

113TH CONGRESS
1ST SESSION

H. R. 1706

To establish an Independent Monitor to maintain oversight of the settlement by mortgage servicing companies that were subject to enforcement actions for unsafe and unsound practices related to residential mortgage loan servicing and foreclosure processing, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 24, 2013

Mr. CUMMINGS (for himself, Ms. WATERS, Mr. GEORGE MILLER of California, Mr. CONYERS, Mr. WAXMAN, Mr. TIERNEY, Ms. LOFGREN, and Ms. SCHAKOWSKY) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To establish an Independent Monitor to maintain oversight of the settlement by mortgage servicing companies that were subject to enforcement actions for unsafe and unsound practices related to residential mortgage loan servicing and foreclosure processing, and for other purposes.

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 Settlement
5 Monitoring Act of 2013”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds the following:

3 (1) In April 2011, the Federal Reserve System,
4 the Office of the Comptroller of the Currency, and
5 the then-Office of Thrift Supervision issued a joint
6 report titled “Interagency Review of Foreclosure
7 Policies and Practices” summarizing the results of
8 “horizontal reviews” of the Nation’s 14 largest
9 mortgage servicers finding “critical weaknesses in
10 servicers’ foreclosures governance practices, fore-
11 closure document preparation processes, and over-
12 sight and monitoring of third-party vendors, includ-
13 ing foreclosure attorneys,” resulting in “unsafe and
14 unsound practices and violations of applicable Fed-
15 eral and State law requirements”.

16 (2) As part of federal enforcement actions ad-
17 dressing these unsafe and unsound practices related
18 to residential mortgage loan servicing and fore-
19 closure processing, fourteen mortgage servicing com-
20 panies entered into consent orders with the Board of
21 Governors of the Federal Reserve System and the
22 Office of the Comptroller of the Currency beginning
23 on April 13, 2011.

24 (3) The consent orders required these mortgage
25 servicers to undertake an “Independent Foreclosure
26 Review” in order to ascertain individual harms and

1 provide appropriate monetary relief to homeowners
2 as a result of these business practice failures. Mort-
3 gage servicers contracted with third-party consult-
4 ants approved by the federal agencies to conduct
5 these reviews.

6 (4) During the tenure of the Independent Fore-
7 closure Review process, questions persisted con-
8 cerning the nature and adequacy of the reviews and
9 expected remediation as well as the independence of
10 the third-party reviewers.

11 (5) On February 28, 2013, the Board of Gov-
12 ernors of the Federal Reserve System and the Office
13 of the Comptroller of the Currency finalized amend-
14 ments to the April 2011 consent orders with 11 of
15 the 14 mortgage servicers. Under the terms of these
16 orders, mortgage servicers are to provide cash pay-
17 ments and other assistance to borrowers—including
18 more than \$3,000,000,000 in direct cash payments
19 to borrowers who had homes in foreclosure in 2009
20 or 2010—and the Independent Foreclosure Review
21 process will cease for the mortgage servicers who
22 agreed to enter into the amended consent orders.

23 (6) On April 4, 2013, the Government Account-
24 ability Office (GAO) issued a report titled “Fore-
25 closure Review: Lessons Learned Could Enhance

1 Continuing Reviews and Activities Under Amended
2 Consent Orders” which examined the Independent
3 Foreclosure Review process. It found that the
4 “[c]omplexity of the reviews, overly broad guidance,
5 and limited monitoring for consistency impeded the
6 ability of the Office of the Comptroller of the Cur-
7 rency (OCC) and the Board of Governors of the
8 Federal Reserve System (Federal Reserve) to
9 achieve the goals of the foreclosure review”. The re-
10 port also stated that “limited communication with
11 borrowers and the public adversely impacted trans-
12 parency and public confidence,” and the GAO rec-
13 ommended that the Board of Governors of the Fed-
14 eral Reserve System and the Office of the Comp-
15 troller of the Currency “identify and apply lessons
16 from the foreclosure review process, such as enhanc-
17 ing planning, and monitoring activities to achieve
18 goals, as they develop and implement the activities
19 under the amended consent orders”.

20 (7) In light of the significant harm caused by
21 mortgage servicers’ unsafe and unsound business
22 practices, and the lack of transparency surrounding
23 the Independent Foreclosure Review process and the
24 amended consent orders that replace this process, it
25 is essential that thorough oversight be conducted

1 over these new orders to ensure that all terms are
2 fully enforced. Creation of an Office of the Inde-
3 pendent Monitor, which will provide reports directly
4 to Congress, will aid in meeting this objective.

5 **SEC. 3. SETTLEMENT DEFINED.**

6 For purposes of this Act, the term “settlement”
7 means—

8 (1) the amended consent orders finalized on
9 February 28, 2013, between the Board of Governors
10 of the Federal Reserve System and the Office of the
11 Comptroller of the Currency and 11 mortgage serv-
12 icing companies that were subject to enforcement ac-
13 tions for unsafe and unsound practices related to
14 residential mortgage loan servicing and foreclosure
15 processing; and

16 (2) any future agreement between the Board of
17 Governors of the Federal Reserve System and the
18 Office of the Comptroller of the Currency and a
19 mortgage servicing company, the terms of which are
20 similar to the agreement described in paragraph (1).

21 **SEC. 4. INDEPENDENT MONITOR.**

22 (a) ESTABLISHMENT.—

23 (1) IN GENERAL.—There is hereby established
24 the Office of the Independent Monitor, to be headed
25 by the Independent Monitor. The purpose of the

1 Independent Monitor shall be to determine the com-
2 pliance of all parties to the settlement with the
3 terms of the settlement and to provide expanded
4 transparency over the implementation of the amend-
5 ed consent orders to rebuild the confidence of the
6 general public.

7 (2) APPOINTMENT.—

8 (A) IN GENERAL.—The President shall ap-
9 point, not later than the end of the 45-day pe-
10 riod beginning on the date of the enactment of
11 this Act, the Independent Monitor from among
12 individuals with extensive experience in con-
13 sumer protection laws and practices, particu-
14 larly in such areas as mortgage lending.

15 (B) VACANCY.—If at any point the posi-
16 tion of Independent Monitor becomes vacant,
17 the President shall appoint, not later than the
18 end of the 60-day period beginning on the date
19 such vacancy occurs, a new Independent Mon-
20 itor from among individuals described under
21 subparagraph (A).

22 (3) STAFF.—Upon request of the Independent
23 Monitor, any executive agency, including the Board
24 of Governors of the Federal Reserve System or the
25 Comptroller of the Currency shall detail, on a reim-

1 bursable basis, any employee to the Office of the
2 Independent Monitor to assist it in carrying out its
3 duties under this Act, but under no circumstances
4 may the Office of the Independent Monitor have
5 more than 16 employees, not including the Inde-
6 pendent Monitor.

7 (4) FUNDING.—The costs of the Office of the
8 Independent Monitor shall be paid out of the funds
9 paid by mortgage servicing companies under the set-
10 tlement, other than any funds designated for direct
11 cash payments to borrowers who held loans during
12 2009 or 2010.

13 (b) DUTIES.—The Independent Monitor shall—

14 (1) issue a quarterly report covering all actions
15 taken to date, with the first such report detailing ac-
16 tions taken from the date of the execution of the set-
17 tlement, to the Board of Governors of the Federal
18 Reserve System, the Comptroller of the Currency,
19 and the Congress containing—

20 (A) a detailed description of—

21 (i) the eligibility criteria used to deter-
22 mine who will receive direct and indirect
23 aid provided under the settlement, includ-
24 ing information detailing instances in

1 which the criteria are not transparent, cer-
2 tain, objective, or equitably applied;

3 (ii) the methodologies used to cal-
4 culate and allocate direct and indirect aid
5 provided under the settlement, including
6 information detailing instances in which
7 the methodologies are not transparent, cer-
8 tain, objective, or equitably applied;

9 (iii) the proof requirements applied to
10 recipients of direct and indirect aid pro-
11 vided under the settlement, including infor-
12 mation detailing instances in which the re-
13 quirements are not transparent, certain,
14 objective, or equitably applied; and

15 (iv) the extent to which those receiv-
16 ing direct and indirect aid under the settle-
17 ment receive procedural due process, in-
18 cluding information detailing instances in
19 which such due process has been denied;

20 (B) information on the total number of
21 borrowers who held loans in 2009 or 2010 who
22 receive direct compensation under the settle-
23 ment, disaggregated by each mortgage servicer
24 subject to the settlement, including—

1 (i) demographic and other data re-
2 lated to such borrowers, including race,
3 gender, geography, and the property value
4 of the property securing such loans;

5 (ii) the level of direct compensation
6 provided to similarly situated borrowers,
7 including a review of the methods used to
8 determine the level of direct compensation
9 provided and the adequacy of such direct
10 compensation; and

11 (iii) total direct compensation pro-
12 vided to date;

13 (C) information on the total number of
14 borrowers with mortgage loans who receive loan
15 modifications or other types of assistance, such
16 as the forgiveness of a deficiency judgment,
17 short sale, deed in lieu, or forbearance agree-
18 ment, under the settlement, disaggregated by
19 each mortgage servicer subject to the settle-
20 ment, including—

21 (i) demographic and other data re-
22 lated to such borrowers, including race,
23 gender, geography, and the property value
24 of the property securing such loans; and

1 (ii) the number of each type of loan
2 modification or other assistance provided
3 to borrowers, including the amount of prin-
4 cipal reduction provided under modifica-
5 tions that include a principal reduction ele-
6 ment, the level of interest reductions pro-
7 vided to borrowers who receive an interest
8 reduction, and the total amount of defi-
9 ciencies forgiven for each of the first, sec-
10 ond, or any subsequent loans, and the
11 number of borrowers receiving each type of
12 relief who were already in a trial modifica-
13 tion when offered assistance under the set-
14 tlement and the number who were not in
15 a trial modification, and whether there has
16 been disparate treatment of those bor-
17 rowers;

18 (D) the credit that parties to the settle-
19 ment have been given through the provision of
20 loan modifications and other types of assistance
21 to borrowers, including principal reduction
22 modifications, disaggregated by each mortgage
23 servicer subject to the settlement, and a deter-
24 mination by the Independent Monitor of wheth-
25 er such credit reflects the real dollar value of

1 the modifications and has not been provided for
2 modifications that have little or no economic
3 value and that do not result in sustainable
4 modifications;

5 (E) a list of any instances in which the
6 Independent Monitor has determined that a
7 party to the settlement has substantially failed
8 to comply with the terms of the settlement, in-
9 cluding a description of the nature of each in-
10 stance of noncompliance;

11 (F) a list of any actions taken by the
12 Board of Governors of the Federal Reserve Sys-
13 tem or the Comptroller of the Currency to com-
14 pel compliance with the terms of the settlement;

15 (G) a review of the efforts undertaken by
16 parties to the settlement to locate borrowers
17 who held loans in 2009 or 2010, including the
18 adequacy of outreach methods used to contact
19 such borrowers and the response rate of such
20 borrowers;

21 (H) information on the extent to which any
22 assistance provided to borrowers under the set-
23 tlement receives credit under both the settle-
24 ment and also another settlement;

25 (I) a detailed description of—

1 (i) the dispute resolution procedures
2 established by the Board of Governors of
3 the Federal Reserve System and the
4 Comptroller of the Currency, if any, to en-
5 able borrowers to seek either a formal re-
6 view of the direct or indirect relief provided
7 to them under the terms of the settlement,
8 or a formal review of a determination that
9 they are not entitled to direct or indirect
10 relief under the terms of the settlement,
11 including a review of the adequacy of these
12 procedures in responding to borrowers'
13 concerns and complaints and in fairly and
14 equitably resolving these requests for re-
15 view; and

16 (ii) if such procedures have been es-
17 tablished, the total number of borrowers
18 who have requested a review under the dis-
19 pute resolution procedures, the number of
20 outstanding requests awaiting adjudication
21 and the number of fully adjudicated
22 claims, the average time required to adju-
23 dicate claims under the dispute resolution
24 procedures, the number of cases in which
25 the arbiter recommended changing the ini-

1 tial determination of relief offered to a bor-
2 rower, and the number of cases in which
3 the recommendations issued by the arbiter
4 were affirmed and implemented by the
5 Board of Governors of the Federal Reserve
6 System and the Comptroller of the Cur-
7 rency;

8 (J) the number of in-scope borrowers
9 whose foreclosures are completed during the re-
10 porting period; and

11 (K) any other information that the Inde-
12 pendent Monitor deems necessary to discharge
13 the duties of the Independent Monitor and to
14 determine compliance with the settlement;

15 (2) make each report described under para-
16 graph (1) available to the public, including on a pub-
17 licly accessible website; and

18 (3) hold, at a minimum, five public meetings in
19 which members of the public may give testimony re-
20 garding the administration of the settlement, and
21 where such meetings—

22 (A) being announced at least two weeks in
23 advance; and

24 (B) held in five different States.

1 (c) POWER TO REQUIRE PRODUCTION.—Not with-
2 standing any other provision of law, the Independent Mon-
3 itor may require the production from any party to the set-
4 tlement of any documents, information, and data related
5 to the settlement that the Independent Monitor deter-
6 mines necessary to carry out the duties of the Independent
7 Monitor.

8 (d) CONFIDENTIALITY OF INFORMATION.—In car-
9 rying out the requirements under this Act, including the
10 report requirement under subsection (b)(1), the Inde-
11 pendent Monitor shall ensure that all personally identifi-
12 able information is kept confidential.

13 (e) ENFORCEMENT.—

14 (1) IN GENERAL.—If the Independent Monitor
15 determines that a party to the settlement substan-
16 tially failed to comply with the terms of the settle-
17 ment or otherwise violates any provision of this Act,
18 the Independent Monitor shall refer a finding of
19 noncompliance to—

20 (A) the Board of Governors of the Federal
21 Reserve System and the Comptroller of the
22 Currency, for noncompliance involving conduct
23 of mortgage servicers subject to the settlement;

24 (B) the Inspector General of the Board of
25 Governors of the Federal Reserve System and

1 the Bureau of Consumer Financial Protection,
2 for noncompliance involving conduct of the
3 Board of Governors of the Federal Reserve Sys-
4 tem; or

5 (C) the Inspector General of the Depart-
6 ment of the Treasury, for noncompliance involv-
7 ing conduct of the Office of the Comptroller of
8 the Currency.

9 (2) HANDLING OF REFERRAL.—Upon receipt of
10 a referral of noncompliance made under paragraph
11 (1)(A), the Board of Governors of the Federal Re-
12 serve System and the Comptroller of the Currency
13 shall, jointly—

14 (A) within the 30-day period beginning on
15 the date of receipt of the referral, issue a report
16 to the Congress containing a plan of action to
17 cure the noncompliance; and

18 (B) within the 60-day period beginning on
19 the date of receipt of the referral, take such ac-
20 tion to cure the noncompliance.

21 (3) BACKUP AUTHORITY.—If the Board of Gov-
22 ernors of the Federal Reserve System and the
23 Comptroller of the Currency fail to take the action
24 required under subparagraph (A) or (B) of para-
25 graph (2), the Independent Monitor may take any

1 action available to the Board of Governors of the
2 Federal Reserve System or the Comptroller of the
3 Currency in order to cure the noncompliance.

4 (4) REFERRAL OF CRIMINAL VIOLATIONS.—If
5 the Independent Monitor determines that evidence
6 exists to suggest that a party to the settlement may
7 have committed a violation of any Federal or State
8 criminal statute, the Independent Monitor shall refer
9 such determination to the appropriate law enforce-
10 ment agency.

11 **SEC. 5. SAVINGS CLAUSE.**

12 Nothing in this Act shall be construed as—

13 (1) limiting the ability of any Federal or State
14 entity to examine or bring action pertaining to any
15 aspect of the settlement; or

16 (2) limiting the ability of any borrower to take
17 any action arising under State or Federal law.

18 **SEC. 6. SUNSET.**

19 (a) IN GENERAL.—This Act shall cease to have any
20 force or effect on and after the date that is the day after
21 the end of the 90-day period beginning on the date that
22 all parties fully satisfy the terms of the settlement.

23 (b) FINAL REPORT.—Within the 90-day period de-
24 scribed under paragraph (1), the Independent Monitor
25 shall submit a final report to the Congress containing the

- 1 information described under subsection (b)(1) and any
- 2 other information the Independent Monitor feels is appro-
- 3 priate.

