

There was no objection.

MORTGAGE SERVICING CLARIFICATION ACT

Mr. ROYCE. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 314) to amend the Fair Debt Collection Practices Act to exempt mortgage servicers from certain requirements of the Act with respect to federally related mortgage loans secured by a first lien, and for other purposes.

The Clerk read as follows:

H.R. 314

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Mortgage Servicing Clarification Act".

SEC. 2. MORTGAGE SERVICING CLARIFICATION.

(a) IN GENERAL.—The Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.) is amended—

(1) by redesignating section 818 as section 819; and

(2) by inserting after section 817 the following new section:

"§ 818. Mortgage servicer exemption

"(a) EXEMPTION.—A covered mortgage servicer who, whether by assignment, sale or transfer, becomes the person responsible for servicing federally related mortgage loans secured by first liens that include loans that were in default at the time such person became responsible for the servicing of such federally related mortgage loans shall be exempt from the requirements of section 807(11) in connection with the collection of any debt arising from such defaulted federally related mortgage loans.

"(b) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

"(1) COVERED MORTGAGE SERVICER.—The term 'covered mortgage servicer' means any servicer of federally related mortgage loans secured by first liens—

"(A) who is also debt collector; and

"(B) for whom the collection of delinquent debts is incidental to the servicer's primary function of servicing current federally related mortgage loans.

"(2) FEDERALLY RELATED MORTGAGE LOAN.—The term 'federally related mortgage loan' has the meaning given to such term in section 3(i) of the Real Estate Settlement Procedures Act of 1974, except that, for purposes of this section, such term includes only loans secured by first liens.

"(3) PERSON.—The term 'person' has the meaning given to such term in section 3(5) of the Real Estate Settlement Procedures Act of 1974.

"(4) SERVICER; SERVICING.—The terms 'servicer' and 'servicing' have the meanings given to such terms in section 6(i) of the Real Estate Settlement Procedures Act of 1974."

(b) CLERICAL AMENDMENT.—The table of sections for the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.) is amended—

(1) by redesignating the item relating to section 818 as section 819; and

(2) by inserting after the item relating to section 817 the following new item:

"818. Mortgage servicer exemption."

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. ROYCE) and the gentleman from New York (Mr. MEEKS) each will control 20 minutes.

The Chair recognizes the gentleman from California (Mr. ROYCE).

GENERAL LEAVE

Mr. ROYCE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 314.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. ROYCE. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, I rise in strong support of this bipartisan legislation, H.R. 314. This is the Mortgage Servicing Clarification Act, which I have introduced with my colleague, the gentleman from Pennsylvania (Mr. KANJORSKI).

This carefully written legislation addresses a specific problem for consumers and businesses involved in the mortgage servicing industry by simply clarifying the existing law governing mortgage servicing. This uncontroversial bill enjoys strong bipartisan support and has been approved for consideration under the suspension of the rules by both the chairman and the ranking member of the Committee on Financial Services.

Mr. Speaker, I introduced this bill to fix a problem in the mortgage servicing industry which has hampered the abilities of this industry to serve its clients effectively and to conduct its business efficiently for too long.

□ 1515

Currently, when a mortgage servicing company acquires the rights to service a portfolio of home loans, it is exempt from the unnecessary strictures of the Fair Debt Collection Practices Act under the creditor exemption that was also extended to the originator of the mortgage. The new mortgage servicer is extended this exemption because its relationship to the borrower is more like a relationship between a borrower and a lender than it is like the relationship between a borrower and a true collections agency. The law already recognizes this reality.

However, in the typical loan servicing portfolio transfer, a small percentage of the loans acquired by a new servicer will inevitably be delinquent or technically in default at the time of transfer. These loans are currently treated by the law as being subject to the Fair Debt Collection Practices Act, and subsequently, the new servicers of these loans are required to provide certain form notices, known as Miranda warnings, to the borrower.

The law also currently requires that in every subsequent contact, both written and oral, whether initiated by the servicer or the borrower, the servicer is required to provide a shorter mini-Miranda notice disclosing that the communication is an attempt to collect a debt, and that any information provided by the borrower will be used toward that end.

The purpose of these cookie-cutter warnings is to prevent unscrupulous debt collectors from using false or mis-

leading tactics, such as a phony winning sweepstakes claim, to trick consumers into divulging private financial information or personal details like their home address or their phone number.

The Fair Debt Collections Practices Act has worked extremely well in preventing bad actors in the debt collections business from using lies and deceit to harm consumers, and this legislation would in no way prevent it from continuing to protect American consumers.

However, as I have already mentioned, mortgage servicers are not like debt collectors. Their role to consumers is much more like that of a mortgage originator, and in the context of a mortgage servicing transfer, these Miranda notices are both detrimental to consumers and unnecessary and inefficient for mortgage servicers' operations.

First, the notice misleads the borrower about the nature of the relationship between him- or herself and the new servicer. Unlike true debt collectors, mortgage servicers have a long-term relationship with their client, and these harshly worded notices often have the effect of discouraging a borrower who was slightly late on a mortgage payment from contacting their new servicer for fear that the servicer is a true third-party debt collector. This ends up frustrating the servicer's efforts to work with delinquent borrowers on developing strategies to bring their loans current and keep their credit ratings intact.

A mortgage servicer's biggest hurdle in helping delinquent borrowers to help themselves is getting them on the phone, and these threatening Miranda notices only contribute to that unnecessary fear without doing anything to help the borrower. Additionally, the information protected by the Miranda notices is information already in the servicer's possession. So nothing new is truly protected by requiring these additional legalistic and threatening notices be provided.

Finally, these warnings simply make consumers feel unnecessarily defensive and antagonistic toward their new servicer during the first step of their new association, which can have a chilling effect on the rest of their relationship.

Mortgage servicers typically send these Miranda notices along with a new customer's welcome letter as required by the Real Estate Settlement Procedures Act, and this letter also includes important consumer information about the new servicer and the borrower's monthly payment arrangements. This preliminary contact is the first opportunity that a servicer has to create a positive relationship with a new client, and the harsh language used in the Miranda warning can create animosity between the servicer where none need exist.

Additionally, because the mini-Miranda is required in all subsequent contacts, they can continue for decades,

even after customers bring their loans current and keep them that way for years.

H.R. 314 resolves this problem by creating a narrow exemption from Miranda notices for the servicers of federally related first lien mortgages whose primary function is servicing current loans, not collecting third-party debts. It exempts these servicers only from the Miranda notices, leaving all other substantive borrower protections required by the Fair Debt Collections Practices Act in place.

This legislation is consistent with the long-standing recommendation from the Federal Trade Commission to improve the mortgage servicing process. I urge my colleagues on both sides of the aisle to support this bipartisan legislation to improve the mortgage servicing process for both the consumer and for the companies who serve them.

Mr. Speaker, I reserve the balance of my time.

Mr. MEEKS of New York. Mr. Speaker, I yield myself such time as I may consume.

I rise today in strong support of H.R. 314, the Mortgage Servicing Clarification Act. As an original cosponsor of the bill, I would like to thank the gentleman from Pennsylvania (Mr. KANJORSKI) for his leadership on this bill. My thanks also go to the lead Republican sponsor of this legislation, the gentleman from California (Mr. ROYCE), who worked on a bipartisan basis to bring this bill to the floor.

I also want to thank the gentleman from Ohio (Mr. OXLEY), the chairman of the Committee on Financial Services, and the gentleman from Massachusetts (Mr. FRANK), the ranking member, and the other cosponsors of the bill from both sides of the aisle for their support and help for bringing this bill to the House floor.

The bill before us is largely technical in nature and seeks to address a change in market practices not anticipated by the original Fair Debt Collections Practices Act. This act is a consumer protection statute which was established in order to protect consumers from deception and abusive practices by third-party debt collectors.

Under the FDCPA, debt collectors are required to give certain notices to debtors regarding the nature and the amount of the delinquent debt. The original intent of this notice was to ensure the debtor understood why the collector was calling and what was owed.

Under the act, collection activities by the original creditors were generally exempt from the FDCPA. However, third parties such as debt collectors are generally considered to be covered and are required to provide such written or oral communications to consumers. These notifications are generally referred to as the Miranda warnings to consumers.

The reason for the bill before the House is to distinguish between mort-

gage servicers and third-party debt collectors. In the mortgage market, mortgages are bought and sold on a regular basis in order to provide liquidity for lending and better rates for the borrowers. In some cases, originators will keep loans on their books, but will decide to sell the servicing rights to other parties.

This legislation was developed in response to a growing concern that some mortgage servicers were unclear whether these transfers were covered by the FDCPA and what the appropriate communication should be between the mortgage servicer and the consumer. H.R. 314 would clarify this problem by providing a narrow exemption from the requirement to provide Miranda warnings under the FDCPA for a mortgage servicer who acquires responsibility for servicing mortgage by assignment, sale or transfer. Under this exemption, a mortgage servicer would not be required to provide a Miranda warning for any loan that is actually in default at the time of the transfer of servicing rights. This means that the exemption is narrowly drawn so as to affect a small number of mortgages.

In addition, this bill ensures that this exemption only applies to collection activities in connection with these specified loans. As a result, a mortgage servicer cannot use this exemption with respect to other loans which may become in default after the transfer occurs.

I also want to highlight the fact that this bill does not provide an exemption from other substantive borrowers' rights. Rather, this exemption is narrowly drawn to apply only to the Miranda warning which third-party debt collectors are required to give to consumers.

I urge my colleagues to support this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. ROYCE. Mr. Speaker, I yield 5 minutes to the gentleman from Alabama (Mr. BACHUS), the chairman of Subcommittee on Financial Institutions and Consumer Credit.

Mr. BACHUS. Mr. Speaker, I want to first commend the gentleman from California (Mr. ROYCE) for introducing this bill. This bill was actually introduced in the last Congress by the gentleman from California and passed almost unanimously. He has enlisted broad support for this bill, both in the committee and from the rank and file. It is also a bill which has bipartisan support. It has people who have sponsored it from both sides of the aisle.

It was drafted to be consistent with the previous recommendations by the Federal Trade Commission to apply the Fair Debt Collection Practices Act protections based on the nature of the overall business conducted by the party to be exempted rather than the status of individual obligations when the party obtained them.

H.R. 314 is actually even narrower than the FTC recommendation. It only

exempts mortgage servicers from the Miranda warnings required by section 8071 on original first lien Federal-backed mortgages. All other borrower protections provided by the Fair Debt Collection Practices Act remain in full force.

I want to read a portion of a letter explaining why the Miranda warnings are clearly appropriate for third-party debt collection activities, but they are actually inappropriate for the type of situation addressed in this bill, and that is where a new servicer comes in and takes over the mortgage and the mortgage is in default.

What the letter says, first of all, is that by requiring these Miranda warnings, it actually does two things. It puts borrowers at greater risk in mortgage servicing transfers, and two, it impairs the ability of the new mortgage servicers to establish a strong customer relationship.

This letter was drafted by the gentleman from Pennsylvania (Mr. KANJORSKI), has a signature of the gentleman from New York (Mrs. MALONEY), the gentleman from California (Mr. SHERMAN), the gentleman from Ohio (Mrs. JONES) and the gentleman from New York (Mr. MEEKS). Of course, the gentleman from New York (Mr. MEEKS) is a cosponsor of the bill. These are all Democrats and all members of the Committee on Financial Services. They say this about the present state of the law and the need for this legislation which the gentleman from California (Mr. ROYCE) is offering.

One, the present Miranda notice misleads the borrower about the nature of the new servicers' relationship. The most important thing a delinquent mortgage borrower can do is call his or her servicer to work out options. The harshly worded warnings actually discourage borrowers from contacting the new servicer out of the fear that the company is simply another debt collector.

Two, the notice "protects borrowers from providing information that the mortgage servicer already has in its possession. Mortgage servicers already possess detailed information about the borrower in the loan files."

Third, the notice hurts customer relationships for the remaining term of the mortgage. The mini-Miranda is required in all subsequent contacts with the borrower, even after the customers have brought their loan current and maintained them that way for years.

In closing, as the gentleman from New York said earlier, mortgages now are transferred. They are assigned. They are bought. It is a normal course of action in a businessplace. When this happens, people need to know whether they are dealing with a debt collector or with their mortgage servicer. This new law will allow that.

So I would urge the membership to endorse this bill with a strong yes vote.

Mr. MEEKS of New York. Mr. Speaker, I have no additional requests for

time, and I yield back the balance of my time.

Mr. ROYCE. Mr. Speaker, I yield myself the remaining time.

In closing, I urge all my colleagues to stand up for consumers and help to increase the efficiency of the mortgage servicing industry by supporting this common-sense and bipartisan legislation.

I would, again, like to thank the co-author of this legislation, the gentleman from Pennsylvania (Mr. KANJORSKI), and thank the gentleman from New York (Mr. MEEKS) and thank the gentleman from Alabama (Mr. BACHUS) for their comments.

□ 1530

Mr. ROYCE. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. PETRI). The question is on the motion offered by the gentleman from California (Mr. ROYCE) that the House suspend the rules and pass the bill, H.R. 314.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. ROYCE. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess until approximately 6 p.m.

Accordingly (at 3 o'clock and 31 minutes p.m.), the House stood in recess until approximately 6 p.m.

□ 1800

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. KOLBE) at 6 p.m.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, proceedings will resume on motions to suspend the rules previously postponed.

Votes will be taken in the following order:

House Concurrent Resolution 26, by the yeas and nays;

H.R. 868, by the yeas and nays;

House Resolution 109, as amended, by the yeas and nays.

Proceedings on H.R. 314 will resume tomorrow.

The first electronic vote will be conducted as a 15-minute vote. Remaining electronic votes will be conducted as 5-minute votes.

CONDEMNING THE PUNISHMENT OF EXECUTION BY STONING AS A GROSS VIOLATION OF HUMAN RIGHTS

The SPEAKER pro tempore. The pending business is the question of suspending the rules and agreeing to the concurrent resolution, H. Con. Res. 26.

The Clerk read the title of the concurrent resolution.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. ROYCE) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 26, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 417, nays 0, not voting 17, as follows:

[Roll No. 65]

YEAS—417

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| Abercrombie | Clyburn | Gingrey |
| Ackerman | Coble | Gonzalez |
| Aderholt | Cole | Goode |
| Akin | Collins | Goodlatte |
| Alexander | Conyers | Goss |
| Allen | Cooper | Granger |
| Andrews | Costello | Graves |
| Baca | Cox | Green (TX) |
| Bachus | Cramer | Green (WI) |
| Baird | Crane | Greenwood |
| Baker | Crenshaw | Grijalva |
| Baldwin | Crowley | Gutknecht |
| Ballance | Cubin | Hall |
| Ballenger | Culberson | Harman |
| Barrett (SC) | Cummings | Harris |
| Bartlett (MD) | Cunningham | Hart |
| Bass | Davis (AL) | Hastings (FL) |
| Beauprez | Davis (CA) | Hastings (WA) |
| Becerra | Davis (FL) | Hayes |
| Bell | Davis (IL) | Hayworth |
| Bereuter | Davis (TN) | Hefley |
| Berkley | Davis, Jo Ann | Hensarling |
| Berman | Davis, Tom | Hergert |
| Berry | Deal (GA) | Hill |
| Biggart | DeFazio | Hinojosa |
| Bilirakis | DeGette | Hobson |
| Bishop (GA) | Delahunt | Hoefel |
| Bishop (NY) | DeLauro | Hoekstra |
| Bishop (UT) | DeLay | Holden |
| Blackburn | DeMint | Holt |
| Blumenauer | Deutsch | Honda |
| Blunt | Diaz-Balart, L. | Hooley (OR) |
| Boehlert | Diaz-Balart, M. | Hostettler |
| Boehner | Dicks | Houghton |
| Bonilla | Dingell | Hoyer |
| Bonner | Doggett | Hunter |
| Bono | Dooley (CA) | Inslie |
| Boozman | Doolittle | Isakson |
| Boswell | Dreier | Israel |
| Boucher | Duncan | Issa |
| Boyd | Dunn | Istook |
| Bradley (NH) | Edwards | Jackson (IL) |
| Brady (PA) | Ehlers | Jackson-Lee |
| Brady (TX) | Emanuel | (TX) |
| Brown (OH) | Emerson | Janklow |
| Brown (SC) | Engel | Jefferson |
| Brown, Corrine | English | Jenkins |
| Brown-Waite, | Eshoo | John |
| Ginny | Etheridge | Johnson (CT) |
| Burgess | Evans | Johnson (IL) |
| Burns | Everett | Johnson, E. B. |
| Burr | Farr | Johnson, Sam |
| Burton (IN) | Fattah | Jones (NC) |
| Buyer | Feeney | Jones (OH) |
| Calvert | Ferguson | Kanjorski |
| Camp | Filner | Kaptur |
| Cannon | Flake | Keller |
| Cantor | Foley | Kelly |
| Capito | Forbes | Kennedy (MN) |
| Capps | Ford | Kennedy (RI) |
| Capuano | Frank (MA) | Kildee |
| Cardin | Franks (AZ) | Kilpatrick |
| Cardoza | Frelinghuysen | Kind |
| Carson (OK) | Frost | King (IA) |
| Carter | Gallegly | King (NY) |
| Case | Garrett (NJ) | Kingston |
| Castle | Gerlach | Kirk |
| Chabot | Gibbons | Kleczka |
| Chocola | Gilchrest | Kline |
| Clay | Gillmor | Knollenberg |

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|----------------|------------------|---------------|
| Kolbe | Oberstar | Shays |
| Kucinich | Obey | Sherman |
| LaHood | Olver | Sherwood |
| Lampson | Ortiz | Shimkus |
| Langevin | Osborne | Shuster |
| Lantos | Ose | Simmons |
| Larsen (WA) | Otter | Simpson |
| Larson (CT) | Owens | Skelton |
| Latham | Oxley | Smith (MI) |
| LaTourette | Pallone | Smith (NJ) |
| Leach | Pascrell | Smith (TX) |
| Levin | Pastor | Smith (WA) |
| Lewis (CA) | Paul | Snyder |
| Lewis (GA) | Pearce | Solis |
| Lewis (KY) | Pelosi | Souder |
| Linder | Pence | Spratt |
| Lipinski | Peterson (MN) | Stark |
| LoBiondo | Peterson (PA) | Stearns |
| Lofgren | Petri | Stenholm |
| Lowey | Pickering | Strickland |
| Lucas (KY) | Pitts | Stupak |
| Lucas (OK) | Platts | Sullivan |
| Lynch | Pombo | Sweeney |
| Majette | Pomeroy | Tancredo |
| Maloney | Porter | Tanner |
| Manzullo | Portman | Tauscher |
| Markey | Price (NC) | Tauzin |
| Marshall | Pryce (OH) | Taylor (MS) |
| Matheson | Putnam | Taylor (NC) |
| Matsui | Quinn | Terry |
| McCarthy (MO) | Radanovich | Thomas |
| McCarthy (NY) | Rahall | Thompson (CA) |
| McCollum | Ramstad | Thompson (MS) |
| McCotter | Rangel | Thornberry |
| McCrery | Regula | Tiahrt |
| McDermott | Rehberg | Tiberi |
| McGovern | Renzi | Tierney |
| McHugh | Reyes | Toomey |
| McInnis | Reynolds | Towns |
| McIntyre | Rodriguez | Turner (OH) |
| McKeon | Rogers (AL) | Turner (TX) |
| McNulty | Rogers (KY) | Udall (NM) |
| Meehan | Rogers (MI) | Upton |
| Meek (FL) | Rohrabacher | Van Hollen |
| Meeke (NY) | Ros-Lehtinen | Velazquez |
| Menendez | Ross | Visclosky |
| Mica | Rothman | Vitter |
| Michaud | Roybal-Allard | Walden (OR) |
| Millender- | Royce | Walsh |
| McDonald | Ruppersberger | Wamp |
| Miller (FL) | Rush | Waters |
| Miller (MI) | Ryan (OH) | Watson |
| Miller (NC) | Ryan (WI) | Watt |
| Miller, Gary | Ryuan (KS) | Waxman |
| Miller, George | Sabo | Weiner |
| Moore | Sanchez, Linda | Weldon (FL) |
| Moran (KS) | T. | Weldon (PA) |
| Moran (VA) | Sanchez, Loretta | Weller |
| Murphy | Sanders | Wexler |
| Murtha | Sandlin | Whitfield |
| Musgrave | Saxton | Wicker |
| Myrick | Schakowsky | Wilson (NM) |
| Nadler | Schiff | Wilson (SC) |
| Napolitano | Schrock | Wolf |
| Neal (MA) | Scott (GA) | Woolsey |
| Nethercutt | Scott (VA) | Wu |
| Ney | Sensenbrenner | Wynn |
| Northup | Serrano | Young (AK) |
| Norwood | Sessions | Young (FL) |
| Nunes | Shadegg | |
| Nussle | Shaw | |

NOT VOTING—17

- | | | |
|-------------|-----------|------------|
| Barton (TX) | Gephardt | Lee |
| Carson (IN) | Gordon | Mollohan |
| Combest | Gutierrez | Payne |
| Doyle | Hinchey | Slaughter |
| Fletcher | Hulshof | Udall (CO) |
| Fossella | Hyde | |

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. KOLBE) (during the vote). Members are advised that there are 2 minutes remaining in this vote.

□ 1821

So (two-thirds having voted in favor thereof) the rules were suspended and the concurrent resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.