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S. 967

To establish clear regulatory standards for mortgage servicers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 12, 2011

Mr. MERKLEY (for himself, Ms. SNOWE, Mr. REED, Mr. DURBIN, Mr. BLUMENTHAL, Mr. INOUE, Mrs. SHAHEEN, Mr. SANDERS, Mr. WHITEHOUSE, Mr. WYDEN, and Mr. AKAKA) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

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 2011”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act, the following definitions shall apply:

8 (1) **ALTERNATIVE TO FORECLOSURE.**—The
9 term “alternative to foreclosure”—

1 (A) means a course of action with respect
2 to a mortgage offered by a servicer to a bor-
3 rower as an alternative to a covered foreclosure
4 action; and

5 (B) includes a short sale and a deed in lieu
6 of foreclosure.

7 (2) BORROWER.—The term “borrower” means
8 a mortgagor under a mortgage who is in default or
9 at risk of imminent default, as determined by the
10 Director, by rule.

11 (3) COVERED FORECLOSURE ACTION.—The
12 term “covered foreclosure action” means a judicial
13 or nonjudicial foreclosure.

14 (4) DIRECTOR.—The term “Director” means
15 the Director of the Bureau of Consumer Financial
16 Protection.

17 (5) INDEPENDENT REVIEWER.—The term
18 “independent reviewer”—

19 (A) means an entity that has the expertise
20 and capacity to determine whether a borrower
21 is eligible to participate in a loan modification
22 program; and

23 (B) includes—

24 (i) an entity that is not a servicer;
25 and

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

7 (6) LOAN MODIFICATION PROGRAM.—The term
8 “loan modification program”—

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

13 (B) includes—

14 (i) a loan modification program estab-
15 lished by the Federal Government, includ-
16 ing the Home Affordable Modification Pro-
17 gram of the Department of the Treasury;
18 and

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

21 (7) MORTGAGE.—The term “mortgage” means
22 a federally related mortgage loan, as defined in sec-
23 tion 3 of the Real Estate Settlement Procedures Act
24 of 1974 (12 U.S.C. 2602), that is secured by a first
25 or subordinate lien on residential real property.

1 (8) SERVICER.—The term “servicer”—

2 (A) has the same meaning as in section
3 6(i) of the Real Estate Settlement Procedures
4 Act of 1974 (12 U.S.C. 2605(i)); and

5 (B) includes a person responsible for serv-
6 icing a pool of mortgages.

7 **SEC. 3. SINGLE POINT OF CONTACT.**

8 (a) CASE MANAGER REQUIRED.—A servicer shall as-
9 sign 1 case manager to each borrower that seeks a loan
10 modification or an alternative to foreclosure.

11 (b) DUTIES OF CASE MANAGER.—The case manager
12 assigned under subsection (a) shall be an individual who—

13 (1) manages the communications between the
14 servicer and the borrower;

15 (2) has the authority to make decisions about
16 the eligibility of the borrower for a loan modification
17 or an alternative to foreclosure;

18 (3) is available to communicate with the bor-
19 rower by telephone and email during business hours;
20 and

21 (4) remains assigned to the borrower until the
22 earliest of—

23 (A) the date on which the borrower accepts
24 a loan modification or an alternative to fore-
25 closure;

1 (B) the date on which the servicer fore-
2 closes on the mortgage of the borrower; and

3 (C) the date on which a release of the
4 mortgage of the borrower is recorded in the ap-
5 propriate land records office, as determined by
6 the Director, by rule.

7 (c) ASSISTANCE FOR CASE MANAGERS.—A servicer
8 may assign an employee to assist a case manager assigned
9 under subsection (a), if the case manager remains avail-
10 able to communicate with the borrower by telephone and
11 email.

12 **SEC. 4. DETERMINATION OF ELIGIBILITY FOR LOAN MODI-**
13 **FICATION PROGRAM OR ALTERNATIVE TO**
14 **FORECLOSURE REQUIRED BEFORE FORE-**
15 **CLOSURE.**

16 (a) INITIATION OF COVERED FORECLOSURE AC-
17 TIONS.—A servicer may not initiate a covered foreclosure
18 action against a borrower unless the servicer has—

19 (1) completed a full review of the file of the
20 borrower to determine whether the borrower is eligi-
21 ble for a loan modification or an alternative to fore-
22 closure;

23 (2) made a reasonable effort to obtain the in-
24 formation necessary to determine whether the bor-
25 rower is eligible for a loan modification or an alter-

1 native to foreclosure, as described in subsection (c);
2 and

3 (3) offered the borrower a loan modification or
4 an alternative to foreclosure, if the borrower is eligi-
5 ble for the loan modification or alternative to fore-
6 closure.

7 (b) SUSPENSION OF COVERED FORECLOSURE AC-
8 TIONS.—

9 (1) IN GENERAL.—A servicer shall suspend a
10 covered foreclosure action that was initiated before
11 the date of enactment of this Act until the
12 servicer—

13 (A) completes a full review of the file of
14 the borrower to determine whether the borrower
15 is eligible for a loan modification or an alter-
16 native to foreclosure;

17 (B) notifies the borrower of the determina-
18 tion under subparagraph (A); and

19 (C) offers the borrower a loan modification
20 or an alternative to foreclosure, if the borrower
21 is eligible for a loan modification or an alter-
22 native to foreclosure.

23 (2) SUSPENSION.—During the period of the
24 suspension under paragraph (1), a servicer may
25 not—

1 (A) send a notice of foreclosure to a bor-
2 rower;

3 (B) conduct or schedule a sale of the real
4 property securing the mortgage of the borrower;
5 or

6 (C) cause final judgment to be entered
7 against the borrower.

8 (3) REASONABLE EFFORTS.—A servicer is not
9 required to suspend a covered foreclosure action
10 under paragraph (1) if the servicer—

11 (A) makes a reasonable effort to obtain in-
12 formation necessary to determine whether the
13 borrower is eligible for a loan modification or
14 an alternative to foreclosure, as described in
15 subsection (c); and

16 (B) documents that the servicer has not
17 received information necessary to determine
18 whether the borrower is eligible for a loan modi-
19 fication or an alternative to foreclosure before
20 the end of the applicable period under sub-
21 section (c).

22 (4) RULE OF CONSTRUCTION.—Nothing in this
23 section may be construed to require a servicer to
24 delay an unavoidable foreclosure, such as foreclosure

1 that results from a borrower abandoning the resi-
2 dential real property securing a mortgage.

3 (c) REASONABLE EFFORT TO OBTAIN NECESSARY
4 INFORMATION.—A servicer shall be deemed to have made
5 a reasonable effort to obtain information necessary to de-
6 termine whether the borrower is eligible for a loan modi-
7 fication or an alternative to foreclosure if—

8 (1) during the 30-day period beginning on the
9 date of delinquency of the borrower, the servicer at-
10 tempts to establish contact with the borrower by—

11 (A) making not fewer than 4 telephone
12 calls to the telephone number on record for the
13 borrower, at different times of the day; and

14 (B) sending not fewer than 2 written no-
15 tices to the borrower at the address on record
16 for the borrower, at least 1 of which shall be
17 delivered by certified mail, requesting that the
18 borrower contact the servicer;

19 (2) in the case that the borrower responds in
20 writing or by telephone to an attempt to establish
21 contact under paragraph (1), the servicer—

22 (A) notifies the borrower, in writing, that
23 the servicer lacks information necessary to de-
24 termine whether the borrower is eligible for a

1 loan modification or an alternative to fore-
2 closure; and

3 (B) sends the borrower a written request
4 that the borrower transmit to the servicer all
5 information necessary to determine whether the
6 borrower is eligible for a loan modification or
7 an alternative to foreclosure, not later than 30
8 days after the date on which the servicer sends
9 the request;

10 (3) in the case that the servicer does not receive
11 from the borrower all information requested under
12 paragraph (2)(B) on or before the date that is 30
13 days after the date on which the servicer sends the
14 notice under paragraph (2), the servicer sends the
15 borrower a written request that the borrower trans-
16 mit to the servicer all information necessary to de-
17 termine whether the borrower is eligible for a loan
18 modification or an alternative to foreclosure, not
19 later than 15 days after the date on which the
20 servicer sends the request; and

21 (4) in the case that the servicer does not receive
22 from the borrower all information requested under
23 paragraph (3) on or before the date that is 15 days
24 after the date on which the servicer sends the re-
25 quest under paragraph (3), the servicer notifies the

1 borrower that the servicer intends to initiate or con-
2 tinue a covered foreclosure action.

3 **SEC. 5. THIRD PARTY REVIEW.**

4 Before a servicer notifies a borrower that the bor-
5 rower is not eligible for a loan modification or an alter-
6 native to foreclosure, the servicer shall obtain the services
7 of an independent reviewer to—

8 (1) review the file of the borrower; and

9 (2) determine whether the borrower is eligible
10 for a loan modification or an alternative to fore-
11 closure.

12 **SEC. 6. BAR TO FORECLOSURE ACTIONS.**

13 (a) IN GENERAL.—Subject to subsection (b), a viola-
14 tion of this Act shall be a bar to a covered foreclosure
15 action.

16 (b) EFFECT OF SUBSEQUENT COMPLIANCE.—If a
17 servicer is in compliance with this Act, the servicer may
18 bring or proceed with a covered foreclosure action, without
19 regard to a prior violation of this Act by the servicer.

20 **SEC. 7. REGULATIONS.**

21 Not later than 90 days after the date of enactment
22 of this Act, the Director, in consultation with the Sec-
23 retary of Housing and Urban Development and the Sec-
24 retary of the Treasury, shall issue regulations to carry out
25 this Act.

1 **SEC. 8. REPORT.**

2 Not later than 1 year after the date of enactment
3 of this Act, the Director shall submit to Congress a report
4 that contains—

5 (1) an evaluation of the effect of this Act on—

6 (A) State law; and

7 (B) communication between servicers and
8 borrowers; and

9 (2) a description of any problems concerning
10 the implementation of this Act.

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