

112TH CONGRESS  
2D SESSION

# H. R. 3789

To amend the Truth in Lending Act to establish clear regulatory standards for mortgage servicers, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES

JANUARY 18, 2012

Ms. DELAURO introduced the following bill; which was referred to the Committee on Financial Services

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## A BILL

To amend the Truth in Lending Act to establish clear regulatory standards for mortgage servicers, 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 “Regulation of Mort-  
5 gage Servicing Act of 2012”.

6 **SEC. 2. STANDARDS FOR MORTGAGE SERVICERS.**

7 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-  
8 ing Act (15 U.S.C. 1631) is amended by adding at the  
9 end the following new section:

1 **“SEC. 129I. STANDARDS FOR SERVICERS OF RESIDENTIAL**  
2 **MORTGAGES.**

3 “(a) DEFINITIONS.—In this section, the following  
4 definitions shall apply:

5 “(1) ALTERNATIVE TO FORECLOSURE.—The  
6 term ‘alternative to foreclosure’—

7 “(A) means a course of action with respect  
8 to a mortgage offered by a servicer to a bor-  
9 rower as an alternative to a covered foreclosure  
10 action; and

11 “(B) includes a short sale and a deed in  
12 lieu of foreclosure.

13 “(2) BORROWER.—The term ‘borrower’ means  
14 a mortgagor under a mortgage who is in default or  
15 at risk of imminent default, as determined by the  
16 Director, by rule.

17 “(3) COVERED FORECLOSURE ACTION.—The  
18 term ‘covered foreclosure action’ means a judicial or  
19 nonjudicial foreclosure.

20 “(4) INDEPENDENT REVIEWER.—The term  
21 ‘independent reviewer’—

22 “(A) means an entity that has the exper-  
23 tise and capacity to determine whether a bor-  
24 rower is eligible to participate in a loan modi-  
25 fication program; and

26 “(B) includes—

1 “(i) an entity that is not a servicer; or

2 “(ii) a division within a servicer that  
3 is independent of, and not under the same  
4 immediate supervision as, any division that  
5 makes determinations with respect to ap-  
6 plications for loan modifications or alter-  
7 natives to foreclosure.

8 “(5) LOAN MODIFICATION PROGRAM.—The  
9 term ‘loan modification program’—

10 “(A) means a program or procedure de-  
11 signed to change the terms of a mortgage in the  
12 case of the default, delinquency, or imminent  
13 default or delinquency of a mortgagor; and

14 “(B) includes—

15 “(i) a loan modification program es-  
16 tablished by the Federal Government, in-  
17 cluding the Home Affordable Modification  
18 Program of the Department of the Treas-  
19 ury; and

20 “(ii) a loan modification program es-  
21 tablished by a servicer.

22 “(6) MORTGAGE.—The term ‘mortgage’ means  
23 a federally related mortgage loan, as defined in sec-  
24 tion 3 of the Real Estate Settlement Procedures Act  
25 of 1974 (12 U.S.C. 2602(3)), that is secured by a

1 first or subordinate lien on residential real property  
2 that is the primary residence of the borrower.

3 “(7) SERVICER.—The term ‘servicer’—

4 “(A) has the same meaning as in section  
5 6(i) of the Real Estate Settlement Procedures  
6 Act of 1974 (12 U.S.C. 2605(i)); and

7 “(B) includes a person responsible for  
8 servicing a pool of mortgages.

9 “(b) SINGLE POINT OF CONTACT.—

10 “(1) CASE MANAGER REQUIRED.—A servicer  
11 shall assign 1 case manager to each borrower that  
12 seeks a loan modification or an alternative to fore-  
13 closure.

14 “(2) DUTIES OF CASE MANAGER.—The case  
15 manager assigned under paragraph (1) shall be an  
16 individual who—

17 “(A) manages the communications between  
18 the servicer and the borrower;

19 “(B) has the authority to make decisions  
20 about the eligibility of the borrower for a loan  
21 modification or an alternative to foreclosure;

22 “(C) is available to communicate with the  
23 borrower by telephone and email during busi-  
24 ness hours; and

1           “(D) remains assigned to the borrower  
2 until the earliest of—

3           “(i) the date on which the borrower  
4 accepts a loan modification or an alter-  
5 native to foreclosure;

6           “(ii) the date on which the servicer  
7 forecloses on the mortgage of the borrower;  
8 or

9           “(iii) the date on which a release of  
10 the mortgage of the borrower is recorded  
11 in the appropriate land records office, as  
12 determined by the Director, by rule.

13           “(3) ASSISTANCE FOR CASE MANAGERS.—A  
14 servicer may assign an employee to assist a case  
15 manager assigned under paragraph (1), if the case  
16 manager remains available to communicate with the  
17 borrower by telephone and email.

18           “(c) DETERMINATION OF ELIGIBILITY FOR LOAN  
19 MODIFICATION PROGRAM OR ALTERNATIVE TO FORE-  
20 CLOSURE REQUIRED BEFORE FORECLOSURE.—

21           “(1) INITIATION OF COVERED FORECLOSURE  
22 ACTIONS.—A servicer may not initiate a covered  
23 foreclosure action against a borrower unless the  
24 servicer has—

1           “(A) completed a full review of the file of  
2 the borrower to determine whether the borrower  
3 is eligible for a loan modification or an alter-  
4 native to foreclosure;

5           “(B) made a reasonable effort to obtain  
6 the information necessary to determine whether  
7 the borrower is eligible for a loan modification  
8 or an alternative to foreclosure, as described in  
9 paragraph (3); and

10           “(C) offered the borrower a loan modifica-  
11 tion or an alternative to foreclosure, if the bor-  
12 rower is eligible for the loan modification or al-  
13 ternative to foreclosure.

14           “(2) SUSPENSION OF COVERED FORECLOSURE  
15 ACTIONS.—

16           “(A) IN GENERAL.—A servicer shall sus-  
17 pend a covered foreclosure action that was initi-  
18 ated before the date of enactment of this sec-  
19 tion until the servicer—

20           “(i) completes a full review of the file  
21 of the borrower to determine whether the  
22 borrower is eligible for a loan modification  
23 or an alternative to foreclosure;

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

1           “(iii) offers the borrower a loan modi-  
2           fication or an alternative to foreclosure, if  
3           the borrower is eligible for a loan modifica-  
4           tion or an alternative to foreclosure.

5           “(B) SUSPENSION.—During the period of  
6           the suspension under subparagraph (A), a  
7           servicer may not—

8           “(i) send a notice of foreclosure to a  
9           borrower;

10           “(ii) conduct or schedule a sale of the  
11           residential real property securing the mort-  
12           gage of the borrower; or

13           “(iii) cause final judgment to be en-  
14           tered against the borrower.

15           “(C) REASONABLE EFFORTS.—A servicer  
16           is not required to suspend a covered foreclosure  
17           action under subparagraph (A) if the servicer—

18           “(i) makes a reasonable effort to ob-  
19           tain information necessary to determine  
20           whether the borrower is eligible for a loan  
21           modification or an alternative to fore-  
22           closure, as described in paragraph (3); and

23           “(ii) documents that the servicer has  
24           not received information necessary to de-  
25           termine whether the borrower is eligible for

1 a loan modification or an alternative to  
2 foreclosure before the end of the applicable  
3 period under paragraph (3).

4 “(D) RULE OF CONSTRUCTION.—Nothing  
5 in this section may be construed to require a  
6 servicer to delay an unavoidable foreclosure,  
7 such as foreclosure that results from a borrower  
8 abandoning the residential real property secur-  
9 ing the mortgage of such borrower.

10 “(3) REASONABLE EFFORT TO OBTAIN NEC-  
11 ESSARY INFORMATION.—A servicer shall be deemed  
12 to have made a reasonable effort to obtain informa-  
13 tion necessary to determine whether the borrower is  
14 eligible for a loan modification or an alternative to  
15 foreclosure if such servicer takes the following steps:

16 “(A) 30-DAY PERIOD AFTER DELIN-  
17 QUENCY.—

18 “(i) IN GENERAL.—During the 30-day  
19 period beginning on the date of delin-  
20 quency of the borrower, the servicer shall  
21 attempt to establish contact with the bor-  
22 rower by—

23 “(I) making not fewer than 4  
24 telephone calls to the telephone num-

1                   ber on record for the borrower, at dif-  
2                   ferent times of the day; and

3                   “(II) sending not fewer than 2  
4                   written notices to the borrower at the  
5                   address on record for the borrower, at  
6                   least 1 of which shall be delivered by  
7                   certified mail, requesting that the bor-  
8                   rower contact the servicer.

9                   “(ii) CONTACT NOT ESTABLISHED.—

10                   In the case that a servicer is not able to  
11                   establish contact with the borrower by tele-  
12                   phone under subclause (I) of clause (i) or  
13                   such borrower does not respond to the no-  
14                   tices sent under subclause (II) of such  
15                   clause, such servicer shall, following a  
16                   third party review under subsection (d),  
17                   notify the borrower that the servicer in-  
18                   tends to initiate or continue a covered fore-  
19                   closure action.

20                   “(B) CONTACT ESTABLISHED WITH BOR-  
21                   ROWER.—In the case that a servicer is able to  
22                   establish contact with the borrower under sub-  
23                   paragraph (A)(i), the servicer shall—

24                   “(i) notify the borrower, in writing,  
25                   that the servicer lacks information nec-

1           essary to determine whether the borrower  
2           is eligible for a loan modification or an al-  
3           ternative to foreclosure; and

4           “(ii) send the borrower a written re-  
5           quest that the borrower transmit to the  
6           servicer, not later than 30 days after the  
7           date on which such request sent by the  
8           servicer is postmarked, all information nec-  
9           essary to determine whether the borrower  
10          is eligible for a loan modification or an al-  
11          ternative to foreclosure.

12          “(C) NECESSARY INFORMATION NOT RE-  
13          CEIVED.—In the case that the servicer does not  
14          receive from the borrower all information re-  
15          quested under clause (ii) of subparagraph (B)  
16          within the time period described in such sub-  
17          paragraph, the servicer shall send the borrower  
18          an additional written request that the borrower  
19          transmit to the servicer, not later than 15 days  
20          after the date on which such request sent by  
21          the servicer is postmarked, all information nec-  
22          essary to determine whether the borrower is eli-  
23          gible for a loan modification or an alternative to  
24          foreclosure.

1           “(D) NOTIFICATION OF FORECLOSURE.—

2           In the case that the servicer does not receive  
3           from the borrower all information requested  
4           under subparagraph (C) within the time period  
5           described in such subparagraph, the servicer  
6           shall, following a third party review under sub-  
7           section (d), notify the borrower that the servicer  
8           intends to initiate or continue a covered fore-  
9           closure action.

10          “(d) THIRD PARTY REVIEW.—

11           “(1) IN GENERAL.—Unless otherwise provided  
12           for in this subsection, before a servicer notifies a  
13           borrower that the borrower is not eligible for a loan  
14           modification or an alternative to foreclosure, the  
15           servicer shall obtain the services of an independent  
16           reviewer to—

17                   “(A) review the file of the borrower; and

18                   “(B) determine whether the borrower is el-  
19           igible for a loan modification or an alternative  
20           to foreclosure.

21           “(2) EXEMPTION.—Paragraph (1) shall not  
22           apply to a servicer that is a community financial in-  
23           stitution, as defined in section 2(10) of the Federal  
24           Home Loan Bank Act (12 U.S.C. 1422(10)).

25          “(e) BAR TO FORECLOSURE ACTIONS.—

1           “(1) IN GENERAL.—Subject to paragraph (2), a  
2 violation of this Act shall be a bar to a covered fore-  
3 closure action.

4           “(2) EFFECT OF SUBSEQUENT COMPLIANCE.—  
5 If a servicer is in compliance with this section, the  
6 servicer may bring or proceed with a covered fore-  
7 closure action, without regard to a prior violation of  
8 this section by the servicer.

9           “(f) LIABILITY.—

10           “(1) IN GENERAL.—A servicer that fails to  
11 comply with any requirement imposed under this  
12 section shall be liable to a borrower in the same  
13 manner that a creditor who fails to comply with any  
14 requirement under this chapter is liable to a person  
15 under section 130.

16           “(2) JOINT AND SEVERAL LIABILITY.—A cred-  
17 itor or assignee that is connected to a mortgage  
18 serviced by a servicer that fails to comply with any  
19 requirement imposed under this section shall, with  
20 respect to that mortgage, have joint and several li-  
21 ability with such servicer for such failure to com-  
22 ply.”.

23           “(b) TABLE OF CONTENTS.—The table of contents of  
24 chapter 2 of such Act is amended by adding at the end  
25 the following new item:

“129I. Standards for servicers of residential mortgages.”.

1 **SEC. 3. REGULATIONS.**

2 Not later than 90 days after the date of enactment  
3 of this Act, the Director of the Bureau of Consumer Fi-  
4 nancial Protection, in consultation with the Secretary of  
5 Housing and Urban Development and the Secretary of the  
6 Treasury, shall issue regulations to carry out the amend-  
7 ments made by this Act.

8 **SEC. 4. REPORT.**

9 Not later than 1 year after the date of enactment  
10 of this Act, the Director of the Bureau of Consumer Fi-  
11 nancial Protection shall submit to Congress a report that  
12 contains—

13 (1) an evaluation of the effect of the amend-  
14 ments made by this Act on—

15 (A) State law; and

16 (B) communication between servicers and  
17 borrowers; and

18 (2) a description of any problems concerning  
19 the implementation of this Act.

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