

AMENDMENT TO H.R. _____
OFFERED BY MR. MILLER OF NORTH CAROLINA
[Private Mortgage Market Investment Act]

Page 8, strike lines 5 through 20, and insert the following:

1 (a) STANDARDS FOR SERVICING.—

2 (1) ESTABLISHMENT.—The Director, in consultation with all of the appropriate Federal banking
3 agencies (as such term is defined in section 3 of the
4 Federal Deposit Insurance Act (12 U.S.C.1813) and
5 the Director of the Bureau of Consumer Financial
6 Protection of the Federal Reserve System, shall develop, adopt, and publish servicing standards under
7 this subsection, including for the modification, restructuring and work-out of any mortgage that
8 serves as collateral for a qualified security.

9 (2) REQUIRED CONTENT.—The servicing standards developed, adopted, and published by the Director as required under paragraph (1) shall provide as
10 follows:

11 (A) FEES TO BE REASONABLY RELATED
12 TO COSTS.—All fees charged for the rendering
13 of a real estate settlement service (as such term
14

1 is defined in section 3 of the Real Estate Settle-
2 ment Procedures Act of 1974 (12 U.S.C.
3 2602)) in connection with a transaction involv-
4 ing a mortgage that serves as collateral for a
5 qualified security or incurred in connection with
6 servicing such mortgage shall be reasonably re-
7 lated to the cost of providing the service.

8 (B) RESTRICTION ON USE OF SUBSIDI-
9 ARIES AND INSOURCING.—

10 (i) IN GENERAL.—No servicer of a
11 mortgage that serves as collateral for a
12 qualified security shall render a real estate
13 settlement service in connection with a
14 transaction involving a mortgage through a
15 subsidiary of such person or through
16 insourcing.

17 (ii) INSOURCING DEFINED.— For pur-
18 poses of this subparagraph, the term
19 “insourcing” means providing for services
20 to be conducted by the servicer’s affiliated
21 entities.

22 (C) REQUIREMENT TO CONTINUE INSUR-
23 ANCE.—If the insurance policy of a borrower
24 under a mortgage that serves as collateral for
25 a qualified security has not been paid, the

1 servicer shall make payments on the current
2 policy or seek reinstatement of such policy
3 where necessary and then make such payments,
4 unless the policy has been terminated for rea-
5 sons other than nonpayment. Where escrow
6 funds are not available, the servicer shall ad-
7 vance such funds. If the current policy cannot
8 be continued and force-placed insurance is pro-
9 vided, the costs and the coverage should be sub-
10 stantially equivalent to that provided in a
11 standard homeowner's insurance policy.

12 (D) DISCLOSURES RELATED TO INSUR-
13 ANCE COVERAGE INFORMATION.—

14 (i) NOTICE.—Each servicer of a mort-
15 gage that serves as collateral for a quali-
16 fied security shall notify the borrower
17 under the mortgage that the borrower is
18 required to disclose to the servicer the bor-
19 rower's property insurance coverage infor-
20 mation.

21 (ii) DISCLOSURE.—Each borrower
22 who receives a notice described under
23 clause (i) shall disclose such information to
24 the servicer.

25 (E) LOSS MITIGATION.—

1 (i) SINGLE ELECTRONIC RECORD AND
2 SINGLE POINT OF CONTACT.—Each
3 servicer of a mortgage that serves as col-
4 lateral for a qualified security, or agents of
5 such servicer, shall, with respect to the
6 borrower under the mortgage, establish—

7 (I) a single electronic record for
8 each account, the contents of which
9 shall be accessible throughout the
10 servicer, or agents of such servicer, in-
11 cluding to all loss mitigation staff, all
12 foreclosure staff, and all bankruptcy
13 staff; and

14 (II) a single point of contact for
15 the borrower for all loss mitigation ac-
16 tivities.

17 (ii) GENERAL LOSS MITIGATION RE-
18 QUIREMENTS.—Each servicer of a mort-
19 gage, or agents of such servicer, shall—

20 (I) maintain adequate staffing
21 and systems for tracking borrower
22 documents and information that are
23 relevant to foreclosure, loss mitiga-
24 tion, bankruptcy, and other servicing
25 operations;

1 (II) maintain adequate staffing
2 and caseload limits for employees re-
3 sponsible for handling foreclosure, loss
4 mitigation, bankruptcy, and related
5 communication with borrowers and
6 housing counselors;

7 (III) set reasonable minimum ex-
8 perience, education, and training re-
9 quirements for loan modification staff;
10 and

11 (IV) document electronically each
12 action on a foreclosure, loan modifica-
13 tion, bankruptcy, or other servicing
14 file, including all communication with
15 the borrower and other parties.

16 (iii) TEAM LEADERS.—Each servicer
17 of a mortgage shall establish a single indi-
18 vidual to coordinate the servicer's depart-
19 ments handling the activities described
20 under subclauses (I), (II), and (III) of
21 clause (ii).

22 (iv) LIMIT ON EMPLOYEE ACTIVI-
23 TIES.—With respect to employees of a
24 servicer of a mortgage who handle delin-
25 quent loans or special servicers, the Direc-

1 tor shall issue regulations setting a reason-
2 able limit on the number of cases that may
3 be handled by each such employee.

4 (v) SPECIAL SERVICER DEFINED.—
5 For purposes of this subparagraph, the
6 term “special servicer” means any separate
7 and independent servicer for default and
8 transactions processing specified by a pool-
9 ing and servicing agreement related to a
10 mortgage-related security.

11 (vi) ADDITIONAL REQUIREMENTS RE-
12 LATED TO TRANSFER OF LOANS.—

13 (I) TO SUCCESSOR SERVICERS.—
14 For any ordinary transfer of servicing
15 to a successor servicer of a mortgage
16 or subservicer, the transferring
17 servicer shall—

18 (aa) inform the successor
19 servicer (including a subservicer)
20 whether a loan modification is
21 pending;

22 (bb) ensure that the suc-
23 cessor servicer shall accept and
24 continue processing prior loan
25 modification requests; and

1 (cc) ensure that successor
2 servicer shall honor trial and per-
3 manent loan modification agree-
4 ments entered into by the trans-
5 ferring servicer.

6 (II) TO SPECIAL SERVICERS.—A
7 servicer of a mortgage shall refer any
8 loan that is 60 or more days delin-
9 quent to an independent special
10 servicer or subservicer who shall agree
11 to the loss mitigation requirements of
12 this subparagraph.

13 (F) APPLICATION OF PAYMENTS.—A
14 servicer of a mortgage that serves as collateral
15 for a qualified security shall not apply pay-
16 ments, including partial payments, made by a
17 borrower to any fees before first applying such
18 payments to any outstanding scheduled prin-
19 cipal or interest payments.

20 (G) MONTHLY SERVICING STATEMENTS.—
21 Each servicer of a mortgage that serves as col-
22 lateral for a qualified security shall provide bor-
23 rowers with a monthly servicing statement that
24 clearly describes—

1 (i) the payment amounts due under
2 the loan agreement;

3 (ii) the date and time when such pay-
4 ments must be received;

5 (iii) the location where such payments
6 must be received; and

7 (iv) a list of each payment received by
8 the servicer, along with how such payment
9 was allocated to the amounts owed by the
10 borrower.

11 (H) TREATMENT OF MISTAKEN LOAN PAY-
12 MENTS AFTER TRANSFER.—During the 60-day
13 period beginning on the effective date of trans-
14 fer of the servicing of any mortgage that serves
15 as collateral for a qualified security, a late fee
16 may not be imposed on the consumer with re-
17 spect to any payment on such loan, and no such
18 payment may be treated as late for any other
19 purpose, if the payment is received by the
20 transferor servicer (rather than the transferee
21 servicer who should properly receive payment)
22 before the due date applicable to such payment.

23 (I) FEE WAIVERS UPON TRANSFER.—Nei-
24 ther a creditor (as such term is defined in sec-
25 tion 103 of the Truth in Lending Act (15

1 U.S.C. 1602) nor a servicer, may not impose or
2 collect—

3 (i) any fee that is not listed as having
4 been incurred in—

5 (I) the notice to the borrower
6 under the mortgage of the transfer of
7 any mortgage that serves as collateral
8 for a qualified security from the pre-
9 vious servicer; or

10 (II) the notice to the borrower
11 from the new servicer; or

12 (ii) any fee that is not specified on the
13 monthly statement to the borrower as hav-
14 ing been incurred.

15 (J) LIMITATION ON FORECLOSURE PRO-
16 CEEDINGS.—

17 (i) INITIATION OF FORECLOSURE.—A
18 servicer may not initiate or continue a non-
19 judicial foreclosure or a judicial foreclosure
20 against a mortgagor under a mortgage
21 that serves as collateral for a qualified se-
22 curity that is otherwise authorized under
23 State law, unless the servicer—

1 (I) has determined whether the
2 mortgagor is eligible for an affordable
3 loan modification; and

4 (II) has made such a modifica-
5 tion, if the mortgagor is eligible for a
6 modification.

7 (ii) FORECLOSURE PROCEEDINGS
8 PERMITTED.—Notwithstanding clause (i),
9 a servicer may initiate or continue a judi-
10 cial or nonjudicial foreclosure under State
11 law against a mortgagor, if—

12 (I) the servicer—

13 (aa) determines that the
14 mortgagor is not eligible for a
15 modification;

16 (bb) notifies the mortgagor
17 of the determination under item
18 (aa); and

19 (cc) provides the mort-
20 gagor—

21 (AA) a copy of any net
22 present value calculation
23 made by the servicer in rela-
24 tion to an affordable loan
25 modification, including any

1 information providing a
2 basis for such net present
3 value calculation;

4 (BB) a copy of any
5 note, deed of trust, or other
6 document necessary to es-
7 tablish the right of the
8 mortgagee to foreclose on
9 the mortgage, including
10 proof of assignment of the
11 mortgage to the mortgagee
12 and the right of the mort-
13 gagee to enforce the relevant
14 note under the law of the
15 State in which the real prop-
16 erty securing the mortgage
17 is located;

18 (CC) a copy of any lan-
19 guage in the pooling or serv-
20 icing agreement with respect
21 to the mortgage that the
22 servicer believes prevents a
23 modification of the mortgage
24 note;

1 (DD) a copy of all cor-
2 respondence between the
3 servicer and the mortgagees
4 and investors in which the
5 servicer attempts to obtain
6 permission to make a modi-
7 fication;

8 (EE) a complete and
9 unaltered copy of the pool-
10 ing or servicing agreement
11 in electronic format; and

12 (FF) the alternatives to
13 foreclosure available to the
14 mortgagor, including deed in
15 lieu of foreclosures and
16 short sales; or

17 (II) a mortgagor—

18 (aa) declines an affordable
19 modification in writing; or

20 (bb) does not respond to the
21 servicer's outreach activities (as
22 defined by the Director) to obtain
23 underlying information to com-
24 plete an application or obtain

1 consent to an affordable modi-
2 fication.

3 For purposes of subclause (I), the term “pooling and serv-
4 icing agreement” means any contract establishing the
5 transaction rights and duties of the parties to any quali-
6 fied securities transaction.

7 (iii) BAR TO FORECLOSURE.—Failure
8 to comply with the requirements of this
9 subparagraph shall be a bar to the fore-
10 closure of a mortgage, deed of trust, or
11 substantially similar instrument.

12 (iv) ELIGIBILITY.—A mortgagor shall
13 be eligible to participate in an affordable
14 loan modification program if—

15 (I) such person is a mortgagor
16 under a mortgage that serves as col-
17 lateral for a qualified security and
18 that is secured by the principal resi-
19 dence of the mortgagor, or is eligible
20 to assume such a mortgage, who is
21 unable to make payments on the
22 mortgage under such criteria as the
23 Director shall define; and

1 (II) the mortgagor is not an indi-
2 vidual who has abandoned the prin-
3 cipal residence securing the mortgage.

4 (v) CERTIFICATION OF DETERMINA-
5 TION OF ELIGIBILITY REQUIRED FOR
6 SALE.—

7 (I) SALE OF PROPERTY PROHIB-
8 ITED.—If the servicer of a mortgage
9 does not file a certification with the
10 appropriate land records office in the
11 jurisdiction where the property secur-
12 ing the mortgage is located, stating
13 that the servicer has determined the
14 eligibility of the mortgagor for an af-
15 fordable loan modification—

16 (aa) the mortgagee may not
17 sell the property securing the
18 mortgage; and

19 (bb) no person that pur-
20 chases the property securing the
21 mortgage may initiate an action
22 to recover possession of the prop-
23 erty.

1 (II) VIOLATIONS.—A sale of
2 property in violation of this clause
3 shall be void.

4 (III) CONTENTS.—The Director
5 shall, by rule, determine the contents
6 of the certification required under this
7 clause.

8 (vi) DEFINITION OF AFFORDABLE
9 LOAN MODIFICATION.—For purposes of
10 this subparagraph, the term “affordable
11 loan modification” means an agreement to
12 reduce the amount of scheduled regular
13 payments under a mortgage note, including
14 any reduction of the principal amount of
15 the mortgage note, that is reflected in a
16 permanent change to the terms of the
17 mortgage note under such terms as the Di-
18 rector shall define.

19 (K) EARNED PRINCIPAL FORGIVENESS.—

20 (i) IN GENERAL.—If, after reducing
21 mortgage note principal under earned prin-
22 cipal forgiveness provided in clause (ii), a
23 target affordable regular mortgage pay-
24 ment has not been achieved, the servicer of
25 the mortgage shall comply with the afford-

1 able loan modification plan modification
2 waterfall steps of interest rate reduction,
3 term extension, and principal forbearance,
4 as necessary to achieve a target affordable
5 regular mortgage payment.

6 (ii) EARNED PRINCIPAL FORGIVE-
7 NESS.—

8 (I) PRINCIPAL REDUCTION.—The
9 Director shall determine standards by
10 which a mortgagor who has received
11 an affordable loan modification shall
12 remain in good standing in order to
13 participate in a reduction in mortgage
14 note principal under this subpara-
15 graph.

16 (II) PRINCIPAL REDUCTION RE-
17 QUIRED.—Except as provided under
18 subclause (III), a servicer shall offer a
19 mortgager an affordable loan modi-
20 fication having the maximum amount
21 of principal reduction that results in a
22 positive net present value calculation.

23 (III) EXCEPTIONS.—

24 (aa) GREATER PRINCIPAL
25 REDUCTION.—A servicer may

1 offer a greater principal reduc-
2 tion, if such a reduction is con-
3 sistent with the terms of any con-
4 tract with respect to the mort-
5 gage.

6 (bb) LOAN-TO-VALUE
7 RATIO.—A servicer is not re-
8 quired to offer an affordable loan
9 modification having a principal
10 reduction that would result in a
11 loan-to-value ratio of less than
12 100 percent.

13 (IV) RULES OF CONSTRUC-
14 TION.—

15 (aa) MAXIMUM AMOUNT OF
16 PRINCIPAL REDUCTION.—A prin-
17 cipal reduction amount may be
18 considered the maximum amount
19 if it is within \$1,000 of the ac-
20 tual maximum amount.

21 (bb) POSITIVE NET
22 PRESENT VALUE CALCULA-
23 TION.—A net present value cal-
24 culation shall be deemed to be
25 positive if the net present value

1 result for an affordable loan
2 modification scenario is greater
3 than the net present value result
4 if no affordable loan modification
5 is made. Net present value shall
6 be calculated as the benefit of all
7 investors in a securitization rath-
8 er than the benefit of any par-
9 ticular class of investors.

10 (V) PRINCIPAL FORGIVENESS.—

11 (aa) TREATMENT OF PRIN-
12 CIPAL REDUCTION AMOUNT.—

13 Any amount of principal reduc-
14 tion under subclause (II) shall be
15 treated as non-interest-bearing
16 principal forbearance until the
17 dates described under item (bb)
18 of this subclause. The principal
19 reduction described in this sub-
20 clause shall be deemed to be sep-
21 arate from and exclusive of any
22 other forbearance that may be of-
23 fered in conjunction with a modi-
24 fication under an affordable loan
25 modification program.

1 (bb) REDUCTION OF PRIN-
2 CIPAL.—The servicer of a mort-
3 gage modified under an afford-
4 able loan modification plan shall
5 reduce the unpaid balance of the
6 principal of the mortgage by an
7 amount equal to 1/3 of the total
8 amount of the principal reduction
9 under subclause (II) on each of
10 the following dates:

11 (AA) The date that is 1
12 year after the date on which
13 the affordable loan modifica-
14 tion begins.

15 (BB) The date that is 2
16 years after the date on
17 which the affordable loan
18 medication begins.

19 (CC) The date that is 3
20 years after the date on
21 which the affordable loan
22 modification begins.

23 (cc) LIMITATION.—The Di-
24 rector may not require a servicer
25 to reduce mortgage note principal

1 to an amount that is less than
2 the market value of the property
3 securing the mortgage at the
4 time of the reduction in principal.

5 (iii) CALCULATION OF TARGET AF-
6 FORDABLE REGULAR MORTGAGE PAY-
7 MENT.—For purposes of this subpara-
8 graph, the target affordable regular mort-
9 gage payment shall be calculated under
10 such terms as the Director shall define.
11 Such terms shall—

12 (I) be based on a fully amortizing
13 principal and interest payment over
14 the remainder of the term of the
15 mortgage, as modified by a reduction
16 in principal; and

17 (II) use the mortgage note inter-
18 est rate in effect at the time of a re-
19 duction in principal.

20 (iv) TREATMENT OF SUBORDINATE
21 LIENS.—The Director shall prescribe rules
22 establishing procedures governing the
23 treatment of any whole loan owned by the
24 creditor (or any of its affiliates) and se-
25 cured by a subordinate lien on a property

1 owned by a mortgagor participating in an
2 affordable loan modification program.

3 (3) FAIR DEBT COLLECTION.—

4 (A) LIABILITY.—Any debt collector (as
5 such term is defined for purposes of the Fair
6 Debt Collection Practices Act (15 U.S.C. 1692
7 et seq.), or any servicer of a mortgage that
8 serves as collateral for a qualified security who
9 uses any instrumentality of interstate commerce
10 or the mails in the collection of any debts in re-
11 lation to any such securitized residential mort-
12 gage loan, that violates any provision of such
13 Act with respect to a debt secured by the resi-
14 dence of the consumer (as such term is defined
15 for purposes of such Act) shall be liable to such
16 consumer in the amount of \$10,000 per viola-
17 tion.

18 (B) ADJUSTMENT FOR INFLATION.—After
19 the end of the 1-year period beginning on the
20 date of the enactment of this Act, amounts of
21 penalties specified under subparagraph (A)
22 shall be annually adjusted to reflect inflation.

23 (4) REGULATION OF SERVICER AFFILIATES BY
24 BANKING AGENCIES.—

1 (A) CAPITAL RESERVE STANDARDS.—Each
2 of the appropriate Federal banking agencies (as
3 defined in section 3 of the Federal Deposit In-
4 surance Act (12 U.S.C. 1813)) shall promulgate
5 regulations to establish independent capital re-
6 serve standards for any servicer of a mortgage
7 that serves as collateral for a qualified security
8 who is affiliated with a financial institution that
9 is subject to regulation by that agency.

10 (B) TREATMENT OF DELINQUENT
11 LOANS.—

12 (i) IN GENERAL.—The Securities and
13 Exchange Commission shall issue regula-
14 tions to provide that, for purposes of gen-
15 erally accepted accounting principles, any
16 mortgage that serves as collateral for a
17 qualified security that is 120 days or more
18 delinquent and that has not been the sub-
19 ject of a modification or a debt restruc-
20 turing, as provided in subparagraphs (J)
21 and (K) of paragraph (2) shall be marked
22 to market.

23 (ii) INSURED DEPOSITORY INSTITU-
24 TION TREATMENT.—An appropriate Fed-
25 eral banking agency (as defined under sec-

1 tion 3 of the Federal Deposit Insurance
2 Act (12 U.S.C. 1813)) may not find the
3 regulations issues pursuant to clause (i) to
4 be inconsistent with the objectives de-
5 scribed under section 37(a)(1) of the Fed-
6 eral Deposit Insurance Act (12 U.S.C.
7 1831n(a)(1)).

8 (5) AUTHORITY OF BUREAU OF CONSUMER FI-
9 NANCIAL PROTECTION WITH RESPECT TO UDAP VIO-
10 LATIONS.—The authority of the Bureau of Con-
11 sumer Financial Protection of the Federal Reserve
12 System (in this paragraph referred to as the “Bu-
13 reau”) with respect to unfair and deceptive acts or
14 practices by servicers of mortgages that serve as col-
15 lateral for a qualified security shall be the same as
16 its authority with respect to unfair and deceptive
17 acts or practices under the Consumer Financial Pro-
18 tection Act of 2010. Notwithstanding such authority,
19 the following shall apply:

20 (A) SERVICE.—The Bureau shall provide
21 the servicer in violation with notification of
22 such violation via personal service and such no-
23 tification shall include a notice of the servicer’s
24 rights and any bond requirements the servicer
25 may be subject to by reason of such violation.

1 (B) DAMAGES.—Notwithstanding amounts
2 specified under the Federal Trade Commission
3 Act, a servicer convicted of unfair and deceptive
4 acts or practices with respect to a mortgage
5 shall be—

6 (i) fined, regardless of whether there
7 was a pattern or practice of such viola-
8 tions, statutory damages of not more than
9 \$10,000 for each such violation (such
10 amount to be adjusted annually beginning
11 1 year after the date of enactment of this
12 Act by the percentage corresponding to the
13 annual percentage increase in the Con-
14 sumer Price Index for all urban con-
15 sumers);

16 (ii) required to pay all actual dam-
17 ages, including emotional distress, regard-
18 less of whether there was detrimental reli-
19 ance on the part of the borrower; and

20 (iii) liable for attorneys fees.

21 (C) BAR TO FORECLOSURE.—In any judi-
22 cial or non-judicial foreclosure proceeding, it
23 shall be a bar to foreclosure that the servicer of
24 the mortgage on the property to be foreclosed
25 violated any provision of this paragraph.

1 (D) STATUTE OF LIMITATIONS.—The stat-
2 ute of limitations for a servicer’s violation of
3 unfair and deceptive acts or practices laws with
4 respect to a mortgage shall be 3 years from the
5 date on which violation occurs.

