

115TH CONGRESS
2D SESSION

H. R. 6102

To provide for the Director of the Federal Housing Finance Agency to establish prudential management and operations standards for mortgage servicers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 14, 2018

Ms. MAXINE WATERS of California introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To provide for the Director of the Federal Housing Finance Agency to establish prudential management and operations standards for mortgage servicers, 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 “Homeowner Mortgage
5 Servicing Fairness Act of 2018”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—The Congress finds that—

1 (1) mortgage servicing plays a critical role in
2 determining the likelihood that a delinquent bor-
3 rower will be able to save their home from fore-
4 closure, but homeowners do not have the ability to
5 choose their mortgage servicers;

6 (2) a 2011 Yale Journal on Regulation article
7 written by Adam Levitin and Tara Twomey, entitled
8 “Mortgage Servicing”, confirmed that borrowers
9 have no control over what bank or non-bank entity
10 services their mortgage loan, whether the servicing
11 rights on their mortgage are transferred to a new
12 entity, or what contractual provisions govern the
13 servicing of their mortgage loan;

14 (3) a 2011 report entitled “Interagency Review
15 of Foreclosure Policies and Practices” conducted by
16 the Federal Reserve System, the Office of the Comp-
17 troller of the Currency, and the Office of Thrift Su-
18 pervision acknowledged that “a number of super-
19 visory actions and industry reforms are required to
20 address [weaknesses in foreclosure process govern-
21 ance] in a way that will hold servicers accountable
22 for establishing necessary governance and controls”;

23 (4) there has been abundant evidence since the
24 financial crisis of 2007 to 2009 that has indicated
25 that some single-family housing mortgage servicers

1 are failing to provide mortgage borrowers with the
2 protections against foreclosure that they are entitled
3 to by law, including failure to provide mortgage bor-
4 rowers with critical information about the process of
5 applying for foreclosure relief and loan modifica-
6 tions;

7 (5) multiple congressional hearings have uncov-
8 ered additional evidence of failures in mortgage serv-
9 icing, including—

10 (A) the hearing of the Committee on Fi-
11 nancial Services of the House of Representa-
12 tives entitled “A Review of Mortgage Servicing
13 Practices and Foreclosure Mitigation”, July 25,
14 2008 (Serial No. 110–132);

15 (B) the hearing of the Subcommittee on
16 Insurance, Housing, and Community Oppor-
17 tunity of the Committee on Financial Services
18 of the House of Representatives entitled “Robo-
19 Signing, Chain of Title, Loss Mitigation and
20 Other Issues in Mortgage Servicing”, November
21 18, 2010 (Serial No. 111–166); and

22 (C) the joint hearing of the Subcommittee
23 on Financial Institutions and Consumer Credit
24 and the Subcommittee on Oversight and Inves-
25 tigations of the Committee on Financial Serv-

1 ices of the House of Representatives entitled
2 “Mortgage Servicing: An Examination of the
3 Role of Federal Regulators in Settlement Nego-
4 tiations and the Future of Mortgage Servicing
5 Standards”, July 7, 2011 (Serial No. 112–44);

6 (6) in view of the heightened reliance by the
7 Federal National Mortgage Association (Fannie
8 Mae) and the Federal Home Loan Mortgage Cor-
9 poration (Freddie Mac) on unilateral reviews of bor-
10 rowers for loss mitigation in place of reviews of ap-
11 plications initiated by borrowers, there is an in-
12 creased need for oversight to bring accountability to
13 the loss mitigation review process;

14 (7) mortgage borrowers have also faced other
15 wide-ranging problems with their mortgage servicers,
16 including errors that have cost some borrowers
17 money and have cost others their homes;

18 (8) such problems have included lapses in basic
19 mortgage servicing functions, such as inaccurate
20 monthly statements, improperly credited payments,
21 improper escrow handling, ignored customer com-
22 plaints, and improper servicing transfers;

23 (9) these failures in mortgage servicing are fur-
24 ther evidenced by enforcement actions initiated by
25 the Consumer Financial Protection Bureau against

1 nine different bank and non-bank mortgage servicers
2 from 2013 through 2017 for “mismanaging the loss
3 mitigation process”, “mistreating mortgage bor-
4 rowers who were trying to save their homes from
5 foreclosure”, and “failing borrowers at every stage
6 of the mortgage servicing process”;

7 (10) although some Federal regulators, in par-
8 ticular the Federal Housing Finance Agency and the
9 Consumer Financial Protection Bureau, have the au-
10 thority to take enforcement and supervisory action
11 against mortgage servicers that harm borrowers,
12 Federal regulators should take additional action that
13 will protect homeowners from the types of abuses
14 that have led to stalled modifications, excess fees,
15 and even foreclosure; and

16 (11) to ensure market confidence in the United
17 States housing system and improve accountability
18 and transparency, Federal regulators should be em-
19 powered to fully exercise all statutorily mandated
20 and implied powers to protect consumers from harm-
21 ful mortgage servicers.

22 (b) PURPOSE.—It is the purpose of this Act to ensure
23 that mortgage borrowers are protected from abusive serv-
24 icing practices, to end engagement by mortgage servicers
25 in illegal servicing practices, to keep more people in their

1 homes whenever possible, to promote servicers' compliance
2 with the loss mitigation guidelines of Fannie Mae and
3 Freddie Mac, and to minimize losses to companies and
4 taxpayers.

5 **SEC. 3. REGULATION AND OVERSIGHT OF MORTGAGE**
6 **SERVICERS.**

7 (a) IN GENERAL.—Subpart A of part 2 of subtitle
8 A of the Federal Housing Enterprises Financial Safety
9 and Soundness Act of 1992 (12 U.S.C. 4541 et seq.) is
10 amended by adding at the end the following new section:

11 **“SEC. 1327. PRUDENTIAL MANAGEMENT AND OPERATIONS**
12 **STANDARDS FOR COVERED SERVICERS.**

13 “(a) DEFINITIONS.—For purposes of this section, the
14 following definitions shall apply:

15 “(1) DIRECTOR.—The term ‘Director’ has the
16 meaning given such term in section 1303.

17 “(2) COVERED SERVICER.—The term ‘covered
18 servicer’ means a servicer, as such term is defined
19 in section 6(i) of the Real Estate Settlement Proce-
20 dures Act of 1974 (12 U.S.C. 2605(i)), that con-
21 ducts mortgage servicing with respect to any single-
22 family mortgage loans owned or guaranteed by any
23 enterprise.

1 “(b) STANDARDS.—The Director shall establish
2 standards, by regulation, for covered servicers relating to
3 each of the following:

4 “(1) Adequacy of internal controls and informa-
5 tion systems, taking into account the nature and
6 scale of business operations.

7 “(2) Independence and adequacy of internal
8 audit systems.

9 “(3) Overall risk management processes, includ-
10 ing adequacy of oversight by senior management and
11 policies to identify, measure, monitor, and control
12 material risks, including data protection and reputa-
13 tional risks.

14 “(4) Compliance with the mortgage servicing
15 requirements under the Real Estate Settlement Pro-
16 cedures Act of 1974 (12 U.S.C. 2601 et seq.) and
17 the regulations implementing such Act (12 C.F.R.
18 Part 1024; Regulation X), in consultation with the
19 Bureau of Consumer Financial Protection, including
20 a system for solicitation and review of borrower com-
21 plaints involving servicing of single-family housing
22 mortgage loans owned or guaranteed by an enter-
23 prise.

24 “(5) Documentation and retention of records
25 related to borrower interactions that enable the Di-

1 rector to evaluate the quality of service given to bor-
2 rowers, including borrower contact, delinquency
3 management practices, loan modifications and fore-
4 closure alternatives, and foreclosure timelines, which
5 shall provide that in each instance involving a de-
6 fault under a loan, the covered servicer shall docu-
7 ment and retain a detailed description of the actions
8 such servicer took to comply with the enterprises’
9 loss mitigation review requirements, including efforts
10 to establish borrower contact, solicit a loss mitiga-
11 tion application, review the application under the ap-
12 propriate guidelines, and inform the borrower of the
13 servicer’s decisions.

14 “(6) Such other operational and management
15 standards as the Director determines to be appro-
16 priate to carry out the purposes of this Act.

17 “(c) FAILURE TO MEET STANDARDS.—

18 “(1) PLAN REQUIREMENT.—

19 “(A) IN GENERAL.—If the Director deter-
20 mines that a covered servicer fails to meet any
21 standard established under subsection (b), the
22 Director shall require the covered servicer to
23 submit an acceptable plan, in writing, to the
24 Director within the time allowed under subpara-
25 graph (C).

1 “(B) CONTENTS.—Any plan required or
2 authorized under subparagraph (A) shall speci-
3 fy the actions that the covered servicer will take
4 to correct the deficiency.

5 “(C) DEADLINES FOR SUBMISSION AND
6 REVIEW.—The Director shall by regulation es-
7 tablish deadlines that—

8 “(i) require a covered servicer to sub-
9 mit a plan required under this subpara-
10 graph not later than 30 days after the Di-
11 rector determines that the covered servicer
12 fails to meet any standard established
13 under subsection (a); and

14 “(ii) require the Director to approve,
15 deny, or otherwise respond to the plan not
16 later than 30 days after the plan is sub-
17 mitted.

18 “(2) REQUIRED ORDER UPON FAILURE TO SUB-
19 MIT OR IMPLEMENT PLAN.—If a covered servicer
20 fails to submit an acceptable plan within the time al-
21 lowed under paragraph (1)(C), or fails in any mate-
22 rial respect to implement a plan accepted by the Di-
23 rector, the following shall apply:

1 “(A) REQUIRED CORRECTION OF DEFICIENCY.—The Director shall, by order, require
2 the covered servicer to correct the deficiency.
3

4 “(B) OTHER AUTHORITY.—The Director
5 may, by order, take one or more of the following actions until the deficiency is corrected:
6

7 “(i) Impose a civil monetary penalty
8 upon the covered servicer in an amount not
9 to exceed \$10,000 for each day during
10 which such deficiency continues.

11 “(ii) Mandate the transfer of loan
12 servicing rights without providing compensation to the covered servicer.
13

14 “(iii) Limit or prohibit the covered
15 servicer from conducting business with the
16 enterprises.

17 “(iv) Require the covered servicer to
18 take any other action that the Director determines will better carry out the purposes
19 of this section than any of the actions described in this subparagraph.
20
21

22 “(3) MANDATORY RESTRICTIONS.—In complying with paragraph (2), the Director shall take
23 one or more of the actions described in clauses (i)
24 through (iv) of paragraph (2)(B) if—
25

1 “(A) the Director determines that the cov-
2 ered servicer fails to meet any standard pre-
3 scribed under subsection (b); and

4 “(B) the covered servicer has not corrected
5 the deficiency within a reasonable period or
6 within a period established by the Director.

7 “(d) OTHER ENFORCEMENT AUTHORITY NOT AF-
8 FECTED.—The authority of the Director under this sec-
9 tion is in addition to any other authority of the Director
10 and does not limit the additional or concurrent authority
11 of the Bureau of Consumer Financial Protection as estab-
12 lished in title X of the Dodd-Frank Wall Street Reform
13 and Consumer Protection Act (12 U.S.C. 5481 et seq.).

14 “(e) OVERSIGHT.—The Director shall conduct over-
15 sight of covered servicers on a regular and ongoing basis
16 and in a manner designed to ensure that such servicers
17 comply with the requirements of this Act and the regula-
18 tions established by the Director for servicing of such
19 mortgages and to identify systemic problems and trends
20 with such compliance.

21 “(f) EXAMINATIONS.—

22 “(1) AUTHORITY.—The Director shall have
23 power to make a thorough examination of any cov-
24 ered servicer whenever the Director determines an

1 examination of any such servicer is necessary to
2 carry out the purposes of this section.

3 “(2) MANUALS.—The Director may issue and
4 revise examination manuals as necessary to carry
5 out paragraph (1).

6 “(g) REGULATORY FEES.—

7 “(1) AUTHORIZATION.—The Director may as-
8 sess and collect from covered servicers a reasonable
9 fee, in an amount not exceeding the amount suffi-
10 cient to provide for reasonable costs (including ad-
11 ministrative costs) and expenses incurred by the Di-
12 rector in connection with carrying out the respon-
13 sibilities of the Director under this section.

14 “(2) ESTABLISHMENT.—The Director shall es-
15 tablish the amount of fees under this subsection for
16 a fiscal year so as to generate a total revenue
17 amount not exceeding the Director’s estimate of 100
18 percent of the costs of the Agency in carrying out
19 the responsibilities under this section during such
20 year.

21 “(3) AVAILABILITY.—Fees authorized under
22 paragraph (1) for a fiscal year shall be available for
23 obligation only—

24 “(A) to the extent and in the amount pro-
25 vided in advance in appropriations Acts; and

1 “(B) to pay the costs of the Agency in car-
2 rying out the responsibilities under this section
3 during such fiscal year.

4 “(h) ISSUANCE OF REGULATIONS.—The Director
5 shall issue such regulations as may be necessary to enable
6 the Director to administer or to carry out the purposes
7 of this section and to prevent evasions thereof.”.

8 (b) TIMING.—The Director of the Federal Housing
9 Finance Agency shall issue final regulations, as required
10 by section 1327 of the Federal Housing Enterprises Fi-
11 nancial Safety and Soundness Act of 1992 (as added by
12 subsection (a) of this section), not later than the expira-
13 tion of the 12-month period beginning on the date of the
14 enactment of this Act.

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