

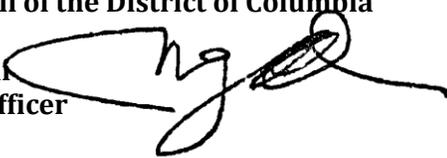
Government of the District of Columbia  
Office of the Chief Financial Officer



**Natwar M. Gandhi**  
Chief Financial Officer

**MEMORANDUM**

**TO:** The Honorable Phil Mendelson  
Chairman, Council of the District of Columbia

**FROM:** Natwar M. Gandhi   
Chief Financial Officer

**DATE:** November 28, 2012

**SUBJECT:** Revised Fiscal Impact Statement – “Saving D.C. Homes from  
Foreclosure Clarification and Title Insurance Clarification Amendment  
Act of 2012”

**REFERENCE:** Bill 19-676 – Draft Committee Print shared with the Office of Revenue  
Analysis on November 21, 2012

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*This revised fiscal impact statement reflects the changes made to the draft legislation and replaces the fiscal impact statement issued on January 26, 2012.*

**Conclusion**

Funds are sufficient in the FY 2013 through FY 2016 budget and financial plan to implement the bill.

**Background**

The proposed legislation would amend various sections of the D.C. Official Code<sup>1</sup> to clarify aspects of foreclosure law enacted with the Saving D.C. Homes from Foreclosure Amendment Act of 2010 (the “Act”).<sup>2</sup> It makes permanent the changes to the District’s foreclosure laws made in the “Saving D.C. Homes from Foreclosure Temporary Amendment Act of 2011,” which became effective November 26, 2011,<sup>3</sup> including the change that “a foreclosure sale of a property secured by a residential mortgage shall be void if a lender files a notice of intention to foreclose on a residential mortgage without a mediation certificate.” Additionally, the bill amends sections of the Title Insurance Producer Act of 2010<sup>4</sup> by making technical changes, setting various insurance

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<sup>1</sup> Except where otherwise noted, changes and additions are to D.C. Official Code § 42-815.01 *et seq.*

<sup>2</sup> Effective March 12, 2011 (D.C. Law 18-314; 57 DCR 12404).

<sup>3</sup> D.C. Law 19-41; D.C. Official Code § 42-815.02.

<sup>4</sup> Effective September 24, 2010 (D.C. Law 18-223; D.C. Official Code § 31-5041.01 *et seq.*)

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Revised FIS: Bill 19-676, "Saving D.C. Homes from Foreclosure Clarification and Title Insurance Clarification Amendment Act of 2012," Draft Committee Print shared with the Office of Revenue Analysis on November 21, 2012

requirements for title insurers, and forbidding a seller of property from requiring a purchaser to use a particular title company.

The Act created the Notice of Default on Residential Mortgage ("Notice of Default"), which would be mailed by a lender to a borrower in default,<sup>5</sup> and serve as the first step in the foreclosure process prior to the Notice of Intention to Foreclose on a Residential Mortgage. The Notice of Default is intended to be another level of security for homeowners against fraudulent foreclosure, because if the Notice of Default is not properly prepared and the process not correctly followed, the foreclosure transaction is legally void. However, the Notice of Default is not currently an official and recorded document, meaning that fraud is difficult to verify and title insurers are being asked to insure title on transactions for which they cannot inspect the legality of the default notices. Under the proposed legislation, the Notice of Default would be an official recorded document verifiable by title insurers that can thus provide the security to borrowers that was intended in the Act.

Under the Act and the District's non-judicial foreclosure laws, foreclosure on an owner-occupied residential property now requires a mediation certificate, which certifies that either the parties underwent mediation with a Mediation Administrator, or the borrower opted out of the mediation process. The proposed legislation clarifies and narrows the applicability of the Act such that it would only void property transactions in cases where the lender ignored the law and attempted to foreclose without a mediation certificate.<sup>6</sup>

The other major change in the proposed legislation is a revision of the definition of properties subject to the mediation process. Under the Act, the mediation process applies to foreclosures of residential mortgages "used to acquire or refinance real property which is improved by 4 or fewer single-family dwellings, including condominium or cooperative units, at least one of which is the principal place of abode of the debtor or his immediate family."<sup>7</sup> The owner-occupied element of this definition is difficult to enforce because it is nearly impossible for title insurers or lenders to determine with certainty whether a residential property is actually owner-occupied. The proposed legislation widens the definition such that all mortgages on residential properties of four units or less must have a mediation certificate as part of the foreclosure process.

The bill also includes a new provision that the District's \$4,433,081 share of the national mortgage settlement<sup>8</sup> with major U.S. banks will be deposited in the Foreclosure Mediation Fund, a non-lapsing fund managed by the Department of Insurance, Securities, and Banking (DISB). The funds will be used for some combination of mortgage-related or foreclosure-related counseling, legal assistance, and mediation; helping current and former homeowners secure benefits under mortgage-related or foreclosure-related settlements or judgments; and enforcement of financial fraud or consumer protection laws.

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<sup>5</sup> A Notice of Default would include the name and the telephone number of the lender, and additional information on the loan, such as the past due payments, penalties, and the amount required to reinstate the loan.

<sup>6</sup> Specifically, it states in Section 2 that "a mediation certificate shall serve as conclusive evidence that all other provisions for the act and implementing regulations have been complied with and can be relied upon by a bona fide purchaser and a bona fide purchaser's lender or assigns."

<sup>7</sup> Section 2(f) of the Saving D.C. Homes from Foreclosure Emergency Declaration Resolution of 2011, enacted July 12, 2011 (D.C. Resolution 19-229; 58 DCR 6897).

<sup>8</sup> Received by the District on May 10, 2012.

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### **Financial Plan Impact**

Funds are sufficient in the FY 2013 through FY 2016 budget and financial plan to implement the bill.

The proposed legislation primarily clarifies regulations that are already in place and being enforced. The expansion of the definition of residential mortgages will result in more of the foreclosure proceedings in the District requiring the mediation process outlined in the Act. However, lenders are required to pay a mediation fee that covers the costs of the mediation process. The proposed legislation transfers from the Council to the Commissioner of DISB the authority to set mediation fees. Given that the Commissioner can continue to calibrate fees to cover mediation costs, an increase in the mediation caseload does not lead to an increase in costs to the District. DISB staff does provide services of scheduling and coordinating mediations, but DISB has stated that it has plenty of existing capacity to handle the anticipated increase in cases. Changes in the requirements made to title insurance requirements affect the title insurance industry, but would not affect the District budget.