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,

2 SECTION 1. SHORT TITLE.

3 This Act may be cited as the “Preventing Unfair Foreclosures Act of 2022”.

4
TITLE I—MORTGAGE SERVICING

SEC. 101. ADDITIONAL SERVICER OBLIGATIONS RELATED TO FORECLOSURE.

(a) In General.—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 forty-fifth day of the borrower’s delinquency and again not later than 45 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 payments, 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 or forbearance extensions that may be available to the borrower;

“(vi) a description of representative examples of types of loss mitigation options for the borrower’s type of loan that may be available to the borrower;

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

“(viii) directions to access the online lists of housing counseling agencies approved by the Secretary of Housing and Urban Development and located on the websites of the Department of Housing and Urban Development and the Bureau of Consumer Financial Protection;
“(ix) a current list of housing counseling agencies approved by the Secretary of Housing and Urban Development that are located in the State in which the borrower resides and contact information for such agencies; and

“(x) the Department of Housing and Urban Development toll-free telephone number available for accessing contact information for housing counseling agencies that serve the homeowner’s geographic area.

“(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 was 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 collecting any foreclosure-related fees, such as attorney’s fees, property inspection fees, or title fees.”.

(b) Rulemaking.—Not later than 1 year after the date of the enactment of this Act, the Director of the Bureau of Consumer Financial Protection shall issue such final rules as necessary to carry out this section.

SEC. 102. ESCROW ANALYSIS.

(a) 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 LOSS MITIGATION.—

“(A) IN GENERAL.—If the terms of any federally related mortgage loan, 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 whether the amount of any shortage or deficiency will be repaid by the borrower under the terms of a loss mitigation option offered to the borrower or whether the servicer will require the borrower to pay additional monthly deposits into the escrow account to eliminate the shortage or deficiency; and

“(iii) notify the borrower of the amount of any additional monthly deposits into the escrow account that may be required.

“(B) CAPITALIZATION AND DEFERRAL.—A servicer shall capitalize the amount of any projected shortage or deficiency into loan modifications or spread the amount of such shortage or deficiency in equal amount over a period of 60
months, unless the borrower chooses to defer payment until the end of the loan, pay the shortage in a lump sum up front, or pay over a shorter period.’”.

(b) Rulemaking.—Not later than 1 year after the date of the enactment of this Act, the Director of the Bureau of Consumer Financial Protection shall issue such final rules as necessary to carry out this section.

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

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

“(k) Home Retention.—A mortgagee may refrain from submitting a due and payable request to the Secretary 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 homeowners association fees, ground rents, special assessments, taxes, or insurance required under the mortgage;
“(2) the amount of total arrearages, as specified in paragraph (1)(B), owed by the mortgagor to the mortgagee with respect to the mortgage is less than $25,000.”.

SEC. 104. 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 Secretary of Housing and Urban Development, 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 relating to consumer complaints regarding forbearances, modifications, and other loss mitigation initiatives undertaken by such agencies (including, 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. 105. 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 ap-
propriate.” and inserting “where appropriate, and coordinate with such agencies to collect and evaluate information about outcomes of such complaints”.

SEC. 106. INFORMATION SHARING AND COORDINATION WITH RESPECT TO SERVICERS.

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

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

“(a) IN GENERAL.—The Director shall, where possible—

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

“(2) regularly consult the Conference of State Bank Supervisors with respect to safety and soundness risks, risks relating to violations of fair housing, fair lending, and other consumer finance or licensing laws, related to persons or entities that are subject to State authority to provide services to consumers.

“(b) EXCHANGE OF REGULATORY AND SUPERVISORY INFORMATION.—
“(1) IN GENERAL.—The Director may enter into agreements with the Conference of State Bank Supervisors to facilitate the exchange of regulatory and supervisory information between the Agency and State mortgage regulators.

“(2) TREATMENT OF INFORMATION.—Any regulatory and supervisory information shared by the Director with the Conference of State Bank Supervisors and any regulatory and supervisory information shared by the Conference of State Bank Supervisors or any State with the Director under this section shall be subject to the confidentiality requirements described in section 5111 of the S.A.F.E. Mortgage Licensing Act of 2008.”.

(b) SPECIFIED FEDERAL ENTITY COORDINATION WITH THE CONFERENCE OF STATE BANK SUPERVISORS.—Section 309 of the Housing Act of 1954 (12 U.S.C. 1723a) is amended by adding at the end the following:

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

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

“(A) coordinate with the Conference of State Bank Supervisors; and
“(B) regularly consult the Conference of State Bank Supervisors with respect to safety and soundness risks, including risks relating to violations of fair housing, fair lending, and other consumer finance or licensing laws, related to persons or entities that are licensed by the State to provide services to consumers.

“(2) EXCHANGE OF REGULATORY AND SUPERVISORY INFORMATION.—

“(A) IN GENERAL.—Specified Federal entities may enter into agreements with the Conference of State Bank Supervisors to facilitate the exchange of regulatory and supervisory information between the specified Federal entities and State mortgage regulators.

“(B) TREATMENT OF INFORMATION.—Any regulatory and supervisory information shared by a specified Federal entity with the Conference of State Bank Supervisors and any regulatory and supervision information shared by the Conference of State Bank Supervisors with a specified Federal entity under this section shall be subject to the confidentiality requirements described in section 5111 of the S.A.F.E. Mortgage Licensing Act of 2008.”.
(c) Specified Federal Entity.—The term “specified Federal entity” means the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration of the United States Department of Housing and Urban Development, the United States Department of Veteran Affairs, the United States Department of Agriculture, and Government National Mortgage Association.

SEC. 107. LOSS MITIGATION OPTIONS.

(a) 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.

(3) NON-FEDERALLY BACKED LOAN.—The term "non-federally 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.

(4) FEDERALEY BACKED MORTGAGE LOAN.—The term "federally backed mortgage loan" includes any loan which is secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from 1- to 4- families that is—

(A) insured by the Federal Housing Administration under title II of the National Housing Act (12 U.S.C. 1707 et seq.);

(B) insured under section 255 of the National Housing Act (12 U.S.C. 1715z–20);
(C) guaranteed under section 184 or 184A of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13a, 1715z–13b);

(D) guaranteed or insured by the Department of Agriculture;

(E) made by the Department of Agriculture; or

(F) purchased or securitized by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association.

(b) Servicing.—

(1) Loss mitigation for non-federally backed loans.—With respect to any non-federally backed loan, a mortgage servicer, mortgagee, beneficiary of the deed of trust, or authorized agent thereof—

(A) shall, prior to the initiation of the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, offer to all borrowers who are three months or more delinquent on their mortgage loan 1 or more options to bring their loan current that do not—
(i) require the borrower to repay ar-
rearages of principal or interest in one or
more lump-sum payments prior to satisfac-
tion of the mortgage loan; or

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

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

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

(ii) charges 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 became delinquent, except to the
extent that interest is charged as part of
a loan modification on amounts that are
capitalized into the new principal balance
of a modified loan; and
(C) shall establish a set of loss mitigation options to bring a delinquent loan current, and a system for evaluating delinquent borrowers for such loss mitigation options, that includes—

(i) an option that allows the resumption of the borrower’s pre-delinquency principal and interest payment but does not charge 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 became delinquent, except to the extent that interest is charged as part of a loan modification on amounts that are capitalized into the new principal balance of a modified loan; and

(ii) with respect to borrowers who cannot afford to resume their pre-delinquency principal and interest payments, an option that offers a modified loan such that the borrower’s monthly principal and interest payment is reduced relative to the pre-delinquency principal and interest pay-
ment, based on an established target of payment relief.

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

(d) DEEMED COMPLIANCE.—If a mortgage servicer offers loss mitigation options that bring a borrower’s loan current with the same terms as those offered by any Federal entities, and otherwise complies with the guidance issued by that entity with respect to that type of loss mitigation option, including but not limited to communications with borrowers and credit reporting, such mortgage servicer, mortgagee, or beneficiary of the deed of trust, or authorized agent thereof, shall be deemed to be in compliance with subsection (b)(1).

(e) SAFE HARBOR.—

(1) SERVICERS.—A servicer of a non-federally 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 non-federally backed loans or other party involved in such a securitization, who in good faith cooperates with the efforts of a servicer of a non-federally backed loan to comply with the requirements of subsection (b), shall not on account of its cooperation be—

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

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

(f) BORROWER RIGHTS UNAFFECTED.—Nothing in subsection (e) shall affect or impair the rights of a borrower of a non-federally backed loan.
TITLE II—HOUSING
COUNSELING

SEC. 201. HUD-APPROVED HOUSING COUNSELING AGENCIES.

(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
housing counseling agency approved by the Secretary of Housing and Urban Development with respect to a federally related mortgage loan, the servicer of such loan shall, after obtaining or receiving consent from the borrower in writing, whether on a form used by the housing counseling agency or by the servicer—

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

(2) provide the housing counseling agency from which the borrower has received assistance with the contact information for a senior manager of the servicer that such housing counseling agency may use to elevate issues relating to case evaluation errors, procedural errors, and other problems identified by the housing counselor.

(c) Loss Mitigation Packages.—A servicer shall accept any supporting or additional materials, for inclusion in a complete loss mitigation application, that—

(1) are prepared by a housing counseling agency approved by the Secretary of the Department of Housing and Urban Development; and

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

(d) SUPPORT FOR HOUSING COUNSELING AGENCIES.—The Secretary of Housing and Urban Development shall provide financial assistance to housing counseling agencies approved by the Department of Housing and Urban Development to be used by such housing counseling agencies to provide—

(1) nonfinancial assistance, including outreach, to borrowers with mortgage loans who need assistance obtaining or assessing loss mitigation options; and

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

(e) 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.

(f) FEDERALLY RELATED MORTGAGE LOAN DEFINED.—The term “federally related mortgage loan” has the meaning given the term in section 1024.2(b) of title 12 of the Code of Federal Regulations.