II

114TH CONGRESS
2D SESSION

S. 3426

To provide nonprofit organizations and local governments with the opportunity to match a bid with respect to the sale of certain non-performing loans by the Government-sponsored enterprises and the Federal Housing Administration, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 28, 2016

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

---

A BILL

To provide nonprofit organizations and local governments with the opportunity to match a bid with respect to the sale of certain non-performing loans by the Government-sponsored enterprises and the Federal Housing Administration, 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 ''Homeowner Foreclosure Reduction Act of 2016''.

SEC. 2. LOANS OWNED BY FANNIE MAE.

Section 302 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717) is amended by adding at the end the following:

"(d) SALE OF NON-PERFORMING LOANS.—

"(1) In this subsection—

"(A) the term 'covered pool' means a pool of non-performing loans owned under this title—

"(i) that contains not more than 300 loans;

"(ii) that is, to the extent practicable, geographically concentrated; and

"(iii) for which the corporation, with respect to the sale of loans in the pool, encourages purchase of the loans by qualifying nonprofits and qualifying local governments;

"(B) the term 'non-covered pool' means a pool of non-performing loans owned under this title that is not a covered pool;

"(C) the term 'qualifying local government' means a local government that the corporation has permitted to bid, after an initial auction, on a covered pool or a non-covered pool; and

''(D) the term 'qualifying nonprofit' means a nonprofit organization that the corporation has permitted to bid, after an initial auction, on a covered pool or a non-covered pool.

''(2)(A) The corporation, with respect to an auction for the sale of non-performing loans, shall ensure that not fewer than 25 percent of the loans that are offered for sale in the auction are loans in covered pools.

''(B) The corporation shall ensure that, after an entity that is not a qualifying nonprofit or a qualifying local government submits the highest bid on a non-covered pool, qualifying nonprofits and qualifying local governments have the opportunity to submit a bid to purchase not more than 5 percent of the loans in the non-covered pool in accordance with the procedures set forth in paragraph (3)(B).

''(3)(A) With respect to the sale of a covered pool when a qualifying nonprofit or a qualifying local government is a party bidding on the covered pool, the corporation shall—

''(i) notify each bidder that a qualifying nonprofit or a qualifying local government is a bidder on the covered pool;

“(ii) if, after receiving bids from each of the bidders on the covered pool, the corporation determines that an entity that is not a qualifying nonprofit or a qualifying local government submitted the highest overall bid—

“(I) disclose to the qualifying nonprofit or qualifying local government that submitted the highest bid (among bids submitted by qualifying nonprofits and qualifying local governments) the amount of the highest overall bid that was submitted;

“(II) provide the qualifying nonprofit or qualifying local government that submitted the highest bid with an opportunity to, not later than 2 days after receiving notice from the corporation, submit a bid in an amount greater than the highest overall bid; and

“(III) if a qualifying nonprofit or qualifying local government, as applicable, described in subclause (II) chooses not to submit a bid as described in that subclause, provide each successive qualifying nonprofit or qualifying local government that submitted the next highest bid with an opportunity to, not later than 2 days after receiving notice from the corporation and a disclosure described in subclause (I), submit a bid in an amount greater than the highest overall bid; and

"(iii) sell the covered pool to a qualifying nonprofit or a qualifying local government if a qualifying nonprofit or qualifying local government, as applicable, under subclause (II) or (III) of clause (ii), submits a bid in an amount greater than the highest overall bid.

"(B) With respect to the sale of a non-covered pool—

"(i) not later than 2 days after the date on which an entity that is not a qualifying nonprofit or a qualifying local government submits the highest overall bid on the non-covered pool—

"(I) the corporation shall disclose to qualifying nonprofits and qualifying local governments the amount of the highest overall bid submitted on the non-covered pool, including the amount of the bid for each individual loan in the non-covered pool; and

''(II) a qualifying nonprofit or a qualifying local government may submit to the corporation a bid to purchase not more than 5 percent of the loans in the non-covered pool;

''(ii) except as provided in subparagraph (C), the corporation shall sell a loan described in clause (i)(II) to a qualifying nonprofit or qualifying local government, as applicable, if, with respect to that loan, the bid of the qualifying nonprofit or qualifying local government is equal to or more than the bid of the entity that submitted the highest overall bid for the non-covered pool; and

''(iii) the total number of loans sold under clause (ii) may not exceed 10 percent of the number of loans in the non-covered pool.

''(C)(i) The corporation shall determine which loans in a non-covered pool shall be sold to a qualifying nonprofit or a qualifying local government if the aggregate number of loans sold under subparagraph (B)(ii) to qualifying nonprofits and qualifying local governments would violate subparagraph (B)(iii).

"(ii) If, under subparagraph (B)(i)(II), more than 1 qualifying nonprofit or qualifying local government submits a bid for a loan that is equal to or higher than the bid submitted by the entity that had submitted the highest overall bid, the corporation shall sell the loan to the qualifying nonprofit or qualifying local government that submitted the highest bid.

"(4) Before submitting a bid with respect to a covered pool or a non-covered pool, a nonprofit organization or local government, in order to be considered a qualifying nonprofit or qualifying local government, as applicable, shall submit to the corporation an application containing such information as the corporation determines appropriate.

"(5) Any entity that purchases a covered pool under this subsection—

"(A) may not foreclose on any of the occupied properties that secure loans in the pool during the 12-month period following the purchase; and

"(B) shall ensure that, not later than 4 years after the settlement date, not less than 50 percent of the loans in the pool result in—

"(i) a modified loan that—

"(I) has a loan-to-value ratio after the modification of the loan that is not greater than 115 percent;

"(II) performs over a period of not less than 6 months;

"(III) does not include an up-front fee or require prepayment of any amount of the mortgage debt; and

"(IV)(aa) is fixed rate for the entire period in which the loan being modified is in effect; or

"(bb) offers an initial period in which the interest rate is reduced and an increase in the interest rate is limited to not more than 1 percent per year after an initial 5-year period in which the interest rate is fixed, with a maximum interest rate not exceeding the prevailing market rate for loans;

"(ii) a short sale of the property that secures the loan to an owner-occupant;

"(iii) with respect to a qualifying non-profit or a qualifying local government that purchases a covered pool under paragraph (3)(A)(iii), holding the property that secures the loan for rental for a period of not less than 3 years, where such rental is affordable to a household with an annual income at or below the area median income;

"(iv) with the approval of the corporation, gifting the property that secures the loan to a land bank, a nonprofit organization, or a State or local government, with additional funds provided for demolition and maintenance; or

"(v) with the approval of the corporation, sale of the loan or the property that secures the loan to a nonprofit organization.

"(6) A qualifying nonprofit or a qualifying local government that purchases a covered pool under paragraph (3)(A)(iii) shall ensure that not less than 60 percent of the loans in the pool result in not less than one of the outcomes described in clauses (i) through (v) of paragraph (5)(B).

"(7)(A) Any entity that purchases a covered pool under this subsection that contains a loan for which the property securing the loan is vacant shall ensure that the servicer of the loan—

"(i) does not release the lien on the property; and

"(ii) maintains the property in accordance with generally acceptable maintenance standards.

"(B) If the servicer of a loan described in subparagraph (A) does not comply with the requirements of that subparagraph, the entity that purchased the covered pool shall sell or donate the loan to another entity, including a government or nonprofit entity.

"(8) Nothing in this subsection shall be construed to prevent the corporation from ensuring that a qualifying nonprofit or a qualifying local government has the opportunity to be the last bidder on a covered pool or a non-covered pool under procedures other than those described in this section.

"(9) In addition to the requirements under this subsection—

"(A) any entity that purchases a non-covered pool shall meet all of the requirements of the corporation in effect on the day before the date of enactment of this subsection; and

"(B) the corporation may impose any other requirements with respect to the purchase of a covered pool or a non-covered pool that the corporation determines are appropriate.''.

SEC. 3. LOANS OWNED BY FREDDIE MAC.

Section 305 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454) is amended by adding at the end the following:

''(d) SALE OF NON-PERFORMING LOANS.—

''(1) In this subsection—

''(A) the term 'covered pool' means a pool of non-performing loans owned under this title—

''(i) that contains not more than 300 loans;

''(ii) that is, to the extent practicable, geographically concentrated; and

''(iii) for which the corporation, with respect to the sale of loans in the pool, encourages purchase of the loans by qualifying nonprofits and qualifying local governments;

''(B) the term 'non-covered pool' means a pool of non-performing loans owned under this title that is not a covered pool;

''(C) the term 'qualifying local government' means a local government that the corporation has permitted to bid, after an initial auction, on a covered pool or a non-covered pool; and

''(D) the term 'qualifying nonprofit' means a nonprofit organization that the corporation has permitted to bid, after an initial auction, on a covered pool or a non-covered pool.

''(2)(A) The corporation, with respect to an auction for the sale of non-performing loans, shall ensure that not fewer than 25 percent of the loans that are offered for sale in the auction are loans in covered pools.

''(B) The corporation shall ensure that, after an entity that is not a qualifying nonprofit or a qualifying local government submits the highest bid on a non-covered pool, qualifying nonprofits and qualifying local governments have the opportunity to submit a bid to purchase not more than 5 percent of the loans in the non-covered pool in accordance with the procedures set forth in paragraph (3)(B).

''(3)(A) With respect to the sale of a covered pool when a qualifying nonprofit or a qualifying local government is a party bidding on the covered pool, the corporation shall—

''(i) notify each bidder that a qualifying nonprofit or a qualifying local government is a bidder on the covered pool;

''(ii) if, after receiving bids from each of the bidders on the covered pool, the corporation determines that an entity that is not a qualifying nonprofit or a qualifying local government submitted the highest overall bid—

''(I) disclose to the qualifying nonprofit or qualifying local government that submitted the highest bid (among bids submitted by qualifying nonprofits and qualifying local governments) the amount of the highest overall bid that was submitted;

''(II) provide the qualifying nonprofit or qualifying local government that submitted the highest bid with an opportunity to, not later than 2 days after receiving notice from the corporation, submit a bid in an amount greater than the highest overall bid; and

''(III) if a qualifying nonprofit or qualifying local government, as applicable, described in subclause (II) chooses not to submit a bid as described in that subclause, provide each successive qualifying nonprofit or qualifying local government that submitted the next highest bid with an opportunity to, not later than 2 days after receiving notice from the corporation and a disclosure described in subclause (I), submit a bid in an amount greater than the highest overall bid; and

''(iii) sell the covered pool to a qualifying nonprofit or a qualifying local government if a qualifying nonprofit or qualifying local government, as applicable, under subclause (II) or (III) of clause (ii), submits a bid in an amount greater than the highest overall bid.

''(B) With respect to the sale of a non-covered pool—

''(i) not later than 2 days after the date on which an entity that is not a qualifying nonprofit or a qualifying local government submits the highest overall bid on the non-covered pool—

''(I) the corporation shall disclose to qualifying nonprofits and qualifying local governments the amount of the highest overall bid submitted on the non-covered pool, including the amount of the bid for each individual loan in the non-covered pool; and

"(II) a qualifying nonprofit or a qualifying local government may submit to the corporation a bid to purchase not more than 5 percent of the loans in the non-covered pool;

"(ii) except as provided in subparagraph (C), the corporation shall sell a loan described in clause (i)(II) to a qualifying nonprofit or qualifying local government, as applicable, if, with respect to that loan, the bid of the qualifying nonprofit or qualifying local government is equal to or more than the bid of the entity that submitted the highest overall bid for the non-covered pool; and

"(iii) the total number of loans sold under clause (ii) may not exceed 10 percent of the number of loans in the non-covered pool.

"(C)(i) The corporation shall determine which loans in a non-covered pool shall be sold to a qualifying nonprofit or a qualifying local government if the aggregate number of loans sold under subparagraph (B)(ii) to qualifying nonprofits and qualifying local governments would violate subparagraph (B)(iii).

"(ii) If, under subparagraph (B)(i)(II), more than 1 qualifying nonprofit or qualifying local government submits a bid for a loan that is equal to or higher than the bid submitted by the entity that had submitted the highest overall bid, the corporation shall sell the loan to the qualifying nonprofit or qualifying local government that submitted the highest bid.

"(4) Before submitting a bid with respect to a covered pool or a non-covered pool, a nonprofit organization or local government, in order to be considered a qualifying nonprofit or qualifying local government, as applicable, shall submit to the corporation an application containing such information as the corporation determines appropriate.

"(5) Any entity that purchases a covered pool under this subsection—

"(A) may not foreclose on any of the occupied properties that secure loans in the pool during the 12-month period following the purchase; and

"(B) shall ensure that, not later than 4 years after the settlement date, not less than 50 percent of the loans in the pool result in—

"(i) a modified loan that—

"(I) has a loan-to-value ratio after the modification of the loan that is not greater than 115 percent;

"(II) performs over a period of not less than 6 months;

"(III) does not include an up-front fee or require prepayment of any amount of the mortgage debt; and

"(IV)(aa) is fixed rate for the entire period in which the loan being modified is in effect; or

"(bb) offers an initial period in which the interest rate is reduced and an increase in the interest rate is limited to not more than 1 percent per year after an initial 5-year period in which the interest rate is fixed, with a maximum interest rate not exceeding the prevailing market rate for loans;

"(ii) a short sale of the property that secures the loan to an owner-occupant;

"(iii) with respect to a qualifying nonprofit or a qualifying local government that purchases a covered pool under paragraph (3)(A)(iii), holding the property that secures the loan for rental for a period of not less than 3 years, where such rental is affordable to a household with an annual income at or below the area median income;

"(iv) with the approval of the corporation, gifting the property that secures the loan to a land bank, a nonprofit organization, or a State or local government, with additional funds provided for demolition and maintenance; or

"(v) with the approval of the corporation, sale of the loan or the property that secures the loan to a nonprofit organization.

"(6) A qualifying nonprofit or a qualifying local government that purchases a covered pool under paragraph (3)(A)(iii) shall ensure that not less than 60 percent of the loans in the pool result in not less than one of the outcomes described in clauses (i) through (v) of paragraph (5)(B).

"(7)(A) Any entity that purchases a covered pool under this subsection that contains a loan for which the property securing the loan is vacant shall ensure that the servicer of the loan—

"(i) does not release the lien on the property; and

"(ii) maintains the property in accordance with generally acceptable maintenance standards.

"(B) If the servicer of a loan described in subparagraph (A) does not comply with the requirements of that subparagraph, the entity that purchased the covered pool shall sell or donate the loan to another entity, including a government or nonprofit entity.

"(8) Nothing in this subsection shall be construed to prevent the corporation from ensuring that a qualifying nonprofit or a qualifying local government has the opportunity to be the last bidder on a covered pool or a non-covered pool under procedures other than those described in this section.

"(9) In addition to the requirements under this subsection—

"(A) any entity that purchases a non-covered pool shall meet all of the requirements of the corporation in effect on the day before the date of enactment of this subsection; and

"(B) the corporation may impose any other requirements with respect to the purchase of a covered pool or a non-covered pool that the corporation determines are appropriate.".

SEC. 4. LOANS INSURED BY THE FHA.

Title II of the National Housing Act (12 U.S.C. 1707 et seq.) is amended by adding at the end the following:

"SEC. 259. SALE OF NON-PERFORMING MORTGAGES.

"(a) DEFINITIONS.—In this section—

"(1) the term 'covered pool' means a pool of non-performing mortgages insured under this title—

"(A) that contains not more than 300 mortgages;

"(B) that is, to the extent practicable, geographically concentrated; and

"(C) for which the Secretary, with respect to the sale of mortgages in the pool, encourages purchase of the mortgages by qualifying non-profits and qualifying local governments;

"(2) the term 'non-covered pool' means a pool of non-performing mortgages insured under this title that is not a covered pool;

"(3) the term 'qualifying local government' means a local government that the Secretary has permitted to bid, after an initial auction, on a covered pool or a non-covered pool; and

"(4) the term 'qualifying nonprofit' means a nonprofit organization that the Secretary has permitted to bid, after an initial auction, on a covered pool or a non-covered pool.

"(b) REQUIREMENTS.—

"(1) COVERED POOLS.—The Secretary, with respect to an auction for the sale of non-performing mortgages, shall ensure that not fewer than 50 percent of the mortgages that are offered for sale in the auction are mortgages in covered pools.

"(2) NON-COVERED POOLS.—The Secretary shall ensure that, after an entity that is not a qualifying nonprofit or a qualifying local government submits the highest bid on a non-covered pool, qualifying nonprofits and qualifying local governments have the opportunity to submit a bid to purchase not more than 5 percent of the mortgages in the non-covered pool in accordance with the procedures set forth in subsection (c)(2).

"(c) PROCEDURES FOR SALE OF COVERED AND NON-COVERED POOLS.—

“(1) COVERED POOLS.—With respect to the sale of a covered pool when a qualifying nonprofit or a qualifying local government is a party bidding on the covered pool, the Secretary shall—

“(A) notify each bidder that a qualified nonprofit or a qualifying local government is a bidder on the covered pool;

“(B) if, after receiving bids from each of the bidders on the covered pool, the Secretary determines that an entity that is not a qualifying nonprofit or a qualifying local government submitted the highest overall bid—

“(i) disclose to the qualifying nonprofit or qualifying local government that submitted the highest bid (among bids submitted by qualifying nonprofits and qualifying local governments) the amount of the highest overall bid that was submitted;

“(ii) provide the qualifying nonprofit or qualifying local government that submitted the highest bid with an opportunity to, not later than 2 days after receiving notice from the Secretary, submit a bid in an amount greater than the highest overall bid; and "(iii) if a qualifying nonprofit or qualifying local government, as applicable, described in clause (ii) chooses not to submit a bid as described in that clause, provide each successive qualifying nonprofit or qualifying local government that submitted the next highest bid with an opportunity to, not later than 2 days after receiving notice from the Secretary and a disclosure described in clause (i), submit a bid in an amount greater than the highest overall bid; and

"(C) sell the covered pool to a qualifying nonprofit or a qualifying local government if a qualifying nonprofit or qualifying local government, as applicable, under clause (ii) or (iii) of subparagraph (B), submits a bid in an amount greater than the highest overall bid.

"(2) NON-COVERED POOLS.—

"(A) IN GENERAL.—With respect to the sale of a non-covered pool—

"(i) not later than 2 days after the date on which an entity that is not a qualifying nonprofit or a qualifying local government submits the highest overall bid on the non-covered pool—

"(I) the Secretary shall disclose to qualifying nonprofits and qualifying local governments the amount of the highest overall bid submitted on the non-covered pool, including the amount of the bid for each individual mortgage in the non-covered pool; and

"(II) a qualifying nonprofit or a qualifying local government may submit to the Secretary a bid to purchase not more than 5 percent of the mortgages in the non-covered pool;

"(ii) except as provided in subparagraphs (B) and (C), the Secretary shall sell a mortgage described in clause (i)(II) to a qualifying nonprofit or qualifying local government, as applicable, if, with respect to that mortgage, the bid of the qualifying nonprofit or qualifying local government is equal to or more than the bid of the entity that submitted the highest overall bid for the non-covered pool; and "(iii) the total number of mortgages sold under clause (ii) may not exceed 10 percent of the number of mortgages in the non-covered pool.

"(B) SELECTION BY THE SECRETARY.—The Secretary shall determine which mortgages in a non-covered pool shall be sold to a qualifying nonprofit or a qualifying local government if the aggregate number of mortgages sold under subparagraph (A)(ii) to qualifying nonprofits and qualifying local governments would violate subparagraph (A)(iii).

"(C) MULTIPLE HIGH BIDS.—If, under subparagraph (A)(i)(II), more than 1 qualifying nonprofit or qualifying local government submits a bid for a mortgage that is equal to or higher than the bid submitted by the entity that had submitted the highest overall bid, the Secretary shall sell the mortgage to the qualifying nonprofit or qualifying local government that submitted the highest bid.

"(d) APPLICATION.—Before submitting a bid with respect to a covered pool or a non-covered pool, a nonprofit organization or local government, in order to be considered a qualifying nonprofit or qualifying local government, as applicable, shall submit to the Secretary an application containing such information as the Secretary determines appropriate.

"(e) ADDITIONAL REQUIREMENTS FOR COVERED POOLS.—

"(1) IN GENERAL.—Any entity that purchases a covered pool under this section—

"(A) may not foreclose on any of the occupied properties that secure mortgages in the pool during the 12-month period following the purchase; and

"(B) shall ensure that, not later than 4 years after the settlement date, not less than 50 percent of the mortgages in the pool result in—

"(i) a modified mortgage that—

"(I) has a loan-to-value ratio after the modification of the mortgage that is not greater than 115 percent;

"(II) performs over a period of not less than 6 months;

"(III) does not include an up-front fee or require prepayment of any amount of the mortgage debt; and

"(IV)(aa) is fixed rate for the entire period in which the mortgage being modified is in effect; or

"(bb) offers an initial period in which the interest rate is reduced and an increase in the interest rate is limited to not more than 1 percent per year after an initial 5-year period in which the interest rate is fixed, with a maximum interest rate not exceeding the prevailing market rate for mortgages;

"(ii) a short sale of the property that secures the mortgage to an owner-occupant;

"(iii) with respect to a qualifying nonprofit or a qualifying local government that purchases a covered pool under subsection (c)(1)(C), holding the property that secures the mortgage for rental for a period of not less than 3 years, where such rental is affordable to a household with an annual income at or below the area median income;

"(iv) with the approval of the Secretary, gifting the property that secures the mortgage to a land bank, a nonprofit organization, or a State or local government, with additional funds provided for demolition and maintenance; and

"(v) with the approval of the Secretary, sale of the mortgage or the property that secures the mortgage to a nonprofit organization.

"(2) QUALIFYING NONPROFITS AND LOCAL GOVERNMENTS.—A qualifying nonprofit or a qualifying local government that purchases a covered pool under subsection (c)(1)(C) shall ensure that not less than 60 percent of the mortgages in the pool result in not less than one of the outcomes described in clauses (i) through (v) of paragraph (1)(B).

"(3) VACANT PROPERTIES.—

"(A) IN GENERAL.—Any entity that purchases a covered pool under this section that contains a mortgage for which the property securing the mortgage is vacant shall ensure that the servicer of the mortgage—

"(i) does not release the lien on the property; and "(ii) maintains the property in accordance with generally acceptable maintenance standards.

"(B) SALE OF MORTGAGE.—If the servicer of a mortgage described in subparagraph (A) does not comply with the requirements of that subparagraph, the entity that purchased the covered pool shall sell or donate the mortgage to another entity, including a government or nonprofit entity.

"(f) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to prevent the Secretary from ensuring that a qualifying nonprofit or a qualifying local government has the opportunity to be the last bidder on a covered pool or a non-covered pool under procedures other than those described in this section.

"(g) ADDITIONAL REQUIREMENTS.—In addition to the requirements under this section—

"(1) any entity that purchases a non-covered pool shall meet all of the requirements of the Secretary in effect on the day before the date of enactment of this section; and

"(2) the Secretary may impose any other requirements with respect to the purchase of a covered pool or a non-covered pool that the Secretary determines are appropriate.''.

○