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 Representatives of the United States of America in Congress assembled,

3. SECTION 1. SHORT TITLE.

This Act may be cited as the “Preventing Unfair Foreclosures Act of 2021”.

October 22, 2021 (4:42 p.m.)
SEC. 2. ADDITIONAL SERVICER OBLIGATIONS RELATED TO FORECLOSURE.

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

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

“(1) NOTICE REQUIREMENT.—

“(A) IN GENERAL.—A servicer of a federally related mortgage loan shall provide, to each delinquent borrower, a written notice with the information set forth in subparagraph (B) not later than the thirtieth day of the borrower’s delinquency and again not later than 30 days after each payment due date so long as the borrower remains delinquent.

“(B) CONTENTS OF NOTICE.—Each notice required under subparagraph (A) shall include—

“(i) a statement encouraging the borrower to contact the servicer;

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

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

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

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

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

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

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

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

“(viii) information with respect to how
the borrower can request available loss
mitigation options from the servicer;
“(ix) directions to access the online lists of homeownership counselors or counseling organizations published by the Secretary of Housing and Urban Development and the Bureau; and

“(x) the Department of Housing and Urban Development toll-free telephone number available for accessing homeownership counselors and counseling organizations.

“(C) OUTREACH ATTEMPT BY HOUSING COUNSELING AGENCY.—A servicer who seeks to initiate foreclosure on a mortgage loan and who is unable to obtain a response from outreach attempts to the borrower shall contract with a housing counseling agency approved by the Department of Housing and Urban Development to provide outreach to the borrower, at no cost to the borrower.

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

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

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

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

“(ii) scheduling a foreclosure sale;

“(iii) moving for a foreclosure judgment or order of sale;

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

“(v) charging, assessing, or incurring any foreclosure-related fees, such as attorney’s fees, property inspection fees, or title fees.

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

“(A) COORDINATION WITH HOUSING COUNSELING AGENCIES.—If a borrower has received assistance from a housing counseling agency approved by the Department of Housing and
Urban Development with respect to a loan, the servicer of such loan shall, if approved by the borrower in writing—

“(i) ensure that all communications about the loan are provided to both such housing counseling agency and the borrower;

“(ii) provide such housing counseling agency with the contact information for a senior manager that the counselor may use to elevate issues relating to case evaluation errors, procedural errors, and other problems.

“(B) LOSS MITIGATION PACKAGES.—A servicer shall accept any loss mitigation package prepared by a housing counseling agency approved by the Department of Housing and Urban Development.

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

“(A) contract with housing counseling agencies approved by the Department of Housing and Urban Development to—
“(i) reach homeowners at risk of default and not in contact with the servicers by—

“(I) conducting outreach and providing services to low-income populations and minorities who are more than 60 days delinquent or in foreclosure; and

“(II) providing housing counseling services in neighborhoods with low-income populations high concentrations of minorities that are more than 60 days delinquent or in foreclosure; and

“(ii) support borrowers with loss mitigation applications and language services; and

“(B) provide amounts to the housing counseling agencies with whom the servicer contracts to compensate the housing counseling agencies for their work with respect to loans of interest to the servicer.”.

SEC. 3. ESCROW ANALYSIS AFTER FORBEARANCE.

Section 6(g) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(g)) is amended—
(1) by striking “If the terms” and inserting
“(1) IN GENERAL.—If the terms”; and

(2) by adding at the end the following:
“(2) ESCROW ANALYSIS BEFORE LOAN MODIFICATION.—

“(A) IN GENERAL.—If the terms of any federally related mortgage, including any loss mitigation option in connection with such mortgage, require a borrower to make payments to the servicer of the loan for deposit into an escrow account, the servicer shall, before offering the borrower a loss mitigation option—

“(i) conduct an escrow account analysis to determine whether a shortage, surplus, or deficiency exists; and

“(ii) notify the borrower if the amount of any shortage or deficiency will be repaid under the terms of a loss modification option offered to the borrower or if the servicer will require the borrower to pay additional monthly deposits into the escrow account to eliminate the shortage or deficiency.

“(B) CAPITALIZATION AND DEFERRAL.—A servicer may, with respect to any shortage or
deficiency identified under subparagraph (A),
capitalize the amount of any such shortage or
deficiency into loan modifications or defer the
amount of such shortage or deficiency until the
end of the loan.”.

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

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

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

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

“(A) is insured under this section; and

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

“(2) the amount of total arrearages owed by
the mortgagor to the mortgagee with respect to the
mortgage is less than $25,000.”.
SEC. 5. SUPPORT FOR HUD-APPROVED HOUSING COUNSELING AGENCIES.

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

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

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

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

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

Section 1013(b)(3) of the Consumer Financial Protection Act of 2010 (12 U.S.C. 5493(b)(3)) is amended in subparagraph (D), by adding at the end the following:

“As part of the data sharing required under this subparagraph, the Director of the Federal Housing Finance Agency, the Secretary of Agriculture, and the Secretary of Veterans Affairs shall make available to the Bureau information about forbearances, modifications, and other loss mitigation initiatives undertaken by such agencies (including—
ing, with respect to the Director of the Federal Housing Finance Agency, such initiatives undertaken by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation).”.

SEC. 7. INFORMATION SHARING WITH RESPECT TO CONSUMER COMPLAINTS.

Section 1013(b)(3)(A) of the Consumer Financial Protection Act of 2010 is amended by striking “where appropriate.” and inserting “where appropriate, and coordinate with such agencies to resolve such complaints.”

SEC. 8. INFORMATION SHARING AND COORDINATION WITH RESPECT TO SERVICERS.

It is the sense of Congress that the Conference of State Bank Supervisors should share information and coordinate with the Federal Housing Finance Agency and the Government National Mortgage Association with respect to the oversight of mortgage servicers.

SEC. 9. COVID–19 MORTGAGE SERVICING.

(a) LOSS MITIGATION OFFERINGS.—When evaluating a loss mitigation application from a borrower experiencing a financial hardship due, directly or indirectly, to the COVID–19 emergency, the servicer of a covered mortgage loan shall offer the borrower all loss mitigation options for which the borrower qualifies, regardless of wheth-
er the borrower was evaluated for loss mitigation prior to exiting a COVID-related forbearance.

(b) Servicing Requirements Nonfederally-Backed Loans.—

(1) COVID Relief.—Any mortgage servicer, mortgagee, beneficiary of the deed of trust, or authorized agent thereof, shall, with respect to any nonfederally-backed loan—

(A) provide COVID-related forbearances with the same conditions and for the same period of time as required by any one of the specified Federal entities;

(B) offer to any borrower who was less than three months delinquent with respect to a covered mortgage loan as of March 1, 2020 and who experienced a financial hardship due directly or indirectly to the COVID–19 emergency, not less than one COVID-related post-forbearance option that, prior to satisfaction of the mortgage loan—

(i) does not require the borrower to repay any arrearages of principal or interest, or any escrow advances made by the servicer, resulting from such forbearance in order to reinstate the mortgage; and
(ii) does not otherwise increase in any month the borrower’s preforbearance monthly principal and interest payment other than as the result of an adjustment of the applicable index pursuant to the terms of an adjustable rate mortgage; and

(C) not offer any COVID-related post-forbearance option that—

(i) charges penalties or late fees incurred on or after March 1, 2020, or charge any modification fees to the borrower; or

(ii) charges additional interest beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full under the terms of the mortgage contract in effect at the time the borrower entered into the forbearance, except to the extent that interest is charged after the modification on any amounts that are capitalized into the new balance of a modified loan.

(2) DEEMED COMPLIANCE.—A servicer shall be deemed to be in compliance with paragraph (1) if such servicer offers post forbearance options with
the same terms as those post forbearance options offered by a specified Federal entity, and complies with any guidance issued by such specified Federal entity with respect to such post forbearance option that is selected, including guidance relating to credit reporting and communications with borrowers.

(c) Safe Harbor.—

(1) Servicers.—A servicer of a nonfederally-backed loan—

(A) shall be deemed not to have violated any duty or contractual obligation owed to investors in or other parties to a securitization of such loan on account of compliance with subsection (b); and

(B) shall not on account of such compliance with subsection (b) be—

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

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

(2) Other Persons.—Any person, including a trustee of a securitization of nonfederally-related loans or other party involved in such a securitization, who in good faith cooperates with the
efforts of a servicer of a nonfederally-related loan to comply with the terms of subsection (B), shall not on account of its cooperation be—

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

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

(3) BORROWER RIGHTS UNAFFECTED.—Nothing in this section shall affect or impair the rights of a borrower of a nonfederally-backed loan.

(d) DEFINITIONS.—In this section:

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

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

(B) does not include a credit transaction under an open end credit plan other than a reverse mortgage.

(2) NONFEDERALLY-BACKED LOAN.—The term “nonfederally-backed loan” means any covered mortgage loan that is not made by, insured, guaranteed, purchased, or securitized by the Federal National
Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Office of Public and Indian Housing of the Department of Housing and Urban Development, the Department of Veterans Affairs, or the Rural Development division of the Department of Agriculture.