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(Original Signature of Member)

117TH CONGRESS
1ST SESSION

H. R. _____

To improve the mortgage servicing process for homeowners by providing additional protections with the goal of ensuring homeowners can remain in their homes whenever possible, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M. _____ introduced the following bill; which was referred to the Committee on _____

A BILL

To improve the mortgage servicing process for homeowners by providing additional protections with the goal of ensuring homeowners can remain in their homes whenever possible, 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 “Preventing Unfair
5 Foreclosures Act of 2021”.

1 **SEC. 2. ADDITIONAL SERVICER OBLIGATIONS RELATED TO**
2 **FORECLOSURE.**

3 Section 6 of the Real Estate Settlement Procedures
4 Act of 1974 (12 U.S.C. 2605) is amended by adding at
5 the end the following:

6 “(n) **ADDITIONAL SERVICER OBLIGATIONS RELATED**
7 **TO FORECLOSURE.**—

8 “(1) **NOTICE REQUIREMENT.**—

9 “(A) **IN GENERAL.**—A servicer of a feder-
10 ally related mortgage loan shall provide, to each
11 delinquent borrower, a written notice with the
12 information set forth in subparagraph (B) not
13 later than the thirtieth day of the borrower’s
14 delinquency and again not later than 30 days
15 after each payment due date so long as the bor-
16 rower remains delinquent.

17 “(B) **CONTENTS OF NOTICE.**—Each notice
18 required under subparagraph (A) shall in-
19 clude—

20 “(i) a statement encouraging the bor-
21 rower to contact the servicer;

22 “(ii) the telephone number to access
23 servicer personnel;

24 “(iii) the mailing addresses and
25 websites of the servicer for sending pay-

1 ments, correspondence, and requests for
2 loss mitigation;

3 “(iv) an identification of the entities
4 that own, insure, or guarantee the loan;

5 “(v) if applicable, information about
6 forbearance extensions that may be avail-
7 able to the borrower;

8 “(vi) a description of all loss mitiga-
9 tion options that the servicer offers for the
10 type of loan of the borrower that may be
11 available to the borrower, including—

12 “(I) brief examples of how each
13 option would apply to a hypothetical
14 situation; and

15 “(II) references the borrower
16 may use to find complete loss mitiga-
17 tion guidelines;

18 “(vii) a statement informing the bor-
19 rower how to obtain more information
20 about loss mitigation options from the
21 servicer;

22 “(viii) information with respect to how
23 the borrower can request available loss
24 mitigation options from the servicer;

1 “(ix) directions to access the online
2 lists of homeownership counselors or coun-
3 seling organizations published by the Sec-
4 retary of Housing and Urban Development
5 and the Bureau; and

6 “(x) the Department of Housing and
7 Urban Development toll-free telephone
8 number available for accessing homeowner-
9 ship counselors and counseling organiza-
10 tions.

11 “(C) OUTREACH ATTEMPT BY HOUSING
12 COUNSELING AGENCY.—A servicer who seeks to
13 initiate foreclosure on a mortgage loan and who
14 is unable to obtain a response from outreach at-
15 tempts to the borrower shall contract with a
16 housing counseling agency approved by the De-
17 partment of Housing and Urban Development
18 to provide outreach to the borrower, at no cost
19 to the borrower.

20 “(2) DELINQUENCY OF GREATER THAN 120
21 DAYS REQUIRED.—

22 “(A) IN GENERAL.—A servicer may not
23 make a foreclosure-related action unless a fed-
24 erally related mortgage loan obligation is more

1 than 120 days delinquent, excluding any period
2 during which the borrower is in forbearance.

3 “(B) FORECLOSURE-RELATED ACTION.—

4 For the purposes of this paragraph, the term
5 ‘foreclosure-related action’ means making the
6 first notice or filing required by applicable law
7 for any judicial or non-judicial foreclosure pro-
8 cess, including—

9 “(i) initiating or proceeding with any
10 judicial or non-judicial foreclosure process;

11 “(ii) scheduling a foreclosure sale;

12 “(iii) moving for a foreclosure judg-
13 ment or order of sale;

14 “(iv) executing a foreclosure-related
15 eviction or foreclosure sale; or

16 “(v) charging, assessing, or incurring
17 any foreclosure-related fees, such as attor-
18 ney’s fees, property inspection fees, or title
19 fees.

20 “(3) SERVICERS AND HUD-APPROVED HOUSING
21 COUNSELING AGENCIES.—

22 “(A) COORDINATION WITH HOUSING COUN-
23 SELING AGENCIES.—If a borrower has received
24 assistance from a housing counseling agency
25 approved by the Department of Housing and

1 Urban Development with respect to a loan, the
2 servicer of such loan shall, if approved by the
3 borrower in writing—

4 “(i) ensure that all communications
5 about the loan are provided to both such
6 housing counseling agency and the bor-
7 rower;

8 “(ii) provide such housing counseling
9 agency with the contact information for a
10 senior manager that the counselor may use
11 to elevate issues relating to case evaluation
12 errors, procedural errors, and other prob-
13 lems.

14 “(B) LOSS MITIGATION PACKAGES.—A
15 servicer shall accept any loss mitigation pack-
16 age prepared by a housing counseling agency
17 approved by the Department of Housing and
18 Urban Development.

19 “(4) SENSE OF CONGRESS.—It is the sense of
20 Congress that servicers should—

21 “(A) contract with housing counseling
22 agencies approved by the Department of Hous-
23 ing and Urban Development to—

1 “(i) reach homeowners at risk of de-
2 fault and not in contact with the servicers
3 by—

4 “(I) conducting outreach and
5 providing services to low-income popu-
6 lations and minorities who are more
7 than 60 days delinquent or in fore-
8 closure; and

9 “(II) providing housing coun-
10 seling services in neighborhoods with
11 low-income populations high con-
12 centrations of minorities that are
13 more than 60 days delinquent or in
14 foreclosure; and

15 “(ii) support borrowers with loss miti-
16 gation applications and language services;
17 and

18 “(B) provide amounts to the housing coun-
19 seling agencies with whom the servicer con-
20 tracts to compensate the housing counseling
21 agencies for their work with respect to loans of
22 interest to the servicer.”.

23 **SEC. 3. ESCROW ANALYSIS AFTER FORBEARANCE.**

24 Section 6(g) of the Real Estate Settlement Proce-
25 dures Act of 1974 (12 U.S.C. 2605(g)) is amended—

1 (1) by striking “If the terms” and inserting
2 “(1) IN GENERAL.—If the terms”; and

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

4 “(2) ESCROW ANALYSIS BEFORE LOAN MODI-
5 FICATION.—

6 “(A) IN GENERAL.—If the terms of any
7 federally related mortgage, including any loss
8 mitigation option in connection with such mort-
9 gage, require a borrower to make payments to
10 the servicer of the loan for deposit into an es-
11 crow account, the servicer shall, before offering
12 the borrower a loss mitigation option—

13 “(i) conduct an escrow account anal-
14 ysis to determine whether a shortage, sur-
15 plus, or deficiency exists; and

16 “(ii) notify the borrower if the amount
17 of any shortage or deficiency will be repaid
18 under the terms of a loss modification op-
19 tion offered to the borrower or if the
20 servicer will require the borrower to pay
21 additional monthly deposits into the escrow
22 account to eliminate the shortage or defi-
23 ciency.

24 “(B) CAPITALIZATION AND DEFERRAL.—A
25 servicer may, with respect to any shortage or

1 deficiency identified under subparagraph (A),
2 capitalize the amount of any such shortage or
3 deficiency into loan modifications or defer the
4 amount of such shortage or deficiency until the
5 end of the loan.”.

6 **SEC. 4. OPTIONAL DELAY FOR CALLING HECM LOANS DUE**
7 **AND PAYABLE.**

8 Section 255 of the National Housing Act is amended
9 by striking subsection (j) and inserting the following:

10 “(j) HOME RETENTION.—A mortgagee may refrain
11 from submitting a due and payable request to the Sec-
12 retary or may withdraw a due and payable request if—

13 “(1) the mortgage to which the due and payable
14 request would relate—

15 “(A) is insured under this section; and

16 “(B) is in default because the mortgagor
17 failed to make payment on applicable home-
18 owners association fees or taxes or insurance
19 required under the mortgage

20 “(2) the amount of total arrearages owed by
21 the mortgagor to the mortgagee with respect to the
22 mortgage is less than \$25,000.”.

1 **SEC. 5. SUPPORT FOR HUD-APPROVED HOUSING COUN-**
2 **SELING AGENCIES.**

3 (a) IN GENERAL.—The Secretary of Housing and
4 Urban Development shall provide financial assistance to
5 housing counseling agencies approved by the Department
6 of Housing and Urban Development—

7 (1) to assist borrowers of mortgage loans for
8 which forbearance is terminating; and

9 (2) to provide outreach to delinquent borrowers
10 and homeowners who are facing foreclosure.

11 (b) AUTHORIZATION OF APPROPRIATIONS.—There is
12 authorized to be appropriated for fiscal year 2022
13 \$25,000,000 in supplementary funding to the Secretary
14 of Housing and Urban Development to make grants under
15 this section.

16 **SEC. 6. REPORT ON CONSUMER COMPLAINTS RELATED TO**
17 **MORTGAGE LOAN MODIFICATIONS.**

18 Section 1013(b)(3) of the Consumer Financial Pro-
19 tection Act of 2010 (12 U.S.C. 5493(b)(3)) is amended
20 in subparagraph (D), by adding at the end the following:
21 “As part of the data sharing required under this subpara-
22 graph, the Director of the Federal Housing Finance Agen-
23 cy, the Secretary of Agriculture, and the Secretary of Vet-
24 erans Affairs shall make available to the Bureau informa-
25 tion about forbearances, modifications, and other loss
26 mitigation initiatives undertaken by such agencies (includ-

1 ing, with respect to the Director of the Federal Housing
2 Finance Agency, such initiatives undertaken by the Fed-
3 eral National Mortgage Association or the Federal Home
4 Loan Mortgage Corporation).”.

5 **SEC. 7. INFORMATION SHARING WITH RESPECT TO CON-**
6 **SUMER COMPLAINTS.**

7 Section 1013(b)(3)(A) of the Consumer Financial
8 Protection Act of 2010 is amended by striking “where ap-
9 propriate.” and inserting “where appropriate, and coordi-
10 nate with such agencies to resolve such complaints.”

11 **SEC. 8. INFORMATION SHARING AND COORDINATION WITH**
12 **RESPECT TO SERVICERS.**

13 It is the sense of Congress that the Conference of
14 State Bank Supervisors should share information and co-
15 ordinate with the Federal Housing Finance Agency and
16 the Government National Mortgage Association with re-
17 spect to the oversight of mortgage servicers.

18 **SEC. 9. COVID-19 MORTGAGE SERVICING.**

19 (a) **LOSS MITIGATION OFFERINGS.**—When evalu-
20 ating a loss mitigation application from a borrower experi-
21 encing a financial hardship due, directly or indirectly, to
22 the COVID-19 emergency, the servicer of a covered mort-
23 gage loan shall offer the borrower all loss mitigation op-
24 tions for which the borrower qualifies, regardless of wheth-

1 er the borrower was evaluated for loss mitigation prior to
2 exiting a COVID-related forbearance.

3 (b) SERVICING REQUIREMENTS NONFEDERALLY-
4 BACKED LOANS.—

5 (1) COVID RELIEF.—Any mortgage servicer,
6 mortgagee, beneficiary of the deed of trust, or au-
7 thorized agent thereof, shall, with respect to any
8 nonfederally-backed loan—

9 (A) provide COVID-related forbearances
10 with the same conditions and for the same pe-
11 riod of time as required by any one of the speci-
12 fied Federal entities;

13 (B) offer to any borrower who was less
14 than three months delinquent with respect to a
15 covered mortgage loan as of March 1, 2020 and
16 who experienced a financial hardship due di-
17 rectly or indirectly to the COVID–19 emer-
18 gency, not less than one COVID-related post-
19 forbearance option that, prior to satisfaction of
20 the mortgage loan—

21 (i) does not require the borrower to
22 repay any arrearages of principal or inter-
23 est, or any escrow advances made by the
24 servicer, resulting from such forbearance
25 in order to reinstate the mortgage; and

1 (ii) does not otherwise increase in any
2 month the borrower's preforbearance
3 monthly principal and interest payment
4 other than as the result of an adjustment
5 of the applicable index pursuant to the
6 terms of an adjustable rate mortgage; and
7 (C) not offer any COVID-related post-for-

8 bearance option that—

9 (i) charges penalties or late fees in-
10 curred on or after March 1, 2020, or
11 charge any modification fees to the bor-
12 rower; or

13 (ii) charges additional interest beyond
14 the amounts scheduled or calculated as if
15 the borrower made all contractual pay-
16 ments on time and in full under the terms
17 of the mortgage contract in effect at the
18 time the borrower entered into the forbear-
19 ance, except to the extent that interest is
20 charged after the modification on any
21 amounts that are capitalized into the new
22 balance of a modified loan.

23 (2) DEEMED COMPLIANCE.—A servicer shall be
24 deemed to be in compliance with paragraph (1) if
25 such servicer offers post forbearance options with

1 the same terms as those post forbearance options of-
2 fered by a specified Federal entity, and complies
3 with any guidance issued by such specified Federal
4 entity with respect to such post forbearance option
5 that is selected, including guidance relating to credit
6 reporting and communications with borrowers.

7 (c) SAFE HARBOR.—

8 (1) SERVICERS.—A servicer of a nonfederally-
9 backed loan—

10 (A) shall be deemed not to have violated
11 any duty or contractual obligation owed to in-
12 vestors in or other parties to a securitization of
13 such loan on account of compliance with sub-
14 section (b); and

15 (B) shall not on account of such compli-
16 ance with subsection (b) be—

17 (i) liable to any party who is owed
18 such a duty or obligation; or

19 (ii) subject to any injunction, stay, or
20 other equitable relief for the benefit of
21 such party.

22 (2) OTHER PERSONS.—Any person, including a
23 trustee of a securitization of nonfederally-related
24 loans or other party involved in such a
25 securitization, who in good faith cooperates with the

1 efforts of a servicer of a nonfederally-related loan to
2 comply with the terms of subsection (B), shall not
3 on account of its cooperation be—

4 (A) liable to any party to or investor in a
5 securitization of nonfederally-related loans; or

6 (B) subject to any injunction, stay, or
7 other equitable relief.

8 (3) BORROWER RIGHTS UNAFFECTED.—Noth-
9 ing in this section shall affect or impair the rights
10 of a borrower of a nonfederally-backed loan.

11 (d) DEFINITIONS.—In this section:

12 (1) COVERED MORTGAGE LOAN.—The term
13 “covered mortgage loan”—

14 (A) means any credit transaction that is
15 secured by a mortgage, deed of trust, or other
16 consensual security interest on a 1- to 4-unit
17 dwelling or on residential real property that in-
18 cludes a 1- to 4-unit dwelling; and

19 (B) does not include a credit transaction
20 under an open end credit plan other than a re-
21 verse mortgage.

22 (2) NONFEDERALLY-BACKED LOAN.—The term
23 “nonfederally-backed loan” means any covered mort-
24 gage loan that is not made by, insured, guaranteed,
25 purchased, or securitized by the Federal National

1 Mortgage Association, the Federal Home Loan
2 Mortgage Corporation, the Federal Housing Admin-
3 istration, the Office of Public and Indian Housing of
4 the Department of Housing and Urban Develop-
5 ment, the Department of Veterans Affairs, or the
6 Rural Development division of the Department of
7 Agriculture.

8 (3) SPECIFIED FEDERAL ENTITY.—The term
9 “specified Federal entity” means the Federal Na-
10 tional Mortgage Association, the Federal Home
11 Loan Mortgage Corporation, and the Federal Hous-
12 ing Administration of the United States Department
13 of Housing and Urban Development.