

116TH CONGRESS
2D SESSION

S. 3509

To provide borrowers the right to request forbearance on mortgage loan payments due to a declared disaster, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 17, 2020

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

A BILL

To provide borrowers the right to request forbearance on mortgage loan payments due to a declared disaster, 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. CONSUMER RIGHT TO REQUEST FORBEAR-**
4 **ANCE.**

5 The Real Estate Settlement Procedures Act of 1974
6 (12 U.S.C. 2601 et seq.) is amended—

7 (1) in section 3 (12 U.S.C. 2602)—

8 (A) in paragraph (8), by striking “and” at
9 the end;

1 (B) in paragraph (9), by striking the pe-
 2 riod at the end and inserting “; and”; and

3 (C) by adding at the end the following:

4 “(10) the term ‘declared disaster’ means—

5 “(A) the coronavirus disease (COVID–19)
 6 pandemic; and

7 “(B) a major disaster or emergency de-
 8 clared by the President under section 401 or
 9 501, respectively, of the Robert T. Stafford Dis-
 10 aster Relief and Emergency Assistance Act (42
 11 U.S.C. 5170, 5191).”; and

12 (2) in section 6 (12 U.S.C. 2605)—

13 (A) in subsection (k)(1)—

14 (i) in subparagraph (D), by striking
 15 “or” at the end;

16 (ii) by redesignating subparagraph
 17 (E) as subparagraph (G); and

18 (iii) by inserting after subparagraph
 19 (D) the following:

20 “(E) initiate any judicial or non-judicial
 21 foreclosure process, move for a foreclosure judg-
 22 ment or order of sale, or execute a foreclosure-
 23 related eviction or foreclosure sale during the
 24 180-day period following a declared disaster in
 25 the area in which the property is located;

1 “(F) fail to toll the time in a foreclosure
 2 process on a property for not less than 180
 3 days following a declared disaster in the area in
 4 which the property is located; or”; and

5 (B) by adding at the end the following:

6 “(n) CONSUMER RIGHT TO REQUEST FORBEAR-
 7 ANCE.—

8 “(1) IN GENERAL.—A borrower experiencing a
 9 financial hardship due, directly or indirectly, to a de-
 10 clared disaster may request forbearance from any
 11 mortgage payment for not less than 180 days, which
 12 may be extended for an additional 180 days at the
 13 request of the borrower, provided that, at the bor-
 14 rower’s request, either the initial or extended period
 15 of forbearance may be shortened.

16 “(2) ACCRUAL OF INTEREST OR FEES.—During
 17 a period of forbearance described in paragraph (1),
 18 no interest or other fees shall accrue on the bor-
 19 rower’s account.

20 “(3) REQUEST FOR RELIEF.—A borrower may
 21 submit a request for forbearance under paragraph
 22 (1) to their servicer, either orally or in writing, af-
 23 firming that the borrower is experiencing hardship
 24 due, directly or indirectly, to a declared disaster.

25 “(4) REQUIREMENTS FOR SERVICERS.—

“(A) NOTIFICATION.—

“(i) IN GENERAL.—Each servicer of a federally related mortgage loan shall notify the borrower of their right to request forbearance under paragraph (3)—

“(I) not later than 14 days after the date of a declared disaster or, in the case of the coronavirus disease (COVID–19) pandemic, not later than 14 days after the date of enactment of this Act; and

“(II) during the incident period for a declared disaster and during not less than the 180-day period following that incident period—

“(aa) on each periodic statement provided to the borrower; and

“(bb) in any oral or written communication by the servicer with or to the borrower.

“(ii) MANNER OF NOTIFICATION.—

“(I) WRITTEN NOTIFICATION.—

Any written notification required under clause (i)—

1 “(aa) shall be provided—

2 “(AA) in English and
3 Spanish and in any addi-
4 tional languages in which
5 the servicer communicates,
6 including the language in
7 which the loan was nego-
8 tiated, to the extent known
9 by the servicer; and

10 “(BB) at least as clear-
11 ly and conspicuously as the
12 most clear and conspicuous
13 disclosure on the document;
14 and

15 “(bb) may be provided by
16 first-class mail or electronically,
17 if the borrower has otherwise
18 consented to electronic commu-
19 nication with the servicer and has
20 not revoked such consent.

21 “(II) ORAL NOTIFICATION.—Any
22 oral notification required under clause
23 (i) shall be provided in the language
24 the servicer otherwise uses to commu-
25 nicate with the borrower.

1 “(III) WRITTEN TRANS-
2 LATIONS.—In providing written notifi-
3 cations in languages other than
4 English under subclause (I), a
5 servicer may rely on written trans-
6 lations developed by the Federal
7 Housing Finance Agency or the Bu-
8 reau.

9 “(B) OTHER REQUIREMENTS.—Upon re-
10 ceiving a request for forbearance from a con-
11 sumer under paragraph (3), a servicer shall—

12 “(i) with no additional documentation
13 required other than the borrower’s attesta-
14 tion to a hardship caused by the declared
15 disaster and with no fees, interest, or other
16 penalties charged to the borrower in con-
17 nection with the forbearance, provide the
18 forbearance for not less than 180 days,
19 which may be extended for an additional
20 180 days at the request of the borrower,
21 provided that, at the borrower’s request,
22 either the initial or extended period of for-
23 bearance may be shortened;

24 “(ii) while such forbearance is in ef-
25 fect, pay or advance funds to make dis-

1 bursements in a timely manner from any
2 escrow account established on the mort-
3 gage loan, and maintain regular commu-
4 nication with such borrower; and

5 “(iii)(I) before the end of such for-
6 bearance, evaluate the borrower’s ability to
7 return to making regular mortgage pay-
8 ments;

9 “(II) if the borrower is able to return
10 to making regular mortgage payments at
11 the end of the forbearance period—

12 “(aa) modify the borrower’s loan
13 to extend the term for the same pe-
14 riod as the length of the forbearance,
15 with all payments that were not made
16 during the forbearance distributed at
17 the same intervals as the borrower’s
18 existing payment schedule and evenly
19 distributed across those intervals, with
20 no penalties or additional interest ac-
21 crued or modification fee charged to
22 the borrower; and

23 “(bb) notify the borrower in writ-
24 ing of the extension, including provi-
25 sion of a new payment schedule and

1 date of maturity, and that the bor-
2 rower shall have the election of pre-
3 paying the forborne payments at any
4 time, in a lump sum or otherwise;

5 “(III) if the borrower is financially
6 unable to return to making regular mort-
7 gage payments at the end of the forbear-
8 ance period—

9 “(aa) evaluate the borrower for
10 all loan modification options, includ-
11 ing—

12 “(AA) further extending the
13 borrower’s repayment period;

14 “(BB) reducing the prin-
15 cipal balance of the loan; or

16 “(CC) other modification op-
17 tions available to the servicer
18 under the terms of their loan and
19 existing laws and policies; and

20 “(bb) if the borrower qualifies for
21 such a modification, modify the bor-
22 rower’s loan to provide a loan with
23 such terms as to provide an affordable
24 payment, with no penalties, additional

1 interest, or modification fees charged
2 to the borrower; and

3 “(IV) if a borrower is granted a for-
4 bearance on payments that would be owed
5 pursuant to a trial loan modification
6 plan—

7 “(aa) any forbearance of pay-
8 ments shall not be treated as missed
9 or delinquent payments or otherwise
10 negatively affect the borrower’s ability
11 to complete their trial plan; and

12 “(bb) any past due amounts as of
13 the end of the trial period, including
14 unpaid interest, real estate taxes, in-
15 surance premiums, and assessments
16 paid on the borrower’s behalf, will be
17 added to the mortgage loan balance,
18 but only to the extent that such
19 charges are not fees associated with
20 the granting of the forbearance, such
21 as late fees, modification fees, or un-
22 paid interest from the period of the
23 forbearance.”.

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