

115TH CONGRESS  
2D SESSION

# S. 2698

To make necessary reforms to improve compliance with loss mitigation requirements by servicers of mortgages for single family housing insured by the FHA, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 18, 2018

Ms. CORTEZ MASTO (for herself and Ms. WARREN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To make necessary reforms to improve compliance with loss mitigation requirements by servicers of mortgages for single family housing insured by the FHA, 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 “FHA Foreclosure Pre-  
5       vention Act of 2018”.

1 **SEC. 2. DOCUMENTATION OF LOSS MITIGATION EFFORTS.**

2 Section 204(a) of the National Housing Act (12  
3 U.S.C. 1710(a)) is amended by adding at the end the fol-  
4 lowing:

5 “(10) DOCUMENTATION OF LOSS MITIGATION  
6 EFFORTS.—

7 “(A) IN GENERAL.—Notwithstanding any  
8 other provision of this title, the Secretary may  
9 not pay insurance benefits to any mortgagee of  
10 a single family mortgage insured under this Act  
11 unless the mortgagee or other servicer for the  
12 mortgage has provided documentation to the  
13 Secretary that is sufficient to demonstrate com-  
14 pliance with any requirements of the Secretary  
15 applicable to the mortgage relating to loss miti-  
16 gation.

17 “(B) RULE OF CONSTRUCTION.—Nothing  
18 in this paragraph may be construed to limit the  
19 authority of the Secretary to impose civil mone-  
20 tary penalties.”.

21 **SEC. 3. HUD OVERSIGHT OF SERVICERS.**

22 Section 533 of the National Housing Act (12 U.S.C.  
23 1735f–11) is amended by adding at the end the following:

24 “(d) OVERSIGHT OF MORTGAGE SERVICERS.—

25 “(1) OVERSIGHT.—

1           “(A) IN GENERAL.—The Secretary shall  
2           conduct oversight of servicers of single family  
3           mortgages insured under this Act on a regular  
4           and ongoing basis and in a manner designed  
5           to—

6                   “(i) ensure that the servicers comply  
7                   with the requirements of this Act and the  
8                   standards and guidelines established by the  
9                   Secretary for the servicing of those mort-  
10                  gages; and

11                   “(ii) identify systemic problems and  
12                   trends with the compliance described in  
13                   clause (i).

14           “(B) LOSS MITIGATION REQUIREMENTS.—  
15           The oversight conducted under subparagraph  
16           (A) shall include—

17                   “(i) oversight designed to ensure that  
18                   the servicers comply with the requirements  
19                   under this Act, and the standards and  
20                   guidelines established by the Secretary, for  
21                   loss mitigation; and

22                   “(ii) appropriate sampling and review  
23                   of the compliance described in clause (i),  
24                   including direct information collection  
25                   through generally accepted means from

1           borrowers whose files were sampled, such  
 2           as surveys, focus groups, interview, or  
 3           other similar measures.

4           “(2) CORRECTIVE ACTION.—The Secretary  
 5           shall take such actions as may be necessary to rem-  
 6           edy failures by servicers of single family mortgages  
 7           insured under this Act to comply with the require-  
 8           ments of this Act and the standards and guidelines  
 9           established by the Secretary for the servicing of  
 10          those mortgages, including ordering noncompliant  
 11          servicers to take corrective actions, including barring  
 12          foreclosure and cancelling from the borrowers ac-  
 13          count balance and from any insurance claim any in-  
 14          terest and other fees that accrued during periods of  
 15          noncompliance.”.

16 **SEC. 4. COMPLAINT PROCEDURE REGARDING LOSS MITI-**  
 17 **GATION.**

18          Title V of the National Housing Act (12 U.S.C.  
 19 1731a et seq.) is amended by adding at the end the fol-  
 20 lowing:

21 **“SEC. 543. COMPLAINT PROCEDURE REGARDING LOSS**  
 22 **MITIGATION.**

23          “(a) COMPLAINT PROCEDURE FOR BORROWERS.—

24                  “(1) FEATURES.—The Secretary shall establish  
 25          and maintain a procedure for mortgagors under sin-

1       gle family mortgages insured under this Act to reg-  
2       ister complaints with the Secretary regarding serv-  
3       icing, including loss mitigation actions, which  
4       shall—

5               “(A) include making available to the public  
6               a website of the Department of Housing and  
7               Urban Development, an e-mail address, a phone  
8               number, and a mailing address for registering  
9               complaints; and

10              “(B) provide an opportunity for servicers  
11              to respond to complaints and submit informa-  
12              tion regarding complaints.

13              “(2) ATTEMPT TO RESOLVE.—For each com-  
14              plaint registered under the procedure established  
15              under this subsection, the Secretary shall—

16              “(A) review the complaint and any re-  
17              sponse by the servicer; and

18              “(B) seek to resolve any dispute between  
19              the mortgagor and the servicer and make a de-  
20              termination regarding the complaint.

21              “(3) USE OF INFORMATION.—In making any  
22              determination regarding the compliance of a servicer  
23              with the requirements, standards, and guidelines for  
24              servicing, including in identifying systemic problems  
25              and trends with servicing, the Secretary shall take

1 into consideration information obtained under the  
2 procedure established under this subsection.

3 “(b) NOTIFICATION OF OPPORTUNITY TO APPEAL.—

4 Upon making a determination with respect to a complaint  
5 regarding servicing, the Secretary shall notify the com-  
6 plainant of—

7 “(1) the determination;

8 “(2) the opportunity for the complainant to ap-  
9 peal an adverse determination under the procedure  
10 established under subsection (a); and

11 “(3) the requirements for and how to initiate  
12 an appeal described in paragraph (2).

13 “(c) APPEALS PROCEDURE.—

14 “(1) ESTABLISHMENT.—The Secretary—

15 “(A) shall provide a procedure for mortga-  
16 gors to appeal an adverse determination by the  
17 Secretary regarding a complaint registered  
18 under the procedure established under sub-  
19 section (a); and

20 “(B) if appropriate, may take action pur-  
21 suant to section 533(d)(2) with respect to a de-  
22 cision on an appeal described in subparagraph  
23 (A).

24 “(2) LIMITATION.—The procedure established  
25 under this subsection may not provide an appeal for

1 any complaint that was previously appealed under  
2 the procedure.

3 “(d) PROHIBITION ON FORECLOSURE.—The Sec-  
4 retary shall prohibit the foreclosure of a mortgage during  
5 any period that a complaint or appeal regarding the mort-  
6 gage is pending under the procedures established under  
7 this section and during a reasonable period after a com-  
8 plainant is notified of a determination regarding a com-  
9 plaint that provides the complainant an opportunity to ap-  
10 peal the decision.

11 “(e) REPORTING.—The Secretary shall submit an an-  
12 nual report to Congress regarding complaints received  
13 under the procedure maintained under subsection (a),  
14 which shall—

15 “(1) specify the number of complaints received,  
16 disaggregated by types of complaints, status of com-  
17 plaints, geographic distribution of complaints, and  
18 average times for resolution of complaints;

19 “(2) include relevant information submitted by  
20 servicers and any other information that the Sec-  
21 retary considers relevant; and

22 “(3) comply with any applicable privacy protec-  
23 tions.”.

1 **SEC. 5. NOTICE TO BORROWERS OF LOSS MITIGATION STA-**  
2 **TUS AND DECISIONS.**

3 Section 204(a) of the National Housing Act (12  
4 U.S.C. 1710(a)), as amended by section 2, is amended by  
5 adding at the end the following:

6 “(11) NOTICE TO BORROWERS OF LOSS MITIGA-  
7 TION STATUS AND DECISIONS.—

8 “(A) REQUIRED NOTICE.—The Secretary  
9 shall require that, before any acceleration of the  
10 indebtedness due under a mortgage, the servicer  
11 for the mortgage shall provide written notice to  
12 the mortgagor that includes—

13 “(i) a summary explaining how the  
14 servicer applied the loss mitigation option  
15 priority analysis established by the Sec-  
16 retary, including the loss mitigation review  
17 waterfall under section III.A.2.j.iii of the  
18 FHA Single Family Housing Policy Hand-  
19 book 4000.1, or any successor provision,  
20 and setting forth the actual information  
21 entered in applying the analysis;

22 “(ii) if the servicer did not conduct  
23 the analysis described in clause (i) because  
24 the servicer determined that the mortgagor  
25 did not express any interest in loss mitiga-  
26 tion or provide appropriate documents—



1                   “(I) a statement of that deter-  
2                   mination;

3                   “(II) a description of the actions  
4                   that the servicer took to solicit the  
5                   borrower for loss mitigation review  
6                   and obtain appropriate documents;  
7                   and

8                   “(III) a statement of the dates  
9                   that the servicer took the actions de-  
10                  scribed in subclause (II);

11                  “(iii) a statement setting forth the re-  
12                  sults of the monthly loss mitigation evalua-  
13                  tions of the servicer for the mortgage re-  
14                  quired under section 203.605(a) of title  
15                  24, Code of Federal Regulations, or any  
16                  successor regulation;

17                  “(iv) with respect to any loss mitiga-  
18                  tion action for which the mortgagor was  
19                  determined to be ineligible, an explanation  
20                  of, and documentation showing, why the  
21                  mortgagor was determined to be ineligible;

22                  “(v) a statement informing the bor-  
23                  rower that, upon the request of the bor-  
24                  rower, the Secretary shall provide the bor-  
25                  rower with all loss mitigation evaluation

1 documentation required by the Secretary  
2 with respect to the mortgage, including the  
3 monthly evaluations described in clause  
4 (iii); and

5 “(vi) information describing the proce-  
6 dure under section 543(a) for registering  
7 complaints regarding loss mitigation and  
8 the procedure under section 543(c) for ap-  
9 pealing the decision of a servicer regarding  
10 loss mitigation actions.

11 “(B) REFERENCES.—The notice required  
12 under subparagraph (A) shall—

13 “(i) contain references to the applica-  
14 ble provisions of the applicable handbook  
15 of the Department of Housing and Urban  
16 Development regarding ongoing loss miti-  
17 gation reviews and the standards for those  
18 reviews; and

19 “(ii) identify how the provisions de-  
20 scribed in clause (i) may be accessed on a  
21 publicly accessible website of the Depart-  
22 ment of Housing and Urban Develop-  
23 ment.”.

1 **SEC. 6. RULE OF CONSTRUCTION.**

2       Nothing in this Act may be construed to supercede,  
3 or exempt any person from complying with, any provision  
4 of the Real Estate Settlement Procedures Act of 1974 (12  
5 U.S.C. 2601 et seq.) or any regulations issued under that  
6 Act.

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