

112TH CONGRESS
1ST SESSION

S. 690

To establish the Office of the Homeowner Advocate.

IN THE SENATE OF THE UNITED STATES

MARCH 30, 2011

Mr. FRANKEN (for himself, Ms. SNOWE, Mr. MENENDEZ, Mr. ROCKEFELLER, Mr. DURBIN, Mr. SANDERS, Mr. BROWN of Ohio, Mrs. SHAHEEN, Mr. LAUTENBERG, Mr. LEAHY, Mr. REED, Mr. MERKLEY, and Mrs. MURRAY) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To establish the Office of the Homeowner Advocate.

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 “Homeowner Advocate
5 Act of 2011”.

6 **SEC. 2. OFFICE OF THE HOMEOWNER ADVOCATE.**

7 (a) ESTABLISHMENT.—There is established in the
8 Department of the Treasury an office to be known as the
9 “Office of the Homeowner Advocate” (in this Act referred
10 to as the “Office”).

1 (b) DIRECTOR.—

2 (1) IN GENERAL.—The Director of the Office of
3 the Homeowner Advocate (in this Act referred to as
4 the “Director”) shall report directly to the Assistant
5 Secretary of the Treasury for Financial Stability,
6 and shall be entitled to compensation at the same
7 rate as the highest rate of basic pay established for
8 the Senior Executive Service under section 5382 of
9 title 5, United States Code.

10 (2) APPOINTMENT.—The Director shall be ap-
11 pointed by the Secretary, after consultation with the
12 Secretary of the Department of Housing and Urban
13 Development, and without regard to the provisions
14 of title 5, United States Code, relating to appoint-
15 ments in the competitive service or the Senior Exec-
16 utive Service.

17 (3) QUALIFICATIONS.—An individual appointed
18 under paragraph (2) shall have—

19 (A) experience as an advocate for home-
20 owners; and

21 (B) experience dealing with mortgage
22 servicers.

23 (4) RESTRICTION ON EMPLOYMENT.—An indi-
24 vidual may be appointed as Director only if such in-
25 dividual was not an officer or employee of either a

1 mortgage servicer or the Department of the Treas-
2 ury during the 4-year period preceding the date of
3 such appointment.

4 (5) **HIRING AUTHORITY.**—The Director shall
5 have the authority to hire staff, obtain support by
6 contract, and manage the budget of the Office of the
7 Homeowner Advocate.

8 **SEC. 3. FUNCTIONS OF THE OFFICE.**

9 (a) **IN GENERAL.**—It shall be the function of the Of-
10 fice—

11 (1) to assist homeowners, housing counselors,
12 and housing lawyers in resolving problems with the
13 Home Affordable Modification Program of the Mak-
14 ing Home Affordable initiative of the Secretary, au-
15 thorized under the Emergency Economic Stabiliza-
16 tion Act of 2008 (in this Act referred to as the
17 “Home Affordable Modification Program”);

18 (2) to identify areas, both individual and sys-
19 tematic, in which homeowners, housing counselors,
20 and housing lawyers have problems in dealings with
21 the Home Affordable Modification Program;

22 (3) to the extent possible, to propose changes in
23 the administrative practices of the Home Affordable
24 Modification Program, to mitigate problems identi-
25 fied under paragraph (2);

1 (4) to identify potential legislative changes
2 which may be appropriate to mitigate such problems;
3 and

4 (5) to implement other programs and initiatives
5 that the Director deems important to assisting
6 homeowners, housing counselors, and housing law-
7 yers in resolving problems with the Home Affordable
8 Modification Program, which may include—

9 (A) running a triage hotline for home-
10 owners at risk of foreclosure;

11 (B) providing homeowners with access to
12 housing counseling programs of the Department
13 of Housing and Urban Development at no cost
14 to the homeowner;

15 (C) developing Internet tools related to the
16 Home Affordable Modification Program; and

17 (D) developing training and educational
18 materials.

19 (b) AUTHORITY.—

20 (1) IN GENERAL.—Staff designated by the Di-
21 rector shall have the authority to implement servicer
22 remedies, on a case-by-case basis, subject to the ap-
23 proval of the Assistant Secretary of the Treasury for
24 Financial Stability.

1 (2) RESOLUTION OF HOMEOWNER CON-
2 CERNS.—The Office shall, to the extent possible, re-
3 solve all homeowner concerns not later than 30 days
4 after the opening of a case with such homeowner.

5 (c) COMMENCEMENT OF OPERATIONS.—The Office
6 shall commence its operations, as required by this Act, not
7 later than 3 months after the date of enactment of this
8 Act.

9 (d) SUNSET.—The Office shall cease operations as of
10 the date on which the Home Affordable Modification Pro-
11 gram ceases to operate.

12 **SEC. 4. RELATIONSHIP WITH EXISTING ENTITIES.**

13 (a) TRANSFER.—The Office shall coordinate and cen-
14 tralize all complaint escalations relating to the Home Af-
15 fordable Modification Program.

16 (b) HOTLINE.—The HOPE hotline (or any successor
17 triage hotline) shall reroute all complaints relating to the
18 Home Affordable Modification Program to the Office.

19 (c) COORDINATION.—The Office shall coordinate
20 with the compliance office of the Office of Financial Sta-
21 bility of the Department of the Treasury and the Home-
22 ownership Preservation Office of the Department of the
23 Treasury.

1 **SEC. 5. RULE OF CONSTRUCTION.**

2 Nothing in this Act shall prohibit a mortgage servicer
3 from evaluating a homeowner for eligibility under the
4 Home Affordable Foreclosure Alternatives Program while
5 a case is still open with the Office of the Homeowner Ad-
6 vocate. Nothing in this Act may be construed to relieve
7 any loan services from otherwise applicable rules, direc-
8 tives, or similar guidance under the Home Affordable
9 Modification Program relating to the continuation or com-
10 pletion of foreclosure proceedings.

11 **SEC. 6. REPORTS TO CONGRESS.**

12 (a) TESTIMONY.—The Director shall be available to
13 testify before the Committee on Banking, Housing, and
14 Urban Affairs of the Senate and the Committee on Finan-
15 cial Services of the House of Representatives, not less fre-
16 quently than 4 times a year, or at any time at the request
17 of the Chairs of either committee.

18 (b) REPORTS.—Once annually, the Director shall
19 provide a detailed report to Congress on the Home Afford-
20 able Modification Program. Such report shall contain full
21 and substantive analysis, in addition to statistical informa-
22 tion, including, at a minimum—

23 (1) data and analysis of the types and volume
24 of complaints received from homeowners, housing
25 counselors, and housing lawyers, broken down by

1 category of servicer, except that servicers may not be
2 identified by name in the report;

3 (2) a summary of not fewer than 20 of the
4 most serious problems encountered by Home Afford-
5 able Modification Program participants, including a
6 description of the nature of such problems;

7 (3) to the extent known, identification of the 10
8 most litigated issues for Home Affordable Modifica-
9 tion Program participants, including recommenda-
10 tions for mitigating such disputes;

11 (4) data and analysis on the resolutions of the
12 complaints received from homeowners, housing coun-
13 selors, and housing lawyers;

14 (5) identification of any programs or initiatives
15 that the Office has taken to improve the Home Af-
16 fordable Modification Program;

17 (6) recommendations for such administrative
18 and legislative action as may be appropriate to re-
19 solve problems encountered by Home Affordable
20 Modification Program participants; and

21 (7) such other information as the Director may
22 deem advisable.

23 **SEC. 7. FUNDING.**

24 Amounts made available for the costs of administra-
25 tion of the Home Affordable Modification Program that

1 are not otherwise obligated shall be available to carry out
2 the duties of the Office. Funding shall be maintained at
3 levels adequate to reasonably carry out the functions of
4 the Office.

5 **SEC. 8. PROHIBITION ON PARTICIPATION IN MAKING HOME**
6 **AFFORDABLE FOR BORROWERS WHO STRA-**
7 **TEGICALLY DEFAULT.**

8 No mortgage may be modified under the Making
9 Home Affordable Program, or with any funds from the
10 Troubled Asset Relief Program, unless the servicer of the
11 mortgage loan has determined, in accordance with stand-
12 ards and requirements established by the Secretary of the
13 Treasury, that the mortgagor cannot afford to make pay-
14 ments under the terms of the existing mortgage loan. The
15 Secretary of the Treasury, in consultation with the Sec-
16 retary of Housing and Urban Development, shall issue
17 rules to carry out this section not later than 90 days after
18 the date of enactment of this Act. This section shall not
19 apply to any refinancing or modifications made under the
20 “FHA Program Adjustments to Support Refinancings for
21 Underwater Homeowners,” announced by the Department
22 of the Treasury and the Department of Housing and
23 Urban Development on March 26, 2010, as long as the
24 program continues to be structured so that borrowers par-
25 ticipating in the FHA refinance program cannot be in de-

1 fault on their primary mortgage at the time of refinance
2 and their eligibility in the program is not helped if they
3 are in default on their second mortgage, and thus lack
4 a strategic reason to go into default on either their first
5 or second mortgage to participate in the program.

6 **SEC. 9. PUBLIC AVAILABILITY OF INFORMATION.**

7 (a) PUBLIC AVAILABILITY OF DATA.—The Secretary
8 of the Treasury shall revise the guidelines for the Home
9 Affordable Modification Program of the Making Home Af-
10 fordable initiative of the Secretary of the Treasury, au-
11 thorized under the Emergency Economic Stabilization Act
12 of 2008 (Public Law 110–343), to establish that the data
13 collected by the Secretary of the Treasury from each mort-
14 gage servicer and lender participating in the Program is
15 made public in accordance with subsection (b).

16 (b) CONTENT.—Not more than 60 days after each
17 monthly deadline for submission of data by mortgage
18 servicers and lender participating in the program, the
19 Treasury shall make all data tables available to the public
20 at the individual record level. This data shall include but
21 not be limited to—

22 (1) higher risk loans, including loans made in
23 connection with any program to provide expanded
24 loan approvals, shall be reported separately;

25 (2) disclose—

1 (A) the rate or pace at which such mort-
2 gages are becoming seriously delinquent;

3 (B) whether such rate or pace is increasing
4 or decreasing;

5 (C) if there are certain subsets within the
6 loans covered by this section that have greater
7 or lesser rates or paces of delinquency; and

8 (D) if such subsets exist, the characteris-
9 tics of such subset of mortgages;

10 (3) with respect to the loss mitigation efforts of
11 the loan—

12 (A) the processes and practices that the re-
13 porter has in effect to minimize losses on mort-
14 gages covered by this section; and

15 (B) the manner and methods by which
16 such processes and practices are being mon-
17 itored for effectiveness;

18 (4) disclose, with respect to loans that are or
19 become 60 or more days past due, (provided that for
20 purposes of disclosure under this paragraph that
21 each loan should have a unique number that is not
22 the same as any loan number the borrower, origi-
23 nator, or servicer uses), the following attributes—

24 (A) the original loan amount;

25 (B) the current loan amount;

1 (C) the loan-to-value ratio and combined
2 loan-to-value ratio, both at origination and cur-
3 rently, and the number of liens on the property;

4 (D) the property valuation at the time of
5 origination of the loan, and all subsequent prop-
6 erty valuations and the date of each valuation;

7 (E) each relevant credit score of each bor-
8 rower obtained at any time in connection with
9 the loan, with the date of the credit score, to
10 the extent allowed by existing law;

11 (F) whether the loan has any mortgage or
12 other credit insurance or guarantee;

13 (G) the current interest rate on such loan;

14 (H) any rate caps and floors if the loan is
15 an adjustable rate mortgage loan;

16 (I) the adjustable rate mortgage index or
17 indices for such loan;

18 (J) whether the loan is currently past due,
19 and if so how many days such loan is past due;

20 (K) the total number of days the loan has
21 been past due at any time;

22 (L) whether the loan is subject to a balloon
23 payment;

24 (M) the date of each modification of the
25 loan;

1 (N) whether any amounts of loan principal
2 has been deferred or written off, and if so, the
3 date and amount of each deferral and the date
4 and amount of each writedown;

5 (O) whether the interest rate was changed
6 from a rate that could adjust to a fixed rate,
7 and if so, the period of time for which the rate
8 will be fixed;

9 (P) the amount by which the interest rate
10 on the loan was reduced, and for what period
11 of time it was reduced;

12 (Q) if the interest rate was reduced or
13 fixed for a period of time less than the remain-
14 ing loan term, on what dates, and to what
15 rates, could the rate potentially increase in the
16 future;

17 (R) whether the loan term was modified,
18 and if so, whether it was extended or shortened,
19 and by what amount of time;

20 (S) whether the loan is in the process of
21 foreclosure or similar procedure, whether judi-
22 cial or otherwise; and

23 (T) whether a foreclosure or similar proce-
24 dure, whether judicial or otherwise, has been
25 completed.

1 (c) GUIDELINES AND REGULATIONS.—The Secretary
2 of the Treasury shall establish guidelines and regulations
3 necessary—

4 (1) to ensure that the privacy of individual con-
5 sumers is appropriately protected in the reports
6 under this section;

7 (2) to make the data reported under this sub-
8 section available on a public Web site with no cost
9 to access the data, in a consistent format;

10 (3) to update the data no less frequently than
11 monthly;

12 (4) to establish procedures for disclosing such
13 data to the public on a public Web site with no cost
14 to access the data; and

15 (5) to allow the Secretary to make such dele-
16 tions as the Secretary may determine to be appro-
17 priate to protect any privacy interest of any loan
18 modification applicant, including the deletion or al-
19 teration of the applicant's name and identification
20 number.

21 (d) EXCEPTION.—No data shall have to be disclosed
22 if it voids or violates existing contracts between the Sec-
23 retary of Treasury and mortgage servicers as part of the
24 Making Home Affordable Program.

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