

113TH CONGRESS
2D SESSION

H. R. 4963

To amend the Real Estate Settlement Procedures Act of 1974 to provide
protections to borrowers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 2014

Ms. MICHELLE LUJAN GRISHAM of New Mexico (for herself and Ms. KAPTUR)
introduced the following bill; which was referred to the Committee on Fi-
nancial Services

A BILL

To amend the Real Estate Settlement Procedures Act of
1974 to provide protections to borrowers, 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 “National Homeowners
5 Bill of Rights Act of 2014”.

6 **SEC. 2. SERVICER TREATMENT OF BORROWERS.**

7 The Real Estate Settlement Procedures Act of 1974
8 (12 U.S.C. 2601 et seq.) is amended by inserting after
9 section 6 the following:

1 **“SEC. 6A. SERVICER TREATMENT OF BORROWERS.**

2 “(a) SERVICER REQUIREMENTS.—

3 “(1) SINGLE ELECTRONIC RECORD AND SINGLE
4 POINT OF CONTACT.—Each servicer of a federally
5 related mortgage loan, or agents of such servicer,
6 shall, with respect to the borrower, establish a single
7 electronic record for each account, the contents of
8 which shall be accessible throughout the servicer, or
9 agents of such servicer, including to all affordable
10 loan modification staff, all foreclosure staff, and all
11 bankruptcy staff.

12 “(2) AVAILABILITY OF NET PRESENT VALUE
13 INFORMATION.—Servicers shall maintain a free and
14 publicly accessible website where borrowers may
15 check their estimated net present value.

16 “(b) PROTECTIONS FOR HOMEOWNERS WITH LIM-
17 ITED ENGLISH PROFICIENCY.—

18 “(1) FREE ORAL INTERPRETATION.—Servicers
19 shall provide free oral interpretation services for bor-
20 rowers who request such services and such services
21 may be provided by contracting with housing coun-
22 seling agencies that are approved by the Department
23 of Housing and Urban Development and that have
24 appropriate language capacity.

25 “(2) NOTATION IN FILE.—Servicers shall—

1 “(A) note a request for translation services
2 in the borrower’s file and make such note avail-
3 able to all relevant servicer personnel; and

4 “(B) note in the borrower’s file any time
5 the borrower has communicated or sought to
6 communicate with the servicer in a language
7 other than English, and shall include such other
8 language.

9 “(3) TRANSLATED DOCUMENTS.—

10 “(A) PROVIDING DOCUMENTS.—

11 “(i) IN GENERAL.—Servicers shall, if
12 a borrower asks for translated documents,
13 provide key documents to the borrower
14 translated into the language of the bor-
15 rower, including periodic statements, af-
16 fordable loan modification applications, de-
17 nial notices, and loan modification offers,
18 including any trial period plan.

19 “(ii) EXCEPTION.—Clause (i) shall
20 only require providing documents in—

21 “(I) commonly spoken languages
22 in the United States, as determined
23 by the Bureau;

24 “(II) with respect to a particular
25 servicer, languages spoken by a sig-

1 nificant number of individuals living
2 in any markets in which the servicer
3 does business, as determined by the
4 Bureau.

5 “(B) ACCEPTING DOCUMENTS.—Servicers
6 shall only be required to accept documents in
7 languages in which the servicer already provides
8 documents, that are considered to be part of
9 routine business transactions in the market in
10 which the mortgage loan was made, or that are
11 used in documents provided to the public by
12 any department or agency of the Federal Gov-
13 ernment.

14 “(4) EXCEPTION.—Subparagraph (A) of para-
15 graph (3) shall not apply to small servicers, as de-
16 fined under section 1026.41(e)(4)(ii) of title 12,
17 Code of Federal Regulations.

18 “(c) REQUIREMENTS DURING AFFORDABLE LOAN
19 MODIFICATION PROCESS.—

20 “(1) BORROWERS FACING IMMINENT DE-
21 FAULT.—Servicers shall evaluate a borrower facing
22 imminent default (as such term is defined by the
23 Bureau), as well as those in default, for affordable
24 loan modification assistance, as described in this sec-
25 tion.

1 “(2) ASSISTANCE TO BORROWERS.—

2 “(A) ASSISTANCE IN APPLYING FOR AF-
3 FORDABLE LOAN MODIFICATION.—Servicers
4 shall—

5 “(i) have available and sufficient staff
6 to answer questions borrowers may have
7 about filling out documents; and

8 “(ii) provide borrowers a list of non-
9 profit legal services organizations and
10 housing agencies approved by the Depart-
11 ment of Housing and Urban Development,
12 that can assist the borrowers with docu-
13 ments.

14 “(B) TREATMENT OF SUCCESSORS IN IN-
15 TEREST.—Servicers shall—

16 “(i) provide full information and com-
17 plete loss mitigation options to successor
18 homeowners protected from an acceleration
19 of a mortgage loan under the Garn-St Ger-
20 main Depository Institutions Act of 1982,
21 if requested by the successor homeowner;
22 and

23 “(ii) review a mortgage loan for loss
24 mitigation, as though the successor home-
25 owner was the borrower, and provide a de-

1 cision on available loss mitigation prior to
2 an assumption of the mortgage loan, if re-
3 quested by the succeeding homeowner.

4 “(3) AFTER REVIEWING APPLICATION.—If a
5 servicer denies an application for an affordable loan
6 modification, the servicer shall notify the borrower of
7 other loss mitigation options that may be available
8 to the borrower and shall consider the borrower for
9 such other loss mitigation options.

10 “(4) RULE OF CONSTRUCTION.—Nothing in
11 this section shall be construed as prohibiting a
12 servicer from considering a borrower for other loss
13 mitigation options, so long as the servicer first offers
14 the borrower an affordable loan modification if the
15 borrower is eligible for such a modification.

16 “(5) REQUIREMENTS RELATED TO TRANSFER
17 OF LOANS.—

18 “(A) IN GENERAL.—For any transfer of
19 servicing to a successor servicer of a federally
20 related mortgage loan or subservicer, the trans-
21 ferring servicer shall—

22 “(i) inform the successor servicer (in-
23 cluding a subservicer) whether a loan
24 modification request is pending;

1 “(ii) provide the successor servicer
2 with all documentation related to the mort-
3 gage loan, including any documentation re-
4 lating to a loan modification or loss mitiga-
5 tion process;

6 “(iii) ensure that the successor
7 servicer has the operational capacity to
8 manage the transferred loan;

9 “(iv) ensure that the successor
10 servicer shall accept and continue proc-
11 essing prior loan modification requests, by
12 including such requirement in the agree-
13 ment made between the servicers when
14 transferring the loan;

15 “(v) ensure that successor servicer
16 shall honor trial and permanent loan modi-
17 fication agreements entered into by the
18 transferring servicer by including such re-
19 quirement in the agreement made between
20 the servicers when transferring the loan;
21 and

22 “(vi) notify the borrower of the trans-
23 ferred loan that the new servicer is re-
24 quired to accept and continue processing
25 prior loan modification requests, if any,

1 and is required to honor trial and perma-
2 nent loan modification agreements entered
3 into by the transferring servicer, if any.

4 “(B) HONORING OF EXISTING LOAN MODI-
5 FICATIONS AND APPLICATIONS IN PROCESS.—
6 The successor servicer shall agree to honor and
7 accept any existing loan modification and con-
8 tinue any loan modification applications.

9 “(C) PROHIBITION ON FORECLOSURE.—
10 During the 60-day period beginning on the ef-
11 fective date of transfer of the servicing of any
12 federally related mortgage loan, the mortgage
13 loan subject to such transfer may not be subject
14 to initiation of a judicial or non-judicial fore-
15 closure or be subject to a foreclosure sale.

16 “(d) SUBSEQUENT APPLICATIONS FOR AFFORDABLE
17 LOAN MODIFICATION.—If a borrower has submitted an
18 application or request in the past, the servicer shall allow
19 such borrower to make a subsequent affordable loan modi-
20 fication application if the borrower experiences a material
21 change in circumstances, as defined by the Bureau.

22 “(e) LIMITATION ON FORECLOSURE PRO-
23 CEEDINGS.—

24 “(1) STOP OF SALES PENDING APPLICATION.—
25 If a borrower submits an initial application for af-

1 fordable loan modification assistance more than 7
2 business days before a scheduled foreclosure sale,
3 the servicer must stop and cancel the foreclosure
4 sale.

5 “(2) INITIATION OF FORECLOSURE.—A servicer
6 may not initiate or continue a nonjudicial foreclosure
7 or a judicial foreclosure that is otherwise authorized
8 under State law against a mortgagor that has sub-
9 mitted an initial application for an affordable loan
10 modification or other loss mitigation, unless the
11 servicer—

12 “(A) has determined whether the mort-
13 gagor is eligible for an affordable loan modifica-
14 tion; and

15 “(B) has made such a modification, if the
16 mortgagor is eligible for a modification.

17 “(3) FORECLOSURE PROCEEDINGS PER-
18 MITTED.—Notwithstanding paragraph (2), a servicer
19 may initiate or continue a judicial or nonjudicial
20 foreclosure under State law against a borrower, if—

21 “(A) the servicer—

22 “(i) determines that the borrower is
23 not eligible for a modification;

24 “(ii) notifies the borrower of the de-
25 termination under clause (i); and

1 “(iii) provides the borrower—

2 “(I) a copy of any net present
3 value calculation made by the servicer
4 in relation to an affordable loan modi-
5 fication, including any information
6 providing a basis for such net present
7 value calculation;

8 “(II) a copy of any note, deed of
9 trust, or other document necessary to
10 establish the right of the servicer to
11 foreclose on the mortgage, including
12 proof of assignment of the mortgage
13 to the servicer and the right of the
14 servicer to enforce the relevant note
15 under the law of the State in which
16 the real property securing the mort-
17 gage is located;

18 “(III) a copy of any language in
19 the pooling or servicing agreement
20 with respect to the mortgage that the
21 servicer relies upon in asserting that
22 it is prohibited or limited in providing
23 a modification of the mortgage note;

24 “(IV) a copy of all correspond-
25 ence between the servicer and the bor-

1 rowers and investors in which the
2 servicer attempts to obtain permission
3 to make a modification; and

4 “(V) the alternatives to fore-
5 closure available to the borrower, in-
6 cluding deed in lieu of foreclosures
7 and short sales; or

8 “(B) a borrower—

9 “(i) declines to be considered for a
10 loan modification in writing or declines an
11 affordable modification in writing; or

12 “(ii) does not respond to the servicer’s
13 outreach activities (as defined by the Bu-
14 reau) to obtain underlying information to
15 complete an application or fails to make a
16 trial or permanent loan modification pay-
17 ment.

18 For purposes of subparagraph (A), a ‘pooling and
19 servicing agreement’ is any contract establishing the
20 transaction rights and duties of the parties to any
21 mortgage-backed securitization transaction.

22 “(4) BAR TO FORECLOSURE.—Failure to com-
23 ply with the requirements of this subsection shall be
24 a bar to the foreclosure of a mortgage, deed of trust,
25 or substantially similar instrument.

1 “(5) FEES.—

2 “(A) WAIVER OF LATE FEES.—If a bor-
3 rower’s application for affordable loan modifica-
4 tion assistance is accepted, the servicer shall
5 waive any foreclosure fees and any late fees re-
6 lated to the delinquency in payment.

7 “(B) NO FEE ACCRUAL WHILE APPLICA-
8 TION IS PENDING.—A borrower shall not accrue
9 additional late or foreclosure fees during the pe-
10 riod beginning on the date that the borrower
11 submits an affordable loan modification applica-
12 tion and the date on which the servicer makes
13 a determination on such application.

14 “(6) NOTIFICATION.—With respect to a fore-
15 closure sale that is postponed by reason of this sub-
16 section, the servicer shall notify the borrower in
17 writing of such postponement and, if a date for such
18 foreclosure sale is rescheduled, shall notify the bor-
19 rower in writing of the new foreclosure sale date.

20 “(7) CERTIFICATION OF DETERMINATION OF
21 ELIGIBILITY REQUIRED FOR SALE.—

22 “(A) SALE OF PROPERTY PROHIBITED.—If
23 the servicer of a mortgage does not file a cer-
24 tification with the appropriate land records of-
25 fice in the jurisdiction where the property se-

1 curing the mortgage is located, stating that the
2 servicer has determined the eligibility of the
3 mortgagor for an affordable loan modification
4 in compliance with this section—

5 “(i) the mortgagee may not sell the
6 property securing the mortgage; and

7 “(ii) no person that purchases the
8 property securing the mortgage may ini-
9 tiate an action to recover possession of the
10 property.

11 “(B) VIOLATIONS.—A sale of property in
12 violation of this paragraph shall be void.

13 “(8) INITIAL APPLICATION DEFINED.—For pur-
14 poses of this subsection, the term ‘initial application’
15 means a completed Uniform Borrower Assistance
16 Form 710 of the Federal National Mortgage Asso-
17 ciation or the Federal Home Loan Mortgage Cor-
18 poration, a Request for Modification and Affidavit of
19 the Making Home Affordable Program, or other
20 equivalent form that sets forth the borrower’s finan-
21 cial, income, and hardship information and Form
22 4506–T of the Internal Revenue Service.

23 “(f) AFFORDABLE LOAN MODIFICATIONS.—

24 “(1) AFFORDABLE LOAN MODIFICATION DE-
25 FINED.—For purposes of this section, the term ‘af-

1 fordable loan modification’ means an agreement to
2 reduce the amount of scheduled regular payments,
3 determined by the borrower’s debt-to-income ratio or
4 residual income, and subject to such terms and con-
5 ditions as may be set by the Bureau, including any
6 reduction of the principal amount of the mortgage
7 note as described in paragraph (4), that is reflected
8 in a permanent change to the terms of the mortgage
9 note under such terms as the Bureau shall define.

10 “(2) CALCULATION OF TARGET AFFORDABLE
11 REGULAR MORTGAGE PAYMENT.—For purposes of
12 this subsection, the target affordable regular mort-
13 gage payment shall be an amount determined by the
14 borrower’s debt-to-income ratio or residual income,
15 and subject to such terms and conditions as may be
16 set by the Bureau, subject to such terms and condi-
17 tions as may be set by the Bureau. Such terms shall
18 be based on a fully amortizing principal and interest
19 payment over the remainder of the term of the mort-
20 gage, as modified by any reduction in principal.

21 “(3) ELIGIBILITY.—A mortgagor shall be eligi-
22 ble to participate in an affordable loan modification
23 if—

24 “(A) such person is a borrower under a
25 federally related loan secured by the principal

1 residence of the borrower or a person eligible to
2 assume such a loan as a successor homeowner
3 protected from an acceleration of a mortgage
4 loan under the Garn-St Germain Depository In-
5 stitutions Act of 1982, who is unable to make
6 payments on a federally related mortgage loan
7 under such criteria as the Director of the Bu-
8 reau shall define, in consultation with the Sec-
9 retary of Housing and Urban Development and
10 the Secretary of the Treasury;

11 “(B) such residence is occupied by the
12 mortgagor; and

13 “(C) the loan modification has a positive
14 net present value (as defined under paragraph
15 (4)(B)(iv)(II)).

16 “(4) EARNED PRINCIPAL FORGIVENESS.—

17 “(A) IN GENERAL.—If, after reducing
18 mortgage note principal under earned principal
19 forgiveness provided in subparagraph (B), a
20 target affordable regular mortgage payment has
21 not been achieved, the servicer of the mortgage
22 shall comply with the affordable loan modifica-
23 tion plan waterfall steps as set out by the Bu-
24 reau of interest rate reduction, term extension,
25 and principal forbearance, as necessary to

1 achieve a target affordable regular mortgage
2 payment.

3 “(B) EARNED PRINCIPAL FORGIVENESS.—

4 “(i) PRINCIPAL REDUCTION.—The
5 Bureau shall determine standards by which
6 a mortgagor who has received an afford-
7 able loan modification shall remain in good
8 standing in order to participate in a reduc-
9 tion in mortgage note principal under this
10 subsection.

11 “(ii) PRINCIPAL REDUCTION RE-
12 QUIRED.—Except as provided under clause
13 (iii), a servicer shall offer a borrower an
14 affordable loan modification having the
15 maximum amount of principal reduction
16 that results in a positive net present value
17 calculation. For purposes of calculating net
18 present value, a servicer may use their own
19 formula, if it has been approved by the
20 Bureau, or may use a default formula de-
21 termined by the Bureau.

22 “(iii) EXCEPTIONS.—

23 “(I) GREATER PRINCIPAL RE-
24 Duction.—A servicer may offer a
25 greater principal reduction, if such a

1 reduction is consistent with the terms
2 of any contract with respect to the
3 mortgage.

4 “(II) LOAN-TO-VALUE RATIO.—A
5 servicer is not required to offer a
6 principal reduction that would result
7 in a loan-to-value ratio of less than
8 100 percent.

9 “(iv) RULES OF CONSTRUCTION.—

10 “(I) MAXIMUM AMOUNT OF PRIN-
11 CIPAL REDUCTION.—A principal re-
12 duction amount may be considered the
13 maximum amount if it is within
14 \$1,000 of the actual maximum
15 amount.

16 “(II) POSITIVE NET PRESENT
17 VALUE CALCULATION.—A net present
18 value calculation shall be deemed to
19 be ‘positive’ for the mortgage inves-
20 tors if the net present value result for
21 an affordable loan modification sce-
22 nario is greater than the net present
23 value result if no affordable loan
24 modification is made. Net present
25 value shall be calculated as the benefit

1 of all investors in a securitization
2 rather than the benefit of any par-
3 ticular class of investors.

4 “(v) PRINCIPAL FORGIVENESS.—

5 “(I) TREATMENT OF PRINCIPAL
6 REDUCTION AMOUNT.—Any amount
7 of principal reduction under clause (ii)
8 shall be treated as non-interest-bear-
9 ing principal forbearance until the
10 dates described under subclause (II).
11 The principal reduction described in
12 this clause shall be deemed to be sepa-
13 rate from and exclusive of any other
14 forbearance that may be offered in
15 conjunction with a modification under
16 an affordable loan modification pro-
17 gram.

18 “(II) REDUCTION OF PRIN-
19 CIPAL.—The servicer of a mortgage
20 modified under an affordable loan
21 modification plan shall reduce the un-
22 paid balance of the principal of the
23 mortgage by an amount equal to $\frac{1}{3}$ of
24 the total amount of the principal re-

1 duction under clause (ii) on each of
2 the following dates:

3 “(aa) The date that is 1
4 year after the date on which the
5 affordable loan modification be-
6 gins.

7 “(bb) The date that is 2
8 years after the date on which the
9 affordable loan medication be-
10 gins.

11 “(cc) The date that is 3
12 years after the date on which the
13 affordable loan modification be-
14 gins.

15 “(vi) CERTAIN MODIFICATIONS.—
16 With respect to a borrower that is not un-
17 derwater and does not qualify for principle
18 reduction, the servicer shall offer such bor-
19 rower an affordable loan modification to
20 reach the target affordable regular mort-
21 gage payment amount, if the borrower
22 qualifies.

23 “(5) TREATMENT OF JUNIOR LIENS.—With re-
24 spect to a borrower, if a primary mortgage loan is
25 modified pursuant to this subsection, the servicer of

1 any junior mortgage loan shall make a modification
2 available to the borrower on the same terms as the
3 modification of the primary mortgage loan, unless
4 prohibited by contract.

5 “(6) RULE OF CONSTRUCTION.—Nothing in
6 this section shall be construed as prohibiting a
7 servicer from providing a loan modification that does
8 not produce a positive net present value (as defined
9 under paragraph (4)(B)(iv)(II)).

10 “(g) BAR TO FORECLOSURE.—In any judicial or non-
11 judicial foreclosure proceeding, it shall be a bar to fore-
12 closure that the servicer of the federally related mortgage
13 loan on the property to be foreclosed violated any provision
14 of this section.

15 “(h) CIVIL PENALTY.—

16 “(1) IN GENERAL.—Any servicer who violates a
17 provision of this section shall be subject to a fine in
18 an amount, as determined by the Bureau, not to ex-
19 ceed \$5,000 for each violation except that the max-
20 imum penalty for all violations by any particular
21 servicer during any 1-year period shall not exceed
22 \$1,000,000.

23 “(2) LIABILITY TO BORROWER.—Any servicer
24 that violates a provision of this section with respect

1 to a loan shall be liable to the borrower of such loan
2 in the amount of \$10,000 per violation.

3 “(3) CONTINUING VIOLATIONS.—In the case of
4 a continuing violation, as determined by the Bureau,
5 each day shall constitute a separate violation for
6 purposes of this subsection.

7 “(4) ADJUSTMENT OF AMOUNTS.—After the
8 end of the 1-year period beginning on the date of the
9 enactment of this subsection, the Bureau shall annu-
10 ally adjust amounts specified under this subsection
11 to reflect inflation.

12 **“SEC. 6B. MORTGAGE SERVICER OMBUDSMAN.**

13 “(a) IN GENERAL.—The Director of the Bureau shall
14 appoint a Mortgage Servicer Ombudsman (the ‘Ombuds-
15 man’) within the Bureau.

16 “(b) DUTIES.—The Ombudsman shall provide assist-
17 ance to servicers and borrowers in complying with Federal
18 law with respect to the servicing of mortgage loans and
19 offer resolution to borrowers who are facing noncompli-
20 ance.

21 “(c) FOCUS ON LOW-INCOME BORROWERS.—In car-
22 rying out this section, the Ombudsman shall focus on pro-
23 viding assistance to low-income borrowers.

24 “(d) CONSULTATION.—The Ombudsman shall con-
25 sult with—

1 “(1) attorneys general of States in carrying out
2 this section; and

3 “(2) other offices of the Bureau that engage in
4 dispute resolution.

5 “(e) NON-DUPLICATION.—The Ombudsman may not
6 carry out any activities that would be duplicative with ac-
7 tivities of other Bureau offices.

8 **“SEC. 6C. PENALTIES FOR ROBO-SIGNING.**

9 “Any servicer who records or files with a land records
10 office or a court more than one document with material
11 deficiencies with respect to a mortgage loan shall be sub-
12 ject to a fine of not more than \$7,500 for each such
13 loan.”.

14 **SEC. 3. EXTENSION OF THE PROTECTING TENANTS AT**
15 **FORECLOSURE ACT OF 2009.**

16 Section 704 of the Protecting Tenants at Foreclosure
17 Act of 2009 (12 U.S.C. 5201 note; 12 U.S.C. 5220 note;
18 42 U.S.C. 1437f note) is hereby repealed.

19 **SEC. 4. RULE OF CONSTRUCTION.**

20 Nothing in this Act, or the amendments made by this
21 Act, shall be construed as preempting any State or local
22 law with respect to foreclosures that provides greater pro-
23 tections for consumers.

1 **SEC. 5. RULEMAKING.**

2 The Bureau of Consumer Financial Protection shall,
3 not later than the end of the 12-month period beginning
4 on the date of the enactment of this Act, issue regulations
5 to carry out this Act and the amendments made by this
6 Act, and the Bureau shall provide that such regulations
7 take effect not later than the end of the 6-month period
8 beginning on the date the regulations are issued.

○