

[DISCUSSION DRAFT]

117TH CONGRESS
2^D 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 2022”.

1 **TITLE I—MORTGAGE SERVICING**

2 **SEC. 101. ADDITIONAL SERVICER OBLIGATIONS RELATED**
3 **TO FORECLOSURE.**

4 (a) IN GENERAL.—Section 6 of the Real Estate Set-
5 tlement Procedures Act of 1974 (12 U.S.C. 2605) is
6 amended by adding at the end the following:

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

9 “(1) NOTICE REQUIREMENT.—

10 “(A) IN GENERAL.—A servicer of a feder-
11 ally related mortgage loan shall provide, to each
12 delinquent borrower, a written notice with the
13 information set forth in subparagraph (B) not
14 later than the forty-fifth day of the borrower’s
15 delinquency and again not later than 45 days
16 after each payment due date so long as the bor-
17 rower remains delinquent.

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

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

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

1 “(iii) the mailing addresses and
2 websites of the servicer for sending pay-
3 ments, correspondence, and requests for
4 loss mitigation;

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

7 “(v) if applicable, information about
8 forbearance or forbearance extensions that
9 may be available to the borrower;

10 “(vi) a description of representative
11 examples of types of loss mitigation op-
12 tions for the borrower’s type of loan that
13 may be available to the borrower;

14 “(vii) a statement informing the bor-
15 rower how to obtain more information
16 about loss mitigation options from the
17 servicer;

18 “(viii) directions to access the online
19 lists of housing counseling agencies ap-
20 proved by the Secretary of Housing and
21 Urban Development and located on the
22 websites of the Department of Housing
23 and Urban Development and the Bureau
24 of Consumer Financial Protection;

1 “(ix) a current list of housing coun-
2 seling agencies approved by the Secretary
3 of Housing and Urban Development that
4 are located in the State in which the bor-
5 rower resides and contact information for
6 such agencies; and

7 “(x) the Department of Housing and
8 Urban Development toll-free telephone
9 number available for accessing contact in-
10 formation for housing counseling agencies
11 that serve the homeowner’s geographic
12 area.

13 “(2) DELINQUENCY OF GREATER THAN 120
14 DAYS REQUIRED.—

15 “(A) IN GENERAL.—A servicer may not
16 make a foreclosure-related action unless a fed-
17 erally related mortgage loan obligation is more
18 than 120 days delinquent, excluding any period
19 during which the borrower was in forbearance.

20 “(B) FORECLOSURE-RELATED ACTION.—
21 For the purposes of this paragraph, the term
22 ‘foreclosure-related action’ means making the
23 first notice or filing required by applicable law
24 for any judicial or non-judicial foreclosure proc-
25 ess, including—

1 “(i) initiating or proceeding with any
2 judicial or non-judicial foreclosure process;
3 “(ii) scheduling a foreclosure sale;
4 “(iii) moving for a foreclosure judg-
5 ment or order of sale;
6 “(iv) executing a foreclosure-related
7 eviction or foreclosure sale; or
8 “(v) charging, assessing, or collecting
9 any foreclosure-related fees, such as attor-
10 ney’s fees, property inspection fees, or title
11 fees.”.

12 (b) RULEMAKING.—Not later than 1 year after the
13 date of the enactment of this Act, the Director of the Bu-
14 reau of Consumer Financial Protection shall issue such
15 final rules as necessary to carry out this section.

16 **SEC. 102. ESCROW ANALYSIS.**

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

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

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

22 “(2) ESCROW ANALYSIS BEFORE LOSS MITIGA-
23 TION.—

24 “(A) IN GENERAL.—If the terms of any
25 federally related mortgage loan, including any

1 loss mitigation option in connection with such
2 mortgage, require a borrower to make payments
3 to the servicer of the loan for deposit into an
4 escrow account, the servicer shall, before offer-
5 ing the borrower a loss mitigation option—

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

9 “(ii) notify the borrower whether the
10 amount of any shortage or deficiency will
11 be repaid by the borrower under the terms
12 of a loss mitigation option offered to the
13 borrower or whether the servicer will re-
14 quire the borrower to pay additional
15 monthly deposits into the escrow account
16 to eliminate the shortage or deficiency; and

17 “(iii) notify the borrower of the
18 amount of any additional monthly deposits
19 into the escrow account that may be re-
20 quired.

21 “(B) CAPITALIZATION AND DEFERRAL.—A
22 servicer shall capitalize the amount of any pro-
23 jected shortage or deficiency into loan modifica-
24 tions or spread the amount of such shortage or
25 deficiency in equal amount over a period of 60

1 months, unless the borrower chooses to defer
2 payment until the end of the loan, pay the
3 shortage in a lump sum up front, or pay over
4 a shorter period.”.

5 (b) RULEMAKING.—Not later than 1 year after the
6 date of the enactment of this Act, the Director of the Bu-
7 reau of Consumer Financial Protection shall issue such
8 final rules as necessary to carry out this section.

9 **SEC. 103. OPTIONAL DELAY FOR CALLING HECM LOANS**
10 **DUE AND PAYABLE.**

11 Section 255 of the National Housing Act (12 U.S.C.
12 1715z–20) is amended by inserting after subsection (j) the
13 following:

14 “(k) HOME RETENTION.—A mortgagee may refrain
15 from submitting a due and payable request to the Sec-
16 retary or may withdraw a due and payable request if—

17 “(1) the mortgage to which the due and payable
18 request would relate—

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

20 “(B) is in default because the mortgagor
21 failed to make payment on applicable home-
22 owners association fees, ground rents, special
23 assessments, taxes, or insurance required under
24 the mortgage;

1 “(2) the amount of total arrearages, as speci-
2 fied in paragraph (1)(B), owed by the mortgagor to
3 the mortgagee with respect to the mortgage is less
4 than \$25,000.”.

5 **SEC. 104. REPORT ON CONSUMER COMPLAINTS RELATED**
6 **TO MORTGAGE LOAN MODIFICATIONS.**

7 Section 1013(b)(3) of the Consumer Financial Pro-
8 tection Act of 2010 (12 U.S.C. 5493(b)(3)) is amended
9 in subparagraph (D), by adding at the end the following:
10 “As part of the data sharing required under this subpara-
11 graph, the Secretary of Housing and Urban Development,
12 the Director of the Federal Housing Finance Agency, the
13 Secretary of Agriculture, and the Secretary of Veterans
14 Affairs shall make available, to the Bureau, information
15 relating to consumer complaints regarding forbearances,
16 modifications, and other loss mitigation initiatives under-
17 taken by such agencies (including, with respect to the Di-
18 rector of the Federal Housing Finance Agency, such ini-
19 tiatives undertaken by the Federal National Mortgage As-
20 sociation or the Federal Home Loan Mortgage Corpora-
21 tion).”.

22 **SEC. 105. INFORMATION SHARING WITH RESPECT TO CON-**
23 **SUMER COMPLAINTS.**

24 Section 1013(b)(3)(A) of the Consumer Financial
25 Protection Act of 2010 is amended by striking “where ap-

1 appropriate.” and inserting “where appropriate, and coordi-
2 nate with such agencies to collect and evaluate information
3 about outcomes of such complaints”.

4 **SEC. 106. INFORMATION SHARING AND COORDINATION**
5 **WITH RESPECT TO SERVICERS.**

6 (a) FHFA COORDINATION WITH THE CONFERENCE
7 OF STATE BANK SUPERVISORS.—The Federal Housing
8 Enterprises Financial Safety and Soundness Act of 1992
9 (12 U.S.C. 4501 et seq.) is amended by inserting after
10 section 1328 the following:

11 **“SEC. 1329. COORDINATION WITH THE CONFERENCE OF**
12 **STATE BANK SUPERVISORS.**

13 “(a) IN GENERAL.—The Director shall, where pos-
14 sible—

15 “(1) coordinate with the Conference of State
16 Bank Supervisors; and

17 “(2) regularly consult the Conference of State
18 Bank Supervisors with respect to safety and sound-
19 ness risks, risks relating to violations of fair hous-
20 ing, fair lending, and other consumer finance or li-
21 censing laws, related to persons or entities that are
22 subject to State authority to provide services to con-
23 sumers.

24 “(b) EXCHANGE OF REGULATORY AND SUPERVISORY
25 INFORMATION.—

1 “(1) IN GENERAL.—The Director may enter
2 into agreements with the Conference of State Bank
3 Supervisors to facilitate the exchange of regulatory
4 and supervisory information between the Agency and
5 State mortgage regulators.

6 “(2) TREATMENT OF INFORMATION.—Any reg-
7 ulatory and supervisory information shared by the
8 Director with the Conference of State Bank Super-
9 visors and any regulatory and supervisory informa-
10 tion shared by the Conference of State Bank Super-
11 visors or any State with the Director under this sec-
12 tion shall be subject to the confidentiality require-
13 ments described in section 5111 of the S.A.F.E.
14 Mortgage Licensing Act of 2008.”.

15 (b) SPECIFIED FEDERAL ENTITY COORDINATION
16 WITH THE CONFERENCE OF STATE BANK SUPER-
17 VISORS.—Section 309 of the Housing Act of 1954 (12
18 U.S.C. 1723a) is amended by adding at the end the fol-
19 lowing:

20 “(p) COORDINATION WITH THE CONFERENCE OF
21 STATE BANK SUPERVISORS.—

22 “(1) IN GENERAL.—Specified Federal entities
23 shall, where possible—

24 “(A) coordinate with the Conference of
25 State Bank Supervisors; and

1 “(B) regularly consult the Conference of
2 State Bank Supervisors with respect to safety
3 and soundness risks, including risks relating to
4 violations of fair housing, fair lending, and
5 other consumer finance or licensing laws, re-
6 lated to persons or entities that are licensed by
7 the State to provide services to consumers.

8 “(2) EXCHANGE OF REGULATORY AND SUPER-
9 VISORY INFORMATION.—

10 “(A) IN GENERAL.—Specified Federal en-
11 tities may enter into agreements with the Con-
12 ference of State Bank Supervisors to facilitate
13 the exchange of regulatory and supervisory in-
14 formation between the specified Federal entities
15 and State mortgage regulators.

16 “(B) TREATMENT OF INFORMATION.—Any
17 regulatory and supervisory information shared
18 by a specified Federal entity with the Con-
19 ference of State Bank Supervisors and any reg-
20 ulatory and supervision information shared by
21 the Conference of State Bank Supervisors with
22 a specified Federal entity under this section
23 shall be subject to the confidentiality require-
24 ments described in section 5111 of the S.A.F.E.
25 Mortgage Licensing Act of 2008.”.

1 (c) SPECIFIED FEDERAL ENTITY.—The term “speci-
2 fied Federal entity” means the Federal National Mortgage
3 Association, the Federal Home Loan Mortgage Corpora-
4 tion, the Federal Housing Administration of the United
5 States Department of Housing and Urban Development,
6 the United States Department of Veteran Affairs, the
7 United States Department of Agriculture, and Govern-
8 ment National Mortgage Association.

9 **SEC. 107. LOSS MITIGATION OPTIONS.**

10 (a) DEFINITIONS.—In this section:

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

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

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

21 (2) FEDERAL ENTITIES.—The term “Federal
22 entities” means the Federal National Mortgage As-
23 sociation, the Federal Home Loan Mortgage Cor-
24 poration, and the Federal Housing Administration

1 of the United States Department of Housing and
2 Urban Development.

3 (3) NON-FEDERALLY BACKED LOAN.—The term
4 “non-federally backed loan” means any covered
5 mortgage loan that is not made by, insured, guaran-
6 teed, purchased, or securitized by the Federal Na-
7 tional Mortgage Association, the Federal Home
8 Loan Mortgage Corporation, the Federal Housing
9 Administration, the Office of Public and Indian
10 Housing of the Department of Housing and Urban
11 Development, the Department of Veterans Affairs,
12 or the Rural Development division of the Depart-
13 ment of Agriculture.

14 (4) FEDERALLY BACKED MORTGAGE LOAN.—
15 The term “federally backed mortgage loan” includes
16 any loan which is secured by a first or subordinate
17 lien on residential real property (including individual
18 units of condominiums and cooperatives) designed
19 principally for the occupancy of from 1- to 4- fami-
20 lies that is—

21 (A) insured by the Federal Housing Ad-
22 ministration under title II of the National
23 Housing Act (12 U.S.C. 1707 et seq.);

24 (B) insured under section 255 of the Na-
25 tional Housing Act (12 U.S.C. 1715z–20);

1 (C) guaranteed under section 184 or 184A
2 of the Housing and Community Development
3 Act of 1992 (12 U.S.C. 1715z–13a, 1715z–
4 13b);

5 (D) guaranteed or insured by the Depart-
6 ment of Agriculture;

7 (E) made by the Department of Agri-
8 culture; or

9 (F) purchased or securitized by the Fed-
10 eral Home Loan Mortgage Corporation or the
11 Federal National Mortgage Association.

12 (b) SERVICING.—

13 (1) LOSS MITIGATION FOR NON-FEDERALLY
14 BACKED LOANS.—With respect to any non-federally
15 backed loan, a mortgage servicer, mortgagee, bene-
16 ficiary of the deed of trust, or authorized agent
17 thereof—

18 (A) shall, prior to the initiation of the first
19 notice or filing required by applicable law for
20 any judicial or non-judicial foreclosure process,
21 offer to all borrowers who are three months or
22 more delinquent on their mortgage loan 1 or
23 more options to bring their loan current that do
24 not—

1 (i) require the borrower to repay ar-
2 rearages of principal or interest in one or
3 more lump-sum payments prior to satisfac-
4 tion of the mortgage loan; or

5 (ii) increase the pre-delinquency
6 monthly principal and interest payment of
7 the borrower throughout the life of the
8 loan other than as the result of an adjust-
9 ment of the applicable index pursuant to
10 the terms of an adjustable rate mortgage;

11 (B) may not offer any option to bring a
12 delinquent borrower's loan current that—

13 (i) charges penalties or modification
14 fees to the borrower; or

15 (ii) charges interest beyond the
16 amounts scheduled or calculated as if the
17 borrower made all contractual payments on
18 time and in full under the terms of the
19 mortgage contract in effect at the time the
20 borrower became delinquent, except to the
21 extent that interest is charged as part of
22 a loan modification on amounts that are
23 capitalized into the new principal balance
24 of a modified loan; and

1 (C) shall establish a set of loss mitigation
2 options to bring a delinquent loan current, and
3 a system for evaluating delinquent borrowers
4 for such loss mitigation options, that includes—

5 (i) an option that allows the resump-
6 tion of the borrower's pre-delinquency
7 principal and interest payment but does
8 not charge interest beyond the amounts
9 scheduled or calculated as if the borrower
10 made all contractual payments on time and
11 in full under the terms of the mortgage
12 contract in effect at the time the borrower
13 became delinquent, except to the extent
14 that interest is charged as part of a loan
15 modification on amounts that are capital-
16 ized into the new principal balance of a
17 modified loan; and

18 (ii) with respect to borrowers who
19 cannot afford to resume their pre-delin-
20 quency principal and interest payments, an
21 option that offers a modified loan such
22 that the borrower's monthly principal and
23 interest payment is reduced relative to the
24 pre-delinquency principal and interest pay-

1 ment, based on an established target of
2 payment relief.

3 (c) LOSS MITIGATION FOR FEDERALLY BACKED
4 LOANS.—Each servicer of a federally backed mortgage
5 loan shall offer loss mitigation options to the borrower as-
6 sociated with such loan prior to any foreclosure action,
7 pursuant to any applicable rulemaking that the relevant
8 federal agencies may prescribe.

9 (d) DEEMED COMPLIANCE.—If a mortgage servicer
10 offers loss mitigation options that bring a borrower’s loan
11 current with the same terms as those offered by any Fed-
12 eral entities, and otherwise complies with the guidance
13 issued by that entity with respect to that type of loss miti-
14 gation option, including but not limited to communications
15 with borrowers and credit reporting, such mortgage
16 servicer, mortgagee, or beneficiary of the deed of trust,
17 or authorized agent thereof, shall be deemed to be in com-
18 pliance with subsection (b)(1).

19 (e) SAFE HARBOR.—

20 (1) SERVICERS.—A servicer of a non-federally
21 backed loan—

22 (A) shall be deemed not to have violated
23 any duty or contractual obligation owed to in-
24 vestors in or other parties to a securitization of

1 such loan on account of compliance with sub-
2 section (b); and

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

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

7 (ii) subject to any injunction, stay, or
8 other equitable relief for the benefit of
9 such party.

10 (2) OTHER PERSONS.—Any person, including a
11 trustee of a securitization of non-federally backed
12 loans or other party involved in such a
13 securitization, who in good faith cooperates with the
14 efforts of a servicer of a non-federally backed loan
15 to comply with the requirements of subsection (b),
16 shall not on account of its cooperation be—

17 (A) liable to any party to or investor in a
18 securitization of non-federally backed loans; or

19 (B) subject to any injunction, stay, or
20 other equitable relief.

21 (f) BORROWER RIGHTS UNAFFECTED.—Nothing in
22 subsection (e) shall affect or impair the rights of a bor-
23 rower of a non-federally backed loan.

**TITLE II—HOUSING
COUNSELING**

**SEC. 201. HUD-APPROVED HOUSING COUNSELING AGEN-
CIES.**

(a) **OUTREACH ATTEMPT BY HOUSING COUNSELING
AGENCY.—**

(1) **IN GENERAL.—**A servicer who seeks to initiate foreclosure on a federally related mortgage loan and who is unable to obtain a response from outreach attempts to the borrower that the servicer is required to make under section 101 of this Act shall contract with and fully compensate, for services rendered to the borrower, a housing counseling agency approved by the Secretary of Housing and Urban Development to provide outreach and housing counseling services to the borrower to help the borrower avoid foreclosure, at no cost to the borrower, not less than 60 days prior to the date on which the servicer takes any additional foreclosure-related action.

(2) **LIMITATION ON LIABILITY.—**A housing counseling agency contracted by a servicer pursuant to this paragraph may not be found liable under this section for actions of the servicer.

(b) **COORDINATION WITH HOUSING COUNSELING
AGENCIES.—**If a borrower has received assistance from a

1 housing counseling agency approved by the Secretary of
2 Housing and Urban Development with respect to a feder-
3 ally related mortgage loan, the servicer of such loan shall,
4 after obtaining or receiving consent from the borrower in
5 writing, whether on a form used by the housing counseling
6 agency or by the servicer—

7 (1) ensure that all communications with respect
8 to such loan are provided to the borrower and the
9 housing counseling agency from which the borrower
10 has received assistance; and

11 (2) provide the housing counseling agency from
12 which the borrower has received assistance with the
13 contact information for a senior manager of the
14 servicer that such housing counseling agency may
15 use to elevate issues relating to case evaluation er-
16 rors, procedural errors, and other problems identi-
17 fied by the housing counselor.

18 (c) LOSS MITIGATION PACKAGES.—A servicer shall
19 accept any supporting or additional materials, for inclu-
20 sion in a complete loss mitigation application, that—

21 (1) are prepared by a housing counseling agen-
22 cy approved by the Secretary of the Department of
23 Housing and Urban Development; and

24 (2) comply with sections 204(a) and 230 of the
25 National Housing Act, part 203 of title 24 of the

1 Code of Federal Regulations, and section 1024.41(b)
2 of title 12 of the Code of Federal Regulations.

3 (d) SUPPORT FOR HOUSING COUNSELING AGEN-
4 CIES.—The Secretary of Housing and Urban Development
5 shall provide financial assistance to housing counseling
6 agencies approved by the Department of Housing and
7 Urban Development to be used by such housing counseling
8 agencies to provide—

9 (1) nonfinancial assistance, including outreach,
10 to borrowers with mortgage loans who need assist-
11 ance obtaining or assessing loss mitigation options;
12 and

13 (2) outreach to delinquent borrowers and home-
14 owners who are facing foreclosure.

15 (e) AUTHORIZATION OF APPROPRIATIONS.—There is
16 authorized to be appropriated for fiscal year 2022
17 \$25,000,000 in supplementary funding to the Secretary
18 of Housing and Urban Development to make grants under
19 this section.

20 (f) FEDERALLY RELATED MORTGAGE LOAN DE-
21 FINED.—The term “federally related mortgage loan” has
22 the meaning given the term in section 1024.2(b) of title
23 12 of the Code of Federal Regulations.