

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



Natwar M. Gandhi
Chief Financial Officer

MEMORANDUM

TO: The Honorable Vincent C. Gray
Chairman, Council of the District of Columbia

FROM: Natwar M. Gandhi
Chief Financial Officer 

DATE: October 25, 2010

SUBJECT: Fiscal Impact Statement – “Saving D.C. Homes from Foreclosure Act of 2010”

REFERENCE: Bill Number 18-691 – Draft Committee Print received on Oct 25, 2010

Conclusion

Funds are sufficient in the FY 2011 through FY 2014 budget and financial plan to implement the proposed legislation. The proposed legislation would establish a mediation program for homes in financial foreclosure. The fees authorized by the proposed legislation would generate sufficient revenue to cover the costs of this program.

Background

The proposed legislation would require mortgage lenders and home owners (borrowers) to participate in mediation prior to foreclosure,¹ and would require mortgage lenders to provide home owners with a notice of the intention to foreclose on residential mortgages.² The mediation program would be administered by the Department of Insurance, Securities, and Banking (DISB). Specifically, the proposed legislation would require the following:

¹ By amending Section 539 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1274; D.C. Official Code § 42-815, Subsection (b)), and adding a new section 539b.

² By adding new subsections (c) and (d) to D.C. Official Code § 42-815. A foreclosure sale under a power of sale provision contained in any deed of trust, mortgage or other security instrument, would not take place unless the holder of the note secured by the deed of trust, mortgage, or security instrument, or its agent, gives written notice of the intention to foreclose, by certified mail, postage prepaid, return receipt requested, and by first-class mail, of the sale to the borrower and, if different from the borrower, to the person who holds the title of record, of the real property encumbered by the deed of trust, mortgage, or security instrument at his last known address. A copy of the notice would also be sent to the Mayor, at least 30 days in advance of the date of the sale.

- After a notice of default³ of a residential mortgage has been given and a mediation election form is mailed to a borrower in default of a mortgage loan, the lender would be required to engage in mediation if the borrower elects;
- The lender would be required to pay a fee of \$300⁴ for each notice of default issued on residential mortgage. If the power of sale a property is exercised, the lender would be allowed to recover the \$300 fee from the proceeds of sale if there is any amount remaining after the payment of all amounts due and owing by the borrower on the residential mortgage and the costs of the sale. The lender would not be permitted to recover mediation fee paid if there is a deficiency upon the sale of the foreclosed property.
- Within 7 days of mailing of the notice of default by the lender, the Mediation Administrator would mail the specified information to the borrower about the mediation process, a statement recommending the borrower seek housing counseling services and information about these services, and a request for the borrower to return the loss mitigation application to the lender and the mediation election form to the Mediation Administrator and lender in the envelopes provided no later than 30 days from the date of the mailing of the notice of default by the lender. The Mediation Administrator would also include a statement that borrower will lose the right to participate in mediation if the mediation election form and the loss mitigation application are not returned within the specified 30 day timeframe, a statement that borrower has to pay a \$50 fee to the District to participate in mediation, and a statement that mediation will be held 45 days after the date of the mailing of the mediation election form;
- Within 20 days of mailing of the mediation election form to the borrower by the lender, the Mediation Administrator would send a 2nd notice to the borrower with all the information specified above, including a statement that the borrower must take immediate action to avoid foreclosure;
- The borrower would be required to return the mediation election form and a \$50 fee to the Mediation Administrator, and the loss mitigation application to the lender no later than 30 days after the mailing of the notice of default to participate in mediation. Otherwise the borrower would be considered to have forfeited the right to mediation;
- The Mediation Administrator would assign a mediator and schedule a mediation session within 45 days of the mailing of the notice of default for each borrower electing to participate in mediation, and would issue a mediation certificate to the lender if a borrower chooses to waive the right to mediation. The power of sale under a mortgage would not be exercised until the Mediation Administrator has issued a mediation certificate;
- If the lender or a representative fails to attend the mediation, fails to participate in the mediation in good faith, or does not bring to the mediation all required documents, the Mediation Administrator would be authorized to impose a \$500 penalty against the lender. Any lender who breaches the terms of the settlement agreement would pay a penalty of \$1,000 and be required to perform the terms of a settlement agreement;

³ A notice of default from the lender would include (a) contact information the borrower may use to reach an agent or representative of the lender with authority to explain the mediation process, (b) a statement recommending that the borrower seek housing counseling services (c) contact information for at least one local housing counseling agency approved by the Department of Housing and Urban Development, (d) information about loss mitigation programs available from the lender, and (e) a mediation election form, in a form prescribed by the Mediation Administrator, with one envelope addressed to the lender, and one envelope addressed to the Mediation Administrator. A copy of the notice of default would also be provided to DISB.

⁴ In similar programs for foreclosure mediation, lenders pay a fee of \$750 in Florida, \$300 in Maryland (the lender pays the fee for a foreclosure filing, and the homeowner pays \$50 for the mediation), and \$200 in Nevada (the homeowner also pays \$200). In Kentucky and Maine, lenders pay all the foreclosure mediation costs, while in Connecticut, New Hampshire, New Jersey, Delaware, Pennsylvania, and Rhode Island, mediation is free to both lenders and borrowers.

- If the borrower breaches the terms of the settlement agreement entered into during mediation, the lender would be allowed to apply to the Mediation Administrator for a mediation certificate;
- The mediation would be concluded within 90 days of the mailing of the notice of default and mediation election form by the lender, unless extended for an additional 30 days by the mutual consent of both parties;
- If the mediator determines that the parties, while acting in good faith, cannot agree to a loan modification, the Mediation Administrator would decide to terminate the mediation process or refer it to another mediator;
- Each foreclosure sale in violation of the proposed legislation would be considered void;
- The District of Columbia Procurement Practices Act of 1985⁵ or any successor act would not apply to any contract that the Mediation Administrator may enter into with mediators for the performance of mediation services;
- The Mayor would be authorized to issue rules to implement the provisions of this Act, including ensuring that mediations occur in an orderly and timely manner, requiring each party to a mediation to provide the necessary information, establishing procedures to carry out the mediations in good faith and to protect the mediation process from abuse, and establishing procedures relating to the appointment of each mediator, the training and qualification requirements for each mediator, and the compensation to be paid to each person serving as a mediator;
- A non-lapsing Foreclosure Mediation Fund ("Fund") would be established to be available for the sole purpose of covering the costs associated with the administration of the foreclosure mediation program. All fees and penalties generated by the mediation program would be deposited into the Fund. DISB would administer the Fund from its appropriated operating budget.

Financial Plan Impact

Funds are sufficient in the FY 2011 through FY 2014 budget and financial plan to implement the proposed legislation. The proposed legislation would generate sufficient revenue to cover associated costs and would not have a fiscal impact on the District's budget and financial plan.

DISB estimates that approximately 2,500 foreclosure notices would be processed each year. On the revenue side, 2,500 notices of default per year would generate \$750,000 in fees from lenders. Assuming 60 percent of the homeowners would opt in for mediation,⁶ it would also contribute \$75,000, for total annual revenues of \$825,000. It is expected that there would be minimal revenue from the civil penalty fines or fees from attempt to foreclose without complying with mediation, as the high fine amounts would discourage lenders from failing to participate in a scheduled mediation or trying to violate mediation rules.

DISB estimates that approximately 30 mediators will be required to effectively facilitate the mediations. DISB would hire the mediators as independent contractors, manage the enrollment of and payments to the mediators, and perform ongoing assessments to ensure the mediators meet and maintain the requirements for retention in the program. DISB expects to pay a mediator about \$350 per mediation session.

⁵ Effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-301.01 *et seq.*)

⁶ This can be thought of a "worse case" scenario. Maryland's mediation program was estimated to generate interest among 20 percent of the homeowners in foreclosure, but the actual participation was significantly lower.

DISB would need two FTEs to administer the mediation program, one administrator and one clerk. The personnel costs associated with the two FTEs would equal approximately \$153,075 per year. Of the assumed sixty percent of the homeowners pursuing mediation, three quarters would complete it in one session; in about 25 percent of the cases, it is estimated that a second session would be necessary. Thus, annual expenditure for the mediation program is estimated to be \$671,925.

The table below summarizes the fiscal impact of the proposed legislation.

Fiscal Impact of Saving D.C. Homes from Foreclosure Act of 2010					
	FY 2011	FY 2012	FY 2013	FY 2014	4 Year Total
Revenues from Mediation fees	\$825,000	\$825,000	\$825,000	\$825,000	\$3,300,000
Costs					
Salary and benefits for the 2 FTEs ¹	\$153,075	\$153,075	\$153,075	\$153,075	\$612,300
Operation of the mediation program ²	\$671,925	\$671,925	\$671,925	\$671,925	\$2,687,700
Net Fiscal Impact	\$0	\$0	\$0	\$0	\$0

¹ Assumes one FTE at grade level 13/6 and one at 9/5, with a fringe benefit percentage of 17.

² Includes payments to mediators at \$350 per mediation for 1,875 mediations, and approximately \$15,000 annually for other administrative expenses and postage fees.