4 payment penalties; refinancing of mortgages with a
5 loan that does not provide a tangible economic ben-
6 efit to the borrower; refinancing unsecured debt;
7 payment of single-premium credit insurance; the
8 process of referring borrowers who qualify for lower-
9 cost financing to high-cost lenders; subprime lend-
10 ing; high yield-spread premiums.

11 **SEC. 3. REGULATORY AUTHORITY OF THE CONSUMER FI-**
12 **NANCIAL PROTECTION BUREAU.**

13 The Director of the Bureau of Consumer Financial
14 Protection of the Federal Reserve System may make rules
15 or issue guidance to carry out this Act.

16 **SEC. 4. DURATION OF THIS ACT.**

17 This Act shall be effective for 5 years, beginning on
18 the date of enactment of this Act.

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