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(Original Signature of Member)

113TH CONGRESS
2D SESSION

H. R. _____

To amend the Real Estate Settlement Procedures Act of 1974 to provide
protections to borrowers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Ms. MICHELLE LUJAN GRISHAM of New Mexico introduced the following bill;
which was referred to the Committee on _____

A BILL

To amend the Real Estate Settlement Procedures Act of
1974 to provide protections to borrowers, 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 “National Homeowners
5 Bill of Rights Act of 2014”.

1 **SEC. 2. SERVICER TREATMENT OF BORROWERS.**

2 The Real Estate Settlement Procedures Act of 1974
3 (12 U.S.C. 2601 et seq.) is amended by inserting after
4 section 6 the following:

5 **“SEC. 6A. SERVICER TREATMENT OF BORROWERS.**

6 “(a) SERVICER REQUIREMENTS.—

7 “(1) SINGLE ELECTRONIC RECORD AND SINGLE
8 POINT OF CONTACT.—Each servicer of a federally
9 related mortgage loan, or agents of such servicer,
10 shall, with respect to the borrower, establish a single
11 electronic record for each account, the contents of
12 which shall be accessible throughout the servicer, or
13 agents of such servicer, including to all affordable
14 loan modification staff, all foreclosure staff, and all
15 bankruptcy staff.

16 “(2) AVAILABILITY OF NET PRESENT VALUE
17 INFORMATION.—Servicers shall maintain a free and
18 publicly accessible website where borrowers may
19 check their estimated net present value.

20 “(b) PROTECTIONS FOR HOMEOWNERS WITH LIM-
21 ITED ENGLISH PROFICIENCY.—

22 “(1) FREE ORAL INTERPRETATION.—Servicers
23 shall provide free oral interpretation services for bor-
24 rowers who request such services and such services
25 may be provided by contracting with housing coun-
26 seling agencies that are approved by the Department

1 of Housing and Urban Development and that have
2 appropriate language capacity.

3 “(2) NOTATION IN FILE.—Servicers shall—

4 “(A) note a request for translation services
5 in the borrower’s file and make such note avail-
6 able to all relevant servicer personnel; and

7 “(B) note in the borrower’s file any time
8 the borrower has communicated or sought to
9 communicate with the servicer in a language
10 other than English, and shall include such other
11 language.

12 “(3) TRANSLATED DOCUMENTS.—

13 “(A) PROVIDING DOCUMENTS.—

14 “(i) IN GENERAL.—Servicers shall, if
15 a borrower asks for translated documents,
16 provide key documents to the borrower
17 translated into the language of the bor-
18 rower, including periodic statements, af-
19 fordable loan modification applications, de-
20 nial notices, and loan modification offers,
21 including any trial period plan.

22 “(ii) EXCEPTION.—Clause (i) shall
23 only require providing documents in—

1 “(I) commonly spoken languages
2 in the United States, as determined
3 by the Bureau;

4 “(II) with respect to a particular
5 servicer, languages spoken by a sig-
6 nificant number of individuals living
7 in any markets in which the servicer
8 does business, as determined by the
9 Bureau.

10 “(B) ACCEPTING DOCUMENTS.—Servicers
11 shall only be required to accept documents in
12 languages in which the servicer already provides
13 documents, that are considered to be part of
14 routine business transactions in the market in
15 which the mortgage loan was made, or that are
16 used in documents provided to the public by
17 any department or agency of the Federal Gov-
18 ernment.

19 “(4) EXCEPTION.—Subparagraph (A) of para-
20 graph (3) shall not apply to small servicers, as de-
21 fined under section 1026.41(e)(4)(ii) of title 12,
22 Code of Federal Regulations.

23 “(c) REQUIREMENTS DURING AFFORDABLE LOAN
24 MODIFICATION PROCESS.—

1 “(1) BORROWERS FACING IMMINENT DE-
2 FAULT.—Servicers shall evaluate a borrower facing
3 imminent default (as such term is defined by the
4 Bureau), as well as those in default, for affordable
5 loan modification assistance, as described in this sec-
6 tion.

7 “(2) ASSISTANCE TO BORROWERS.—

8 “(A) ASSISTANCE IN APPLYING FOR AF-
9 FORDABLE LOAN MODIFICATION.—Servicers
10 shall—

11 “(i) have available and sufficient staff
12 to answer questions borrowers may have
13 about filling out documents; and

14 “(ii) provide borrowers a list of non-
15 profit legal services organizations and
16 housing agencies approved by the Depart-
17 ment of Housing and Urban Development,
18 that can assist the borrowers with docu-
19 ments.

20 “(B) TREATMENT OF SUCCESSORS IN IN-
21 TEREST.—Servicers shall—

22 “(i) provide full information and com-
23 plete loss mitigation options to successor
24 homeowners protected from an acceleration
25 of a mortgage loan under the Garn-St Ger-

1 main Depository Institutions Act of 1982,
2 if requested by the successor homeowner;
3 and

4 “(ii) review a mortgage loan for loss
5 mitigation, as though the successor home-
6 owner was the borrower, and provide a de-
7 cision on available loss mitigation prior to
8 an assumption of the mortgage loan, if re-
9 quested by the succeeding homeowner.

10 “(3) AFTER REVIEWING APPLICATION.—If a
11 servicer denies an application for an affordable loan
12 modification, the servicer shall notify the borrower of
13 other loss mitigation options that may be available
14 to the borrower and shall consider the borrower for
15 such other loss mitigation options.

16 “(4) RULE OF CONSTRUCTION.—Nothing in
17 this section shall be construed as prohibiting a
18 servicer from considering a borrower for other loss
19 mitigation options, so long as the servicer first offers
20 the borrower an affordable loan modification if the
21 borrower is eligible for such a modification.

22 “(5) REQUIREMENTS RELATED TO TRANSFER
23 OF LOANS.—

24 “(A) IN GENERAL.—For any transfer of
25 servicing to a successor servicer of a federally

1 related mortgage loan or servicer, the trans-
2 ferring servicer shall—

3 “(i) inform the successor servicer (in-
4 cluding a servicer) whether a loan
5 modification request is pending;

6 “(ii) provide the successor servicer
7 with all documentation related to the mort-
8 gage loan, including any documentation re-
9 lating to a loan modification or loss mitiga-
10 tion process;

11 “(iii) ensure that the successor
12 servicer has the operational capacity to
13 manage the transferred loan;

14 “(iv) ensure that the successor
15 servicer shall accept and continue proc-
16 essing prior loan modification requests, by
17 including such requirement in the agree-
18 ment made between the servicers when
19 transferring the loan;

20 “(v) ensure that successor servicer
21 shall honor trial and permanent loan modi-
22 fication agreements entered into by the
23 transferring servicer by including such re-
24 quirement in the agreement made between

1 the servicers when transferring the loan;
2 and

3 “(vi) notify the borrower of the trans-
4 ferred loan that the new servicer is re-
5 quired to accept and continue processing
6 prior loan modification requests, if any,
7 and is required to honor trial and perma-
8 nent loan modification agreements entered
9 into by the transferring servicer, if any

10 “(B) HONORING OF EXISTING LOAN MODI-
11 FICATIONS AND APPLICATIONS IN PROCESS.—
12 The successor servicer shall agree to honor and
13 accept any existing loan modification and con-
14 tinue any loan modification applications.

15 “(C) PROHIBITION ON FORECLOSURE.—
16 During the 60-day period beginning on the ef-
17 fective date of transfer of the servicing of any
18 federally related mortgage loan, the mortgage
19 loan subject to such transfer may not be subject
20 to initiation of a judicial or non-judicial fore-
21 closure or be subject to a foreclosure sale.

22 “(d) SUBSEQUENT APPLICATIONS FOR AFFORDABLE
23 LOAN MODIFICATION.—If a borrower has submitted an
24 application or request in the past, the servicer shall allow
25 such borrower to make a subsequent affordable loan modi-

1 fication application if the borrower experiences a material
2 change in circumstances, as defined by the Bureau.

3 “(e) LIMITATION ON FORECLOSURE PRO-
4 CEEDINGS.—

5 “(1) STOP OF SALES PENDING APPLICATION.—

6 If a borrower submits an initial application for af-
7 fordable loan modification assistance more than 7
8 business days before a scheduled foreclosure sale,
9 the servicer must stop and cancel the foreclosure
10 sale.

11 “(2) INITIATION OF FORECLOSURE.—A servicer
12 may not initiate or continue a nonjudicial foreclosure
13 or a judicial foreclosure that is otherwise authorized
14 under State law against a mortgagor that has sub-
15 mitted an initial application for an affordable loan
16 modification or other loss mitigation, unless the
17 servicer—

18 “(A) has determined whether the mort-
19 gator is eligible for an affordable loan modifica-
20 tion; and

21 “(B) has made such a modification, if the
22 mortgagor is eligible for a modification.

23 “(3) FORECLOSURE PROCEEDINGS PER-
24 MITTED.—Notwithstanding paragraph (2), a servicer

1 may initiate or continue a judicial or nonjudicial
2 foreclosure under State law against a borrower, if—

3 “(A) the servicer—

4 “(i) determines that the borrower is
5 not eligible for a modification;

6 “(ii) notifies the borrower of the de-
7 termination under clause (i); and

8 “(iii) provides the borrower—

9 “(I) a copy of any net present
10 value calculation made by the servicer
11 in relation to an affordable loan modi-
12 fication, including any information
13 providing a basis for such net present
14 value calculation;

15 “(II) a copy of any note, deed of
16 trust, or other document necessary to
17 establish the right of the servicer to
18 foreclose on the mortgage, including
19 proof of assignment of the mortgage
20 to the servicer and the right of the
21 servicer to enforce the relevant note
22 under the law of the State in which
23 the real property securing the mort-
24 gage is located;

1 “(III) a copy of any language in
2 the pooling or servicing agreement
3 with respect to the mortgage that the
4 servicer relies upon in asserting that
5 it is prohibited or limited in providing
6 a modification of the mortgage note;

7 “(IV) a copy of all correspond-
8 ence between the servicer and the bor-
9 rowers and investors in which the
10 servicer attempts to obtain permission
11 to make a modification; and

12 “(V) the alternatives to fore-
13 closure available to the borrower, in-
14 cluding deed in lieu of foreclosures
15 and short sales; or

16 “(B) a borrower—

17 “(i) declines to be considered for a
18 loan modification in writing or declines an
19 affordable modification in writing; or

20 “(ii) does not respond to the servicer’s
21 outreach activities (as defined by the Bu-
22 reau) to obtain underlying information to
23 complete an application or fails to make a
24 trial or permanent loan modification pay-
25 ment.

1 For purposes of subparagraph (A), a ‘pooling and
2 servicing agreement’ is any contract establishing the
3 transaction rights and duties of the parties to any
4 mortgage-backed securitization transaction.

5 “(4) BAR TO FORECLOSURE.—Failure to com-
6 ply with the requirements of this subsection shall be
7 a bar to the foreclosure of a mortgage, deed of trust,
8 or substantially similar instrument.

9 “(5) FEES.—

10 “(A) WAIVER OF LATE FEES.—If a bor-
11 rower’s application for affordable loan modifica-
12 tion assistance is accepted, the servicer shall
13 waive any foreclosure fees and any late fees re-
14 lated to the delinquency in payment.

15 “(B) NO FEE ACCRUAL WHILE APPLICA-
16 TION IS PENDING.—A borrower shall not accrue
17 additional late or foreclosure fees during the pe-
18 riod beginning on the date that the borrower
19 submits an affordable loan modification applica-
20 tion and the date on which the servicer makes
21 a determination on such application.

22 “(6) NOTIFICATION.—With respect to a fore-
23 closure sale that is postponed by reason of this sub-
24 section, the servicer shall notify the borrower in
25 writing of such postponement and, if a date for such

1 foreclosure sale is rescheduled, shall notify the bor-
2 rower in writing of the new foreclosure sale date.

3 “(7) CERTIFICATION OF DETERMINATION OF
4 ELIGIBILITY REQUIRED FOR SALE.—

5 “(A) SALE OF PROPERTY PROHIBITED.—If
6 the servicer of a mortgage does not file a cer-
7 tification with the appropriate land records of-
8 fice in the jurisdiction where the property se-
9 curing the mortgage is located, stating that the
10 servicer has determined the eligibility of the
11 mortgagor for an affordable loan modification
12 in compliance with this section—

13 “(i) the mortgagee may not sell the
14 property securing the mortgage; and

15 “(ii) no person that purchases the
16 property securing the mortgage may ini-
17 tiate an action to recover possession of the
18 property.

19 “(B) VIOLATIONS.—A sale of property in
20 violation of this paragraph shall be void.

21 “(8) INITIAL APPLICATION DEFINED.—For pur-
22 poses of this subsection, the term ‘initial application’
23 means a completed Uniform Borrower Assistance
24 Form 710 of the Federal National Mortgage Asso-
25 ciation or the Federal Home Loan Mortgage Cor-

1 poration, a Request for Modification and Affidavit of
2 the Making Home Affordable Program, or other
3 equivalent form that sets forth the borrower’s finan-
4 cial, income, and hardship information and Form
5 4506-T of the Internal Revenue Service.

6 “(f) AFFORDABLE LOAN MODIFICATIONS.—

7 “(1) AFFORDABLE LOAN MODIFICATION DE-
8 FINED.—For purposes of this section, the term ‘af-
9 fordable loan modification’ means an agreement to
10 reduce the amount of scheduled regular payments,
11 determined by the borrower’s debt-to-income ratio or
12 residual income, and subject to such terms and con-
13 ditions as may be set by the Bureau, including any
14 reduction of the principal amount of the mortgage
15 note as described in paragraph (4), that is reflected
16 in a permanent change to the terms of the mortgage
17 note under such terms as the Bureau shall define.

18 “(2) CALCULATION OF TARGET AFFORDABLE
19 REGULAR MORTGAGE PAYMENT.—For purposes of
20 this subsection, the target affordable regular mort-
21 gage payment shall be an amount determined by the
22 borrower’s debt-to-income ratio or residual income,
23 and subject to such terms and conditions as may be
24 set by the Bureau, subject to such terms and condi-
25 tions as may be set by the Bureau. Such terms shall

1 be based on a fully amortizing principal and interest
2 payment over the remainder of the term of the mort-
3 gage, as modified by any reduction in principal.

4 “(3) ELIGIBILITY.—A mortgagor shall be eligi-
5 ble to participate in an affordable loan modification
6 if—

7 “(A) such person is a borrower under a
8 federally related loan secured by the principal
9 residence of the borrower or a person eligible to
10 assume such a loan as a successor homeowner
11 protected from an acceleration of a mortgage
12 loan under the Garn-St Germain Depository In-
13 stitutions Act of 1982, who is unable to make
14 payments on a federally related mortgage loan
15 under such criteria as the Director of the Bu-
16 reau shall define, in consultation with the Sec-
17 retary of Housing and Urban Development and
18 the Secretary of the Treasury;

19 “(B) such residence is occupied by the
20 mortgagor; and

21 “(C) the loan modification has a positive
22 net present value (as defined under paragraph
23 (4)(B)(iv)(II)).

24 “(4) EARNED PRINCIPAL FORGIVENESS.—

1 “(A) IN GENERAL.—If, after reducing
2 mortgage note principal under earned principal
3 forgiveness provided in subparagraph (B), a
4 target affordable regular mortgage payment has
5 not been achieved, the servicer of the mortgage
6 shall comply with the affordable loan modifica-
7 tion plan waterfall steps as set out by the Bu-
8 reau of interest rate reduction, term extension,
9 and principal forbearance, as necessary to
10 achieve a target affordable regular mortgage
11 payment.

12 “(B) EARNED PRINCIPAL FORGIVENESS.—

13 “(i) PRINCIPAL REDUCTION.—The
14 Bureau shall determine standards by which
15 a mortgagor who has received an afford-
16 able loan modification shall remain in good
17 standing in order to participate in a reduc-
18 tion in mortgage note principal under this
19 subsection.

20 “(ii) PRINCIPAL REDUCTION RE-
21 QUIRED.—Except as provided under clause
22 (iii), a servicer shall offer a borrower an
23 affordable loan modification having the
24 maximum amount of principal reduction
25 that results in a positive net present value

1 calculation. For purposes of calculating net
2 present value, a servicer may use their own
3 formula, if it has been approved by the
4 Bureau, or may use a default formula de-
5 termined by the Bureau.

6 “(iii) EXCEPTIONS.—

7 “(I) GREATER PRINCIPAL RE-
8 DUCTION.—A servicer may offer a
9 greater principal reduction, if such a
10 reduction is consistent with the terms
11 of any contract with respect to the
12 mortgage.

13 “(II) LOAN-TO-VALUE RATIO.—A
14 servicer is not required to offer a
15 principal reduction that would result
16 in a loan-to-value ratio of less than
17 100 percent.

18 “(iv) RULES OF CONSTRUCTION.—

19 “(I) MAXIMUM AMOUNT OF PRIN-
20 CIPAL REDUCTION.—A principal re-
21 duction amount may be considered the
22 maximum amount if it is within
23 \$1,000 of the actual maximum
24 amount.

1 “(II) POSITIVE NET PRESENT
2 VALUE CALCULATION.—A net present
3 value calculation shall be deemed to
4 be ‘positive’ for the mortgage inves-
5 tors if the net present value result for
6 an affordable loan modification sce-
7 nario is greater than the net present
8 value result if no affordable loan
9 modification is made. Net present
10 value shall be calculated as the benefit
11 of all investors in a securitization
12 rather than the benefit of any par-
13 ticular class of investors.

14 “(v) PRINCIPAL FORGIVENESS.—

15 “(I) TREATMENT OF PRINCIPAL
16 REDUCTION AMOUNT.—Any amount
17 of principal reduction under clause (ii)
18 shall be treated as non-interest-bear-
19 ing principal forbearance until the
20 dates described under subclause (II).
21 The principal reduction described in
22 this clause shall be deemed to be sepa-
23 rate from and exclusive of any other
24 forbearance that may be offered in
25 conjunction with a modification under

1 an affordable loan modification pro-
2 gram.

3 “(II) REDUCTION OF PRIN-
4 CIPAL.—The servicer of a mortgage
5 modified under an affordable loan
6 modification plan shall reduce the un-
7 paid balance of the principal of the
8 mortgage by an amount equal to $\frac{1}{3}$ of
9 the total amount of the principal re-
10 duction under clause (ii) on each of
11 the following dates:

12 “(aa) The date that is 1
13 year after the date on which the
14 affordable loan modification be-
15 gins.

16 “(bb) The date that is 2
17 years after the date on which the
18 affordable loan medication be-
19 gins.

20 “(cc) The date that is 3
21 years after the date on which the
22 affordable loan modification be-
23 gins.

24 “(vi) CERTAIN MODIFICATIONS.—

25 With respect to a borrower that is not un-

1 derwater and does not qualify for principle
2 reduction, the servicer shall offer such bor-
3 rower an affordable loan modification to
4 reach the target affordable regular mort-
5 gage payment amount, if the borrower
6 qualifies.

7 “(5) TREATMENT OF JUNIOR LIENS.—With re-
8 spect to a borrower, if a primary mortgage loan is
9 modified pursuant to this subsection, the servicer of
10 any junior mortgage loan shall make a modification
11 available to the borrower on the same terms as the
12 modification of the primary mortgage loan, unless
13 prohibited by contract.

14 “(6) RULE OF CONSTRUCTION.—Nothing in
15 this section shall be construed as prohibiting a
16 servicer from providing a loan modification that does
17 not produce a positive net present value (as defined
18 under paragraph (4)(B)(iv)(II)).

19 “(g) BAR TO FORECLOSURE.—In any judicial or non-
20 judicial foreclosure proceeding, it shall be a bar to fore-
21 closure that the servicer of the federally related mortgage
22 loan on the property to be foreclosed violated any provision
23 of this section.

24 “(h) CIVIL PENALTY.—

1 “(1) IN GENERAL.—Any servicer who violates a
2 provision of this section shall be subject to a fine in
3 an amount, as determined by the Bureau, not to ex-
4 ceed \$5,000 for each violation except that the max-
5 imum penalty for all violations by any particular
6 servicer during any 1-year period shall not exceed
7 \$1,000,000.

8 “(2) LIABILITY TO BORROWER.—Any servicer
9 that violates a provision of this section with respect
10 to a loan shall be liable to the borrower of such loan
11 in the amount of \$10,000 per violation.

12 “(3) CONTINUING VIOLATIONS.—In the case of
13 a continuing violation, as determined by the Bureau,
14 each day shall constitute a separate violation for
15 purposes of this subsection.

16 “(4) ADJUSTMENT OF AMOUNTS.—After the
17 end of the 1-year period beginning on the date of the
18 enactment of this subsection, the Bureau shall annu-
19 ally adjust amounts specified under this subsection
20 to reflect inflation.

21 **“SEC. 6B. MORTGAGE SERVICER OMBUDSMAN.**

22 “(a) IN GENERAL.—The Director of the Bureau shall
23 appoint a Mortgage Servicer Ombudsman (the ‘Ombuds-
24 man’) within the Bureau.

1 “(b) DUTIES.—The Ombudsman shall provide assist-
2 ance to servicers and borrowers in complying with Federal
3 law with respect to the servicing of mortgage loans and
4 offer resolution to borrowers who are facing noncompli-
5 ance.

6 “(c) FOCUS ON LOW-INCOME BORROWERS.—In car-
7 rying out this section, the Ombudsman shall focus on pro-
8 viding assistance to low-income borrowers.

9 “(d) CONSULTATION.—The Ombudsman shall con-
10 sult with—

11 “(1) attorneys general of States in carrying out
12 this section; and

13 “(2) other offices of the Bureau that engage in
14 dispute resolution.

15 “(e) NON-DUPLICATION.—The Ombudsman may not
16 carry out any activities that would be duplicative with ac-
17 tivities of other Bureau offices.

18 **“SEC. 6C. PENALTIES FOR ROBO-SIGNING.**

19 “Any servicer who records or files with a land records
20 office or a court more than one document with material
21 deficiencies with respect to a mortgage loan shall be sub-
22 ject to a fine of not more than \$7,500 for each such
23 loan.”.

1 **SEC. 3. EXTENSION OF THE PROTECTING TENANTS AT**
2 **FORECLOSURE ACT OF 2009.**

3 Section 704 of the Protecting Tenants at Foreclosure
4 Act of 2009 (12 U.S.C. 5201 note; 12 U.S.C. 5220 note;
5 42 U.S.C. 1437f note) is hereby repealed.

6 **SEC. 4. RULE OF CONSTRUCTION.**

7 Nothing in this Act, or the amendments made by this
8 Act, shall be construed as preempting any State or local
9 law with respect to foreclosures that provides greater pro-
10 tections for consumers.

11 **SEC. 5. RULEMAKING.**

12 The Bureau of Consumer Financial Protection shall,
13 not later than the end of the 12-month period beginning
14 on the date of the enactment of this Act, issue regulations
15 to carry out this Act and the amendments made by this
16 Act, and the Bureau shall provide that such regulations
17 take effect not later than the end of the 6-month period
18 beginning on the date the regulations are issued.