

110TH CONGRESS
2D SESSION

S. 3738

To amend the Truth in Lending Act to permit deferrals on certain home mortgage foreclosures for a limited period to allow homeowners to take remedial action, to require home mortgage servicers to provide advance notice of any upcoming reset of the mortgage interest rate, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 11 (legislative day, DECEMBER 10), 2008

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

A BILL

To amend the Truth in Lending Act to permit deferrals on certain home mortgage foreclosures for a limited period to allow homeowners to take remedial action, to require home mortgage servicers to provide advance notice of any upcoming reset of the mortgage interest rate, 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 “Home Retention and
5 Economic Stabilization Act of 2008”.

1 **SEC. 2. FORECLOSURE DEFERMENT.**

2 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
 3 ing Act (15 U.S.C. 1631 et seq.) is amended by inserting
 4 after section 128 the following new section:

5 **“§ 128A. Foreclosure deferment and reset notification**
 6 **for certain mortgages**

7 “(a) DEFINITIONS.—For purposes of this section, the
 8 following definitions shall apply:

9 “(1) DEFERMENT PAYMENT AMOUNT.—The
 10 term ‘deferment payment amount’ means the
 11 amount of the monthly payment that is due on an
 12 eligible deferred-foreclosure mortgage during the
 13 deferment period.

14 “(2) DEFERMENT PERIOD.—The term
 15 ‘deferment period’ means the period that—

16 “(A) begins when the eligible deferred-fore-
 17 closure consumer sends notice of the exercise of
 18 the deferral right under subsection (b)(1) with
 19 respect to an eligible deferred-foreclosure mort-
 20 gage to the creditor or servicer; and

21 “(B) ends on the earliest of the following
 22 applicable dates:

23 “(i) The date that is 270 days after
 24 the beginning of the period.

25 “(ii) The end of the 30-day period be-
 26 ginning on any due date for any deferment

1 payment (on such mortgage, in accordance
 2 with this section) which remains unpaid as
 3 of the end of such 30-day period.

4 “(iii) The date on which the creditor
 5 or servicer enters into a qualified loan
 6 modification with the consumer.

7 “(iv) The date on which the deferment
 8 is terminated by judicial order.

9 “(3) DEFERMENT PERIOD TRIGGER.—The term
 10 ‘deferment period trigger’ means the date on which
 11 the consumer becomes eligible for a deferment under
 12 subsection (b)(1) with respect to an eligible deferred-
 13 foreclosure mortgage and occurs—

14 “(A) in the case of a subprime mortgage,
 15 on the earlier of the date of any adjustment or
 16 reset of the interest rate on such mortgage or
 17 the date by which the consumer is 60 days de-
 18 linquent on mortgage payments; and

19 “(B) in the case of a negative amortization
 20 mortgage, the date of the first increase in the
 21 minimum monthly payment due under such
 22 mortgage after the origination of such mort-
 23 gage.

24 “(4) ELIGIBLE DEFERRED-FORECLOSURE
 25 MORTGAGE.—The term ‘eligible deferred-foreclosure

1 mortgage' means a subprime mortgage or a negative
2 amortization mortgage, that was entered into before
3 January 1, 2008, and has reached the deferment pe-
4 riod trigger.

5 “(5) ELIGIBLE DEFERRED-FORECLOSURE CON-
6 SUMER.—The term ‘eligible deferred-foreclosure con-
7 sumer’ means a consumer who—

8 “(A) is a mortgagor on an eligible de-
9 ferred-foreclosure mortgage;

10 “(B) has resided at the property secured
11 by such mortgage since the mortgage trans-
12 action was entered into and intends to reside at
13 such property at least until the end of the
14 deferment period;

15 “(C) has a current monthly income that,
16 when multiplied by 12, is less than 200 percent
17 of the area median annual income for the rel-
18 evant family size in the State in which the resi-
19 dence is located; and

20 “(D) during the deferment period, re-
21 sponds to reasonable inquiries from a creditor
22 or servicer with respect to an eligible deferred-
23 foreclosure mortgage.

24 “(6) NEGATIVE AMORTIZATION MORTGAGE.—
25 The term ‘negative amortization mortgage’ means a

1 consumer credit transaction secured by the con-
 2 sumer's principal residence with the potential for
 3 negative amortization of the outstanding principal
 4 balance and under which the minimum monthly pay-
 5 ment of principal and interest required increases
 6 after the date of origination.

7 “(7) QUALIFIED LOAN MODIFICATION.—

8 “(A) IN GENERAL.—The term ‘qualified
 9 loan modification’ means a permanent, sustain-
 10 able loan modification.

11 “(B) FDIC REGULATIONS.—Not later
 12 than 60 days after the date of enactment of the
 13 Home Retention and Economic Stabilization
 14 Act of 2008, the Chair of the Federal Deposit
 15 Insurance Corporation shall promulgate rules
 16 establishing under what circumstances a loan
 17 modification will qualify as permanent and sus-
 18 tainable.

19 “(8) SUBPRIME MORTGAGE.—The term
 20 ‘subprime mortgage’ means—

21 “(A) any residential mortgage loan that
 22 constitutes a first lien on the dwelling or real
 23 property securing the loan and either—

24 “(i) has an annual percentage rate
 25 that equals or exceeds the yield on securi-

1 ties issued by the Secretary of the Treas-
2 ury under chapter 31 of title 31, United
3 States Code, that bear comparable periods
4 of maturity by more than 3 percentage
5 points; or

6 “(ii) has an annual percentage rate
7 that equals or exceeds the most recent con-
8 ventional mortgage rate, or such other an-
9 nual percentage rate as may be established
10 by the Board by regulation, by more than
11 175 basis points; and

12 “(B) any residential mortgage loan that is
13 not the first lien on the dwelling or real prop-
14 erty securing the loan and either—

15 “(i) has an annual percentage rate
16 that equals or exceeds the yield on securi-
17 ties issued by the Secretary of the Treas-
18 ury under chapter 31 of title 31, United
19 States Code, that bear comparable periods
20 of maturity by more than 5 percentage
21 points; or

22 “(ii) has an annual percentage rate
23 that equals or exceeds the most recent con-
24 ventional mortgage rate, or such other an-
25 nual percentage rate as may be established

1 by the Board by regulation, by more than
2 375 basis points.

3 “(b) RIGHT TO DEFERMENT OF INSTITUTION OF OR
4 ACTION ON FORECLOSURE.—

5 “(1) RIGHT ESTABLISHED.—Any eligible de-
6 ferred-foreclosure consumer shall have the right to
7 defer any initiation of a foreclosure, whether judicial
8 or nonjudicial, or any action in connection with a
9 foreclosure already instituted, including any fore-
10 closure sale, with respect to any eligible deferred-
11 foreclosure mortgage by any creditor, servicer, or
12 holder of such mortgage, or any other person acting
13 on behalf of any such creditor, servicer, or holder,
14 until the end of the deferment period.

15 “(2) ENFORCEMENT OF RIGHT.—An eligible de-
16 ferred-foreclosure consumer may defend against a
17 foreclosure or bring an action in any court of com-
18 petent or general jurisdiction to compel compliance
19 with the right of the consumer under paragraph (1)
20 to defer any initiation of a foreclosure or any action
21 in connection with a foreclosure already instituted,
22 including any foreclosure sale, with respect to any
23 eligible deferred-foreclosure mortgage.

24 “(c) NOTICE TO CONSUMER BEFORE ANY FORE-
25 CLOSURE ACTION.—

1 “(1) NOTICE OF RIGHT REQUIRED.—Before ini-
2 tiating any foreclosure with respect to any eligible
3 deferred-foreclosure mortgage, the creditor or
4 servicer shall notify, by personal service, any eligible
5 deferred-foreclosure consumer with respect to such
6 mortgage of such consumer’s right under subsection
7 (b) to defer the initiation of foreclosure.

8 “(2) CONTENTS OF NOTICE.—The Board shall
9 prescribe, by regulations under sections 105 and
10 122, the content and format, including the size of
11 the font, of the notices under paragraph (1) in a
12 manner that maximizes the likelihood that the con-
13 sumer will obtain and understand all the information
14 necessary to exercise the right to defer any action to
15 institute foreclosure, including—

16 “(A) the manner and format for obtaining
17 such deferral, including a sample notice form,
18 an identification form, and a certification form
19 for the consumer to use in complying with sub-
20 section (d)(1);

21 “(B) contact information for the creditor
22 or servicer, as the case may be and any third
23 party involved in foreclosure proceedings, in-
24 cluding State or local officials; and

1 “(C) contact information for obtaining any
2 counseling concerning the exercise of such de-
3 ferral from a counselor approved by the appro-
4 priate State housing finance agency or the Sec-
5 retary of Housing and Urban Development.

6 “(3) TIMING.—No foreclosure action or pro-
7 ceeding with respect to any eligible deferred-fore-
8 closure mortgage shall be valid unless the creditor or
9 servicer has provided the notice required under this
10 subsection to the consumer at least 30 days before
11 instituting any such action or proceeding and at
12 least once during each subsequent 30-day period
13 until the foreclosure becomes final.

14 “(d) INSTITUTION OF DEFERMENT.—

15 “(1) PROCEDURE REQUIRED.—Any eligible de-
16 ferred-foreclosure consumer who chooses to exercise
17 a deferment right under subsection (b) shall pro-
18 vide—

19 “(A) notice of the exercise of such to the
20 servicer or other person described in the notice
21 to the consumer under subsection (e) by any
22 reasonable means including by mail, service
23 whether directly or to any agent, including at
24 the address of any registered agent;

1 “(B) a clear identification of the eligible
2 deferred-foreclosure consumer and the address
3 of the property securing the mortgage; and

4 “(C) a certification that at least 1 con-
5 sumer borrower with respect to such mortgage
6 resides at the property secured by such mort-
7 gage and intends to reside at such property at
8 least until the end of the deferment period.

9 “(2) SUFFICIENCY OF NOTICE.—

10 “(A) IN GENERAL.—Notice and delivery of
11 an affidavit under paragraph (1) may be made
12 by any reasonable means including by mail,
13 service whether directly or to any agent, includ-
14 ing at the address of any registered agent with
15 the secretary of state for the State in which the
16 property is located, or any attorney rep-
17 resenting the consumer, or by such means as
18 the terms of the mortgage or regulations pre-
19 scribed by the Board may provide.

20 “(B) OTHER PARTIES.—If any court, any
21 sheriff or other official designated under State
22 law, or any other person authorized under State
23 law and the contracts of the parties to maintain
24 any foreclosure proceeding or conduct any fore-
25 closure sale receives, directly or indirectly, a

1 copy of any notice provided under this sub-
2 section by an eligible deferred-foreclosure con-
3 sumer with respect to any eligible deferred-fore-
4 closure mortgage, no foreclosure action may be
5 taken by the court, sheriff, official, or other
6 person with respect to such mortgage during
7 the applicable deferred-foreclosure period.

8 “(3) ACKNOWLEDGMENT.—

9 “(A) IN GENERAL.—Any creditor, servicer,
10 or holder of an eligible deferred-foreclosure
11 mortgage, or any other person acting on behalf
12 of any such creditor, servicer, or holder, who re-
13 ceives a notice from a consumer under para-
14 graph (2) shall acknowledge to the consumer
15 the receipt of the notice of the exercise of the
16 deferment right under subsection (b) before the
17 end of the 10-business day period beginning on
18 the date of such receipt.

19 “(B) CONTENTS OF NOTICE.—The ac-
20 knowledgment provided to any eligible deferred-
21 foreclosure consumer under subparagraph (A)
22 shall include the date on which the next pay-
23 ment is due on the eligible deferred-foreclosure
24 mortgage, the deferment payment amount, the
25 date on which each subsequent payment is due,

1 and the address or the delivery method for each
2 such payment that is acceptable to the recipi-
3 ent.

4 “(4) MONTHLY PAYMENT NOTICES.—Each peri-
5 odic statement of account submitted by the creditor
6 or servicer with respect to any eligible deferred-fore-
7 closure mortgage during the period while any
8 deferment right under subsection (b) is in effect
9 shall include—

10 “(A) the due date and the amount of the
11 next payment due on such mortgage;

12 “(B) the address or the delivery method
13 for such payment;

14 “(C) the date on which the deferral of the
15 foreclosure will terminate; and

16 “(D) a notice that failure to make such
17 payment in a timely manner will jeopardize the
18 continuation of the deferral of the foreclosure.

19 “(e) DEFERMENT PAYMENT.—

20 “(1) IN GENERAL.—During the deferment pe-
21 riod with respect to any eligible deferred-foreclosure
22 mortgage for which any deferment right has been
23 exercised under subsection (b), monthly payments
24 shall continue to be made by the consumer with re-
25 spect to such mortgage.

1 “(2) AMOUNT OF PAYMENT.—The deferment
2 payment amount for purposes of monthly payments
3 under paragraph (1) with respect to any eligible de-
4 ferred-foreclosure mortgage shall be—

5 “(A) in the case of any subprime mort-
6 gage, the lesser of—

7 “(i) the minimum monthly payment of
8 principal and interest on the date the loan
9 was originated; or

10 “(ii) a monthly payment based on the
11 outstanding loan principal plus a rate of
12 interest calculated at a fixed annual per-
13 centage rate, in an amount equal to the
14 most recent conventional mortgage rate
15 plus a 100 basis point premium for risk,
16 amortized over a period of 30 years minus
17 the period of time since the origination of
18 the loan; and

19 “(B) in the case of any negative amortiza-
20 tion mortgage, the amount of the first min-
21 imum monthly payment due under the mort-
22 gage after the origination of such mortgage.

23 “(3) AMORTIZATION OF DIFFERENCE.—The
24 difference between the amount of any monthly pay-
25 ment due under the terms of any eligible deferred-

1 foreclosure mortgage and the deferment payment
2 amount shall be amortized over the life of the mort-
3 gage beginning after the deferred-foreclosure period
4 in accordance with regulations which the Board shall
5 prescribe.

6 “(4) CHARGES PROHIBITED.—No creditor or
7 servicer may impose any late fee or other fee or
8 charge during the deferment period with respect to
9 any eligible deferred-foreclosure mortgage for which
10 any deferment right has been exercised under sub-
11 section (b) or in connection with the exercise of such
12 deferment right.

13 “(f) NOTICE OF RESET AND ALTERNATIVES.—Dur-
14 ing the 1-month period that ends 120 days before the date
15 on which, in the case of a subprime mortgage, the interest
16 rate in effect during the introductory period of the mort-
17 gage adjusts or resets to a variable interest rate, or in
18 the case of a negative amortization mortgage, the min-
19 imum monthly payment of principal and interest required
20 first increases from the amount of the first such minimum
21 monthly payment due under the mortgage after the origi-
22 nation of such mortgage, the creditor or servicer of such
23 loan shall provide a written notice, separate and distinct
24 from all other correspondence to the consumer, that in-
25 cludes the following:

1 “(1) Any index or formula used—

2 “(A) in the case of any subprime mort-
3 gage, in determining the annual percentage rate
4 applicable as of the effective date of such reset
5 or adjustment; and

6 “(B) in the case of any negative amortiza-
7 tion mortgage, in making increases in the min-
8 imum monthly payments due, and a source of
9 information about the index or formula.

10 “(2) A good faith estimate, based on accepted
11 industry standards and disclosed in a clear and con-
12 spicuous manner, of the creditor or servicer of the
13 amount of the monthly payment that will apply after
14 the date of the adjustment or reset, or increase, as
15 applicable, and the assumptions on which this esti-
16 mate is based.

17 “(3) A list of alternatives consumers may pur-
18 sue before the date of adjustment or reset, or in-
19 crease, as applicable, and descriptions of the actions
20 consumers must take to pursue these alternatives,
21 including—

22 “(A) refinancing;

23 “(B) renegotiation of loan terms;

24 “(C) payment forbearances;

25 “(D) pre-foreclosure sales; and

1 “(E) any payment assistance available
2 from the State in which the property is located.

3 “(4) The names, addresses, telephone numbers,
4 and Internet addresses of counseling agencies or
5 programs reasonably available to the consumer that
6 have been certified or approved and made publicly
7 available by the Secretary of Housing and Urban
8 Development or a State housing finance authority
9 (as defined in section 1301 of the Financial Institu-
10 tions Reform, Recovery, and Enforcement Act of
11 1989).

12 “(5) The address, telephone number, and Inter-
13 net address for the State housing finance authority
14 (as so defined) for the State in which the consumer
15 resides.

16 “(g) MOST RECENT CONVENTIONAL MORTGAGE
17 RATE.—For purposes of subsection (f)(1)(A)(ii), the term
18 ‘most recent conventional mortgage rate’ means the con-
19 tract interest rate on commitments for fixed-rate first
20 mortgages most recently published in the Federal Reserve
21 Statistical Release on selected interest rates (daily or
22 weekly), and commonly referred to as the H.15 release (or
23 any successor publication), in the week preceding a date
24 of determination for purposes of applying this subsection.

1 “(h) DUTY OF CONSUMER TO MAINTAIN PROP-
2 ERTY.—

3 “(1) IN GENERAL.—Any eligible deferred-fore-
4 closure consumer for whom a deferment of fore-
5 closure is in effect under this section with respect to
6 any eligible deferred-foreclosure mortgage may not,
7 with respect to any property securing such mort-
8 gage, destroy, damage, or impair such property,
9 allow the property to deteriorate, or commit waste
10 on the property.

11 “(2) ENFORCEMENT.—Any consumer may be
12 liable to any creditor or servicer for any violation of
13 paragraph (1) under section 130(a)(1) and for such
14 purposes section 130(a) shall be applied by sub-
15 stituting ‘consumer’ for ‘creditor’ each place such
16 term appears.

17 “(i) DECLARATION OF RIGHTS.—In addition to the
18 right of any party to a mortgage to seek a declaratory
19 judgment under section 2201 of title 28, United States
20 Code, any such party may apply prior to the end of the
21 deferment period to any State court of competent or gen-
22 eral jurisdiction for an order establishing the rights, du-
23 ties, and conditions imposed on or applicable to any party
24 to the mortgage, including the terms and conditions of a
25 deferment.

1 “(j) COORDINATION WITH STATE LAW.—

2 “(1) IN GENERAL.—No provision of this section
3 shall be construed as annulling, altering, or affecting
4 the laws of any State relating to deferment of fore-
5 closures, except to the extent that those laws are in-
6 consistent with the provisions of this section, and
7 then only to the extent of the inconsistency.

8 “(2) RULE OF CONSTRUCTION.—A State law is
9 not inconsistent with this section if the protection
10 such law affords any consumer is greater than the
11 protection afforded by this subsection.”.

12 (b) CLERICAL AMENDMENT.—The table of sections
13 for chapter 2 of the Truth in Lending Act is amended
14 by inserting after the item relating to section 128 the fol-
15 lowing new item:

“128A. Foreclosure deferment and reset notification for certain mortgages.”.

16 **SEC. 3. AUTHORIZATION OF APPROPRIATIONS FOR HOUS-**
17 **ING COUNSELING.**

18 There is authorized to be appropriated for fiscal year
19 2008, \$200,000,000 for the Neighborhood Reinvestment
20 Corporation, for carrying out foreclosure mitigation activi-
21 ties under the terms and conditions contained in the sec-
22 ond paragraph under the heading “Neighborhood Rein-
23 vestment Corporation—Payment to the Neighborhood Re-
24 investment Corporation” in title III of division K of Public
25 Law 110–161 (121 Stat. 2441), which may include use

- 1 for costs of providing additional counselors, translators,
- 2 and other staffers and costs of providing additional com-
- 3 puters and improving databases and overall operations to
- 4 better assist mortgagor families.

