II

114TH CONGRESS
2D SESSION

S. 3146

To require servicers to provide certain notices relating to foreclosure proceedings, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 7, 2016

Mr. MENENDEZ (for himself, Mr. BOOKER, and Mr. MERKLEY) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

---

A BILL

To require servicers to provide certain notices relating to foreclosure proceedings, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Preventing Abandoned Foreclosures and Preserving Communities Act of 2016".

SEC. 2. NOTIFICATION REQUIREMENTS FOR SERVICERS THAT INITIATE FORECLOSURE PROCEEDINGS.

The Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601 et seq.) is amended—

(1) in section 3 (12 U.S.C. 2602)—

(A) in paragraph (8), by striking "and" at the end;

(B) in paragraph (9), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(10) the term 'enterprise' has the meaning given the term in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502)."; and

(2) in section 6 (12 U.S.C. 2605), by adding at the end the following:

"(n) NOTICES RELATING TO FORECLOSURE.—

"(1) DEFINITION.—In this subsection, the term 'covered loan' means—

"(A) a federally related mortgage loan; or

"(B) a non-performing loan purchased from a Federal agency or an enterprise.

"(2) INITIAL NOTICE REQUIREMENT.—

"(A) IN GENERAL.—A servicer of a covered loan that makes the first notice or filing required by applicable State law for a judicial or non-judicial foreclosure process against a borrower and any other record owners shall notify the borrower and any other record owners in writing that, until the date on which the deed and title for the property for which the covered loan was made are transferred to another person, the borrower and any other record owners—

"(i) may remain in the property until such time as the borrower and any other record owners are required to vacate the property under State law; and

"(ii) shall, to the extent required under State law, be responsible for the payment of any taxes, assessments, and other fees associated with the property.

"(B) STATE LAW REQUIREMENTS.—A servicer of a covered loan is not required to provide the written notice described in subparagraph (A) if the servicer provides notice to the borrower and any other record owners, under applicable State law, of the information described in subparagraph (A).

"(3) NOTICE OF CHARGE-OFF AND RELEASE OF LIEN.—

"(A) IN GENERAL.—If a servicer of a covered loan makes the first notice or filing required by applicable State law for a judicial or non-judicial foreclosure process against a borrower and any other record owners and subsequently charges off the covered loan and releases the lien on the property for which the covered loan was made, the servicer shall provide prompt notice, in writing, of the charge-off and release to—

"(i) the borrower and any other record owners, which shall include a statement that—

"(I) the title to the property is no longer encumbered by the lien;

"(II) the covered loan has been discharged;

"(III) the borrower and any other record owners may face income tax consequences related to the discharged covered loan; and

"(IV) the borrower and any other record owners may want to consult a tax advisor; and

"(ii) the taxing district in which the property is located.

"(B) REQUIRED ATTEMPTS.—A servicer that is required to provide notice to a borrower and any other record owners under subparagraph (A)(i)—

"(i) shall make not less than 3 attempts to provide the notice, where the servicer makes—

"(I) not less than 2 attempts to provide the notice by telephone; and

"(II) not less than 1 attempt to provide the notice in writing; and

"(ii) shall attempt to locate the borrower and any other record owners and provide the notice if the servicer has information that the borrower and any other record owners no longer reside at the property.

"(C) LANGUAGE.—A servicer shall provide the notice under subparagraph (A)(i) in the preferred language of the borrower if the servicer has information that the borrower has indicated a preferred language other than English.

"(4) STANDARD NOTIFICATION FORMS.—The Bureau may develop and issue standard forms, which may be submitted in paper or electronic format, for the provision of the notices required under paragraphs (2) and (3).

"(5) DATABASE OF ABANDONED FORECLOSURES.—

"(A) DEFINITION.—In this paragraph, the term 'abandoned foreclosure' means a covered loan—

"(i) that is secured by a property that was the principal residence of the borrower—

"(I) at the time of the origination of the covered loan; or

"(II) when the servicer of the covered loan made the first notice or filing required by applicable State law for a judicial or non-judicial foreclosure process;

"(ii) that is not an open-end credit or reverse mortgage loan; and

"(iii) where the servicer of the covered loan—

"(I) has made the first notice or filing required by applicable State law for a judicial or non-judicial foreclosure process; and

"(II) has—

"(aa) ceased to pursue additional action in the foreclosure process; or

"(bb) charged off the covered loan and released the lien on the property for which the covered loan was made.

"(B) DATABASE.—Not later than 3 years after the date of enactment of this subsection, the Bureau shall establish, maintain, and periodically update a database of abandoned foreclosures.

"(C) CONTENTS.—The database established under subparagraph (B) shall include, for each abandoned foreclosure—

"(i) the address information for the property;

"(ii) the status of the deed or title to the property;

"(iii) the number of days the borrower was delinquent before the servicer initiated the foreclosure;

"(iv) the outstanding amount of the covered loan at the time the servicer initiated the foreclosure;

"(v) the date on which the servicer initiated the foreclosure;

"(vi) the date on which the servicer charged off the covered loan and released the lien; and

"(vii) the amount of the covered loan charged off by the servicer.

"(D) ACCESSIBILITY.—The Bureau may, at the discretion of the Director of the Bureau, provide access to the database established under subparagraph (B) to taxing districts.

"(E) PROTECTION OF INFORMATION.—The Bureau shall take appropriate and necessary steps to ensure the protection of personally identifiable information in the database established under subparagraph (B).

"(6) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to preempt or prohibit any provision of State law with respect to notice provided to borrowers relating to a foreclosure, except to the extent that the requirements of this section provide greater notice to such a borrower.".

SEC. 3. SELLER AND SERVICER ELIGIBILITY.

(a) ENTERPRISES.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Federal Housing Finance Agency shall promulgate a rule that provides that a seller or servicer of a mortgage loan held by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation (or an affiliate thereof)—

(A) may not, with respect to the mortgage loan—

(i) make the first notice or filing required by applicable State law for a judicial or non-judicial foreclosure process; and

(ii) following the notice or filing, cease to pursue additional action in the foreclosure process or charge off the mortgage loan unless the seller or servicer contemporaneously records a release of the mortgage loan in the registry of deeds in which the mortgage is recorded, which release shall include a discharge of the debt secured by the mortgage loan; and

(B) with respect to the servicer of the mortgage loan, is required to comply with the notice requirements under paragraphs (1) and

(2) of section 6(n) of the Real Estate Settlement Procedures Act of 1974, as added by section 2 of this Act.

(2) RULE OF CONSTRUCTION.—Nothing in paragraph (1) shall be construed to inhibit or preclude a seller or servicer of a mortgage loan described in paragraph (1) from continuing or initiating loss mitigation during the foreclosure process, including participating in any available mediation program or process under State law.

(b) FEDERAL HOUSING ADMINISTRATION.—Section 203 of the National Housing Act (12 U.S.C. 1709) is amended by adding at the end the following:

"(y) PROHIBITION ON ABANDONED FORECLOSURES.—

"(1) IN GENERAL.—To be eligible to service a mortgage insured under this section, a servicer may not, with respect to the mortgage—

"(A) make the first notice or filing required by applicable State law for a judicial or non-judicial foreclosure process; and

"(B) following the notice or filing, cease to pursue additional action in the foreclosure process or charge off the mortgage unless the servicer contemporaneously records a release of the mortgage in the registry of deeds in which the mortgage is recorded, which release shall include a discharge of the debt secured by the mortgage.

"(2) REQUIRED NOTICE.—A servicer of a mortgage insured under this section shall comply with the notice requirements under paragraphs (2) and (3) of section 6(n) of the Real Estate Settlement Procedures Act of 1974.

"(3) RULE OF CONSTRUCTION.—Nothing in paragraph (1) shall be construed to inhibit or preclude a servicer of a mortgage from continuing or initiating loss mitigation during the foreclosure process, including participating in any available mediation program or process under State law.".

SEC. 4. GAO STUDY ON ABANDONED FORECLOSURES.

(a) DEFINITIONS.—In this section:

(1) ABANDONED FORECLOSURE.—The term "abandoned foreclosure" means a covered loan—

(A) that is secured by a property that was the principal residence of the borrower—

(i) at the time of the origination of the covered loan; or

(ii) when the servicer of the covered loan made the first notice or filing required by applicable State law for a judicial or non-judicial foreclosure process;

(B) that is not an open-end credit or reverse mortgage loan; and

(C) where the servicer of the covered loan—

(i) has made the first notice or filing required by applicable State law for a judicial or non-judicial foreclosure process; and

(ii) has—

(I) ceased to pursue additional action in the foreclosure process; or

(II) charged off the covered loan and released the lien on the property for which the covered loan was made.

(2) COVERED LOAN.—The term "covered loan" means—

(A) a federally related mortgage loan; or

(B) a non-performing loan purchased from a Federal agency or an enterprise.

(3) ENTERPRISE.—The term "enterprise" has the meaning given the term in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502).

(4) FEDERALLY RELATED MORTGAGE LOAN.—The term ''federally related mortgage loan'' has the meaning given the term in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602).

(b) STUDY.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives a report on—

(1) the incidence and concentration of abandoned foreclosures;

(2) the impact of abandoned foreclosures on neighborhood and community property values, including the propensity of abandoned foreclosures to lead to foreclosures on neighboring properties; and

(3) the best available methods to collect information on abandoned foreclosures, taking into account the cost of collecting that information.

(c) RECOMMENDATIONS.—The report submitted under subsection (b) may include recommendations for additional requirements or conditions for servicers with respect to charging off covered loans or releasing liens on abandoned foreclosures.

SEC. 5. RULE OF CONSTRUCTION.

Nothing in this Act or the amendments made by this Act shall be construed to limit the rights of a tenant to remain in a property during a foreclosure process that are in effect under Federal or State law as of the date of enactment of this Act.

○