

By: Representatives Myers, Wooten, Cockerham

To: Banking and Financial Services

HOUSE BILL NO. 792

1 AN ACT TO CREATE THE MISSISSIPPI RESIDENTIAL MORTGAGE
2 FORECLOSURE MEDIATION PROGRAM, WHICH WILL PROVIDE FOR MEDIATION
3 BETWEEN THE BORROWERS AND LENDERS BEFORE FORECLOSURE ACTIONS ON
4 HOMESTEAD PROPERTY ARE BEGUN; TO PROVIDE THE PROCEDURES TO BE
5 FOLLOWED IN THE PROGRAM; AND FOR RELATED PURPOSES.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

7 **SECTION 1.** This act shall be known as the Mississippi
8 Residential Mortgage Foreclosure Mediation Program.

9 **SECTION 2.** As used in this act, the following terms have the
10 meanings in the section:

11 (a) "Residential Mortgage Foreclosure Mediation
12 Program" or "RMFM Program" means the mediation program managed by
13 the Administrative Office of Courts to implement and carry out the
14 intent of this act.

15 (b) "Program manager" means the manager of the RMFM
16 Program.

17 (c) "Plaintiff" means the individual or entity filing
18 to obtain a mortgage foreclosure on residential property.



19 (d) "Plaintiff's counsel" means counsel of record
20 assigned to the case, or a member of The Mississippi Bar of the
21 law firm retained by the plaintiff who is knowledgeable about the
22 case.

23 (e) "Plaintiff's representative" means the person
24 designated by the plaintiff who will appear at mediation and who
25 has full authority to settle without further consultation and
26 resolve the foreclosure suit. The plaintiff's representative is
27 distinct from plaintiff's counsel.

28 (f) "Borrower" means an individual named as a party in
29 the foreclosure action who is a primary obligor on the promissory
30 note that is secured by the mortgage being foreclosed.

31 (g) "Homestead residence" means a residential property
32 for which a homestead exemption was granted according to the
33 certified rolls of the last assessment by the county property
34 appraiser before the filing of the suit to foreclose the mortgage.

35 (h) "Plaintiff's disclosure for mediation" means those
36 documents requested by the borrower under Section 9 of this act.

37 (i) "Foreclosure counselor" means a counselor trained
38 in advising persons of options available when facing a mortgage
39 foreclosure, who has no criminal history of committing a felony or
40 a crime of dishonesty, and who is certified by the United States
41 Department of Housing and Urban Development (HUD) or National
42 Foreclosure Mitigation Counseling Program (NFMC) as an agency



43 experienced in mortgage delinquency and default resolution
44 counseling.

45 (j) "Communication equipment" means a conference
46 telephone or other electronic device that permits all those
47 appearing or participating to hear and speak to each other,
48 provided that all conversation of the participants is audible to
49 all persons present.

50 **SECTION 3.** (1) This act shall apply to all residential
51 mortgage foreclosure actions filed in any circuit court in
52 Mississippi in which the origination of the note and mortgage sued
53 upon was subject to the provisions of the federal Truth in Lending
54 Act, Regulation Z.1. However, compliance with this act varies
55 depending on whether the property secured by the mortgage is a
56 homestead residence.

57 (2) Upon the effective date of this act, all newly filed
58 mortgage foreclosure actions filed against a homestead residence
59 shall be referred to the RMFM Program unless the plaintiff and
60 borrower agree in writing otherwise or unless pre-suit mediation
61 was conducted in accordance with Section 25 of this act. The
62 parties to the foreclosure action shall comply with the conditions
63 and requirements imposed by this act. In actions to foreclose a
64 mortgage on a homestead residence, the plaintiff and borrower
65 shall attend at least one (1) mediation session, unless the
66 plaintiff and borrower agree in writing not to participate in the



67 RMFM Program or the program manager files a notice of borrower
68 nonparticipation.

69 (3) Upon the effective date of this act, all newly filed
70 residential mortgage foreclosure actions involving property that
71 is not a homestead residence shall comply with the requirements of
72 filing a RMFM Program Form as required by Section 7 of this act
73 and the requirements of Section 20 of this act (plaintiff's
74 certification as to settlement authority).

75 (4) At the discretion of the circuit court judge, compliance
76 with this act may also be required for homestead residential
77 mortgage foreclosure actions filed before the effective date of
78 this act, to residences that are not homestead residences, and any
79 other residential foreclosure action the circuit court judge deems
80 appropriate. A party requesting that the case be sent to
81 mediation with the RMFM Program at the discretion of the circuit
82 court judge shall make the request in format prescribed by the
83 judge.

84 **SECTION 4.** This act constitutes a formal referral to
85 mediation under the Mississippi Rules of Civil Procedure in
86 actions involving a mortgage foreclosure of a homestead residence.
87 The plaintiff and borrower are deemed to have stipulated to
88 mediation by a mediator assigned by program manager, unless the
89 plaintiff and borrower file a written stipulation choosing not to
90 participate in the RMFM Program. Referral to the RMFM Program is
91 for administration and management of the mediation process and



92 assignment of a mediator on the List of Court Annexed Mediation
93 Program Mediators who has been trained in mediating residential
94 mortgage foreclosure actions and who has agreed to be on the panel
95 of available mediators. Mediation through the RMFM Program shall
96 be conducted in accordance with Mississippi Rules of Civil
97 Procedure and Mississippi Rules for Certified and Court-Appointed
98 Mediators.

99 **SECTION 5.** The parties must comply with this act and the
100 mediation process must be completed before the plaintiff applies
101 for default judgment, a summary judgment hearing, or a final
102 hearing in an action to foreclose a mortgage on a homestead
103 residence unless a notice of nonparticipation is filed by the
104 program manager.

105 **SECTION 6.** After the effective date of this act, in all
106 actions to foreclose a mortgage on residential property the
107 plaintiff shall attach to the summons to be served on each
108 defendant a notice regarding managed mediation for homestead
109 residences.

110 **SECTION 7.** (1) When suit is filed, counsel for the
111 plaintiff must file a completed RMFM Program Form with the clerk
112 of court. If the property is a homestead residence, all
113 certifications in the RMFM Program Form must be filled out
114 completely. Within one (1) business day after the RMFM Program
115 Form is filed with the clerk of court, counsel for plaintiff shall
116 also transmit in the electronic format approved by the circuit



117 court judge a copy of the RMFM Program Form to the program manager
118 along with the case number of the action and contact information
119 for all of the parties. The contact information must include at a
120 minimum the last known mailing address and phone number for each
121 party.

122 (2) The program manager shall notify plaintiff's counsel of
123 any incomplete or seemingly inaccurate information and plaintiff's
124 counsel shall provide correct information promptly. In the RMFM
125 Program Form, plaintiff's counsel must affirmatively certify
126 whether the origination of the note and mortgage sued upon was
127 subject to the provisions of the federal Truth in Lending Act,
128 Regulation Z. In the RMFM Program Form, plaintiff's counsel must
129 also affirmatively certify whether the property is a homestead
130 residence. Plaintiff's counsel is not permitted to respond to the
131 certification with "unknown," "unsure," "not applicable," or
132 similar nonresponsive statements.

133 (3) If the property is a homestead residence and if the case
134 is not exempted from participation in the RMFM Program because of
135 pre-suit mediation conducted in accordance with Section 25 of this
136 act, plaintiff's counsel shall further certify in the RMFM Program
137 Form the identity of the plaintiff's representative who will
138 appear at mediation. Plaintiff's counsel may designate more than
139 one plaintiff's representative. At least one (1) of the
140 plaintiff's representatives designated in the RMFM Program Form
141 must attend any mediation session scheduled under this act. The



142 RMFM Program Form may be amended to change the designated
143 plaintiff's representative, and the amended RMFM Program Form must
144 be filed with the court no later than five (5) days before the
145 mediation session. All amended RMFM Program Forms must be
146 electronically transmitted to the program manager via a secure
147 dedicated email address or on the web-enabled information platform
148 described in Section 10 of this act no later than one (1) business
149 day after being filed with the clerk of court.

150 **SECTION 8.** (1) Upon the program manager receiving a copy of
151 the RMFM Program Form, the program manager shall begin efforts to
152 contact the borrower to explain the RMFM Program to the borrower
153 and the requirements that the borrower must comply with to obtain
154 a mediation. The program manager shall also ascertain whether the
155 borrower wants to participate in the RMFM Program.

156 (2) The borrower must do the following before mediation
157 being scheduled: meet with an approved mortgage foreclosure
158 counselor, and provide to the program manager the information
159 required by the borrower's financial disclosure for mediation.
160 The borrower must meet in person or by telephone with an approved
161 mortgage foreclosure counselor no later than thirty (30) days
162 after the borrower is initially in contact with the program
163 manager. The borrower's legal counsel may also attend foreclosure
164 counseling, but attendance by legal counsel without the borrower
165 does not satisfy the requirement. If the borrower fails to timely
166 schedule a meeting with a foreclosure counselor, or if the



167 borrower fails to submit the required financial disclosure forms,
168 that failure shall be grounds for the program manager to file a
169 notice of borrower nonparticipation as provided in Section 11 of
170 this act. Completion of the borrower's financial disclosure for
171 loan modification is mandatory in every case so that the
172 borrower's basic financial condition can be assessed by the
173 plaintiff. As applicable, the borrower's financial disclosure for
174 alternative workout options, short sale and a deed in lieu of
175 foreclosure should be submitted or made available to plaintiff's
176 counsel and plaintiff's representative designated in the RMFM
177 Program Form.

178 (3) It shall be the responsibility of the program manager to
179 transmit the borrower's financial disclosure for mediation to
180 plaintiff's counsel and the plaintiff's representative designated
181 in the RMFM Program Form via a secure dedicated email address or
182 to upload same to the web-enabled information platform described
183 in Section 10 of this act. If the information is uploaded, the
184 program manager shall notify plaintiff's counsel and the
185 plaintiff's representative that the borrower's financial
186 disclosure for mediation is available. The program manager is not
187 responsible or liable for the accuracy of the borrower's financial
188 information. The transmission of the borrower's financial
189 disclosure for mediation to plaintiff's counsel and the
190 plaintiff's representative shall occur no later than sixty (60)



191 days after the program manager receives the electronic
192 transmission of the RMFM Program Form from plaintiff's counsel.

193 **SECTION 9.** (1) Within the time limit stated below, before
194 attending mediation the borrower may request any of the following
195 information and documents from the plaintiff:

196 (a) Documentary evidence the plaintiff is the owner and
197 holder in due course of the note and mortgage sued upon.

198 (b) A history showing the application of all payments
199 by the borrower during the life of the loan.

200 (c) A statement of the plaintiff's position on the
201 present net value of the mortgage loan.

202 (d) The most current appraisal of the property
203 available to the plaintiff.

204 (2) The borrower must deliver a written request for that
205 information to the program manager no later than twenty-five (25)
206 days before the mediation session. The program manager shall
207 promptly electronically transmit the request for information to
208 plaintiff's counsel.

209 (3) Plaintiff's counsel is responsible for ensuring that the
210 plaintiff's disclosure for mediation is electronically transmitted
211 via a secure dedicated email address or to the web-enabled
212 information platform described in Section 10 of this act no later
213 than five (5) business days before the mediation session. The
214 program manager shall promptly deliver a copy of plaintiff's
215 disclosure for mediation to the borrower.



216 **SECTION 10.** All information to be provided to the program
217 manager to advance the mediation process, such as the RMFM Program
218 Form, borrower's financial disclosure for mediation, plaintiff's
219 disclosure for mediation, as well as the case number of the action
220 and contact information for the parties, shall be submitted
221 electronically in a format approved by the circuit court judge via
222 a secure dedicated email address or in a web-enabled information
223 platform with XML data elements.

224 **SECTION 11.** The program manager shall have thirty (30) days
225 after electronically receiving contact information for the
226 borrower (as required by Section 7 of this act) to contact the
227 borrower. If the borrower does not want to participate in the
228 RMFM Program, or if the borrower fails or refuses to cooperate
229 with the program manager, or if the program manager is unable to
230 contact the borrower, the program manager shall file a notice of
231 borrower's nonparticipation. The notice of borrower's
232 nonparticipation shall be filed no later than ten (10) days after
233 the borrower advises that he or she does not want to participate
234 in the program, or fails to cooperate with requirements of this
235 act. If the program manager is unable to contact the borrower
236 within thirty (30) days after electronically receiving contact
237 information for the borrower, the notice of borrower's
238 nonparticipation shall be filed within forty (40) days after the
239 borrower contact information is electronically received by the
240 program manager. A copy of the notice of borrower's



241 nonparticipation shall be served on the parties by the program
242 manager.

243 **SECTION 12.** The program manager shall be responsible for
244 referring the borrower to a foreclosure counselor prior to
245 scheduling mediation. Selection from a list of foreclosure
246 counselors certified by the United States Department of Housing
247 and Urban Development shall be by rotation or by such other
248 procedures as may be adopted by order of the circuit court judge.
249 The borrower's failure to participate in foreclosure counseling
250 shall be cause for terminating the case from the RMFM Program.

251 **SECTION 13.** In actions referred to the RMFM Program, the
252 program manager shall advise any borrower who is not represented
253 by an attorney that the borrower has a right to consult with an
254 attorney at any time during the mediation process and the right to
255 bring an attorney to the mediation session. The program manager
256 shall also advise the borrower that the borrower may apply for a
257 volunteer pro bono attorney in programs run by lawyer referral,
258 legal services, and legal aid programs as may exist within the
259 state. If the borrower applies to one (1) of those agencies and
260 is coupled with a legal services attorney or a volunteer pro bono
261 attorney, the attorney shall file a notice of appearance with the
262 clerk of the court and provide a copy to the attorney for the
263 plaintiff and the program manager. The appearance may be limited
264 to representation only to assist the borrower with mediation but,



265 if a borrower secures the services of an attorney, counsel of
266 record must attend the mediation.

267 **SECTION 14.** (1) The plaintiff's representative, plaintiff's
268 counsel, and the borrower are all required to comply with the time
269 limitations imposed by this act and attend a mediation session as
270 scheduled by the program manager. No earlier than sixty (60) days
271 and no later than one hundred twenty (120) days after suit is
272 filed, the program manager shall schedule a mediation session.
273 The mediation session shall be scheduled for a date and time
274 convenient to the plaintiff's representative, the borrower, and
275 counsel for the plaintiff and the borrower, using a mediator on
276 the List of Court Annexed Mediation Program Mediators who have
277 been specially trained to mediate residential mortgage foreclosure
278 disputes. Mediation sessions will be held at a suitable
279 location(s) within the circuit court district obtained by the
280 program manager for mediation. Mediation shall be completed
281 within the time requirements established by the Mississippi Rules
282 of Civil Procedure.

283 (2) Mediation shall not be scheduled until the borrower has
284 had an opportunity to meet with an approved foreclosure counselor
285 and the borrower's financial disclosure for mediation has been
286 transmitted to the plaintiff via a secure dedicated email address
287 or uploaded to the web-enabled information platform described in
288 Section 10 of this act. Mediation shall not be scheduled earlier



289 than thirty (30) days after the borrower's financial disclosure
290 for mediation has been transmitted to the plaintiff.

291 (3) Once the date, time, and place of the mediation session
292 have been scheduled by the program manager, the program manager
293 shall promptly file with the clerk of court and serve on all
294 parties a notice of the mediation session.

295 **SECTION 15.** (1) The following persons are required to be
296 physically present at the mediation session: a plaintiff's
297 representative designated in the most recently filed RMFM Program
298 Form; plaintiff's counsel; the borrower; and the borrower's
299 counsel of record, if any. However, the plaintiff's
300 representative may appear at mediation through the use of
301 communication equipment, if plaintiff files and serves at least
302 five (5) days before the mediation a notice advising that the
303 plaintiff's representative will be attending through the use of
304 communication equipment and designating a person who is attending
305 the mediation live and not electronically, who has full authority
306 to sign any settlement agreement reached. Plaintiff's counsel may
307 be designated as the person with full authority to sign the
308 settlement agreement.

309 (2) At the time that the mediation is scheduled to
310 physically begin, the program manager shall enter the mediation
311 room before the beginning of the mediation conference and, before
312 any discussion of the case in the presence of the mediator, take a
313 written roll. That written roll will consist of a determination



314 of the presence of the borrower; the borrower's counsel of record,
315 if any; the plaintiff's counsel; and the plaintiff's
316 representative with full authority to settle. If the program
317 manager determines that anyone is not present, that party shall be
318 reported by the program manager as a nonappearance by that party
319 on the written roll. If the program manager determines that the
320 plaintiff's representative present does not have full authority to
321 settle, the program manager shall report that the plaintiff's
322 representative did not appear on the written roll as a
323 representative with full settlement authority as required by this
324 act. The written roll and communication of authority to the
325 program manager is not a mediation communication.

326 (3) If the plaintiff's representative attends mediation
327 through the use of communication equipment, the person authorized
328 by the plaintiff to sign a settlement agreement must be physically
329 present at mediation. If the plaintiff's representative attends
330 mediation through the use of communication equipment, the
331 plaintiff's representative must remain on the communication
332 equipment at all times during the entire mediation session. If
333 the plaintiff's representative attends through the use of
334 communication equipment, and if the mediation results in an
335 impasse, within five (5) days after the mediation session, the
336 plaintiff's representative shall file in the court file a
337 certification as to whether the plaintiff's representative
338 attended mediation. If the mediation results in an impasse after



339 the appearance of the plaintiff's representative through the use
340 of communication equipment, the failure to timely file the
341 certification regarding attendance through the use of
342 communication equipment shall be grounds to impose sanctions
343 against the plaintiff, including requiring the physical appearance
344 of the plaintiff's representative at a second mediation, taxation
345 of the costs of a second mediation to the plaintiff, or dismissal
346 of the action.

347 (4) Junior lienholders may appear at mediation by a
348 representative with full settlement authority. If a junior
349 lienholder is a governmental entity comprised of an elected body,
350 that junior lienholder may appear at mediation by a representative
351 who has authority to recommend settlement to the governing body.
352 Counsel for any junior lienholder may also attend the mediation.
353 The participants physically attending mediation may consult on the
354 telephone during the mediation with other persons.

355 **SECTION 16.** If either the plaintiff's representative
356 designated in the most recently filed RMFM Program Form or the
357 borrower fails to appear at a properly noticed mediation and the
358 mediation does not occur, or when a mediation results in an
359 impasse, the report of the mediator shall notify the circuit court
360 judge regarding who appeared at mediation without making further
361 comment as to the reasons for an impasse. If the borrower fails
362 to appear, or if the mediation results in an impasse with all
363 required parties present, and if the borrower has been lawfully



364 served with a copy of the complaint, and if the time for filing a
365 responsive pleading has passed, the matter may proceed to a final
366 hearing, summary judgment, or default final judgment in accordance
367 with the Mississippi Rules of Civil Procedure without any further
368 requirement to attend mediation. If plaintiff's counsel or the
369 plaintiff's representative fails to appear, the court may dismiss
370 the action without prejudice, order plaintiff's counsel or the
371 plaintiff's representatives to appear at mediation, or impose such
372 other sanctions as the court deems appropriate including, but not
373 limited to, attorney's fees and costs if the borrower is
374 represented by an attorney. If the borrower or borrower's counsel
375 of record fails to appear, the court may impose such other
376 sanctions as the court deems appropriate, including, but not
377 limited to, attorney's fees and costs.

378 **SECTION 17.** If a partial or final agreement is reached, it
379 shall be reduced to writing and signed by the parties and their
380 counsel, if any. If a partial or full settlement agreement is
381 reached, the mediator shall report the existence of the signed or
382 transcribed agreement to the court without comment within ten (10)
383 days after completion of the mediation. If the parties do not
384 reach an agreement as to any matter as a result of mediation, the
385 mediator shall report the lack of an agreement to the court
386 without comment or recommendation. In the case of an impasse, the
387 report shall advise the court who attended the mediation, and a
388 copy of the RMFM Program Form or any amended RMFM Program Form



389 shall be attached to the report for the court to determine if at
390 least one (1) of the plaintiff's representative named in the RMFM
391 Program Form appeared for mediation.

392 **SECTION 18.** All mediation communications occurring as a
393 result of this act, including information provided to the program
394 manager that is not filed with the court, shall be confidential
395 and inadmissible in any later legal proceeding, unless otherwise
396 provided for by law.

397 **SECTION 19.** (1) In all residential foreclosure actions, if
398 a notice for trial, motion for default final judgment, or motion
399 for summary judgment is filed with the clerk of court, no action
400 will be taken by the court to set a final hearing or enter a
401 summary or default final judgment until the requirements of this
402 act have been met. In cases involving a homestead residence, the
403 circuit court judge shall require that copies of either (a) the
404 most recently filed RMFM Program Form and the report of the
405 mediator, or (b) the most recently filed RMFM Program Form and the
406 notice of borrower's nonparticipation be sent to the circuit judge
407 by the plaintiff or plaintiff's counsel before setting a final
408 hearing or delivered with the packet requesting a summary or
409 default final judgment.

410 (2) Unless otherwise ordered by the court, a certificate of
411 compliance shall be filed with a motion for default final
412 judgment, a motion for summary judgment, or a notice for trial. A
413 copy of the certificate of compliance must accompany the



414 submission of any proposed order for a default final judgment,
415 summary judgment, or final judgment of foreclosure.

416 (3) The failure of a party to fully comply with the
417 provisions of this act may result in the imposition of any
418 sanctions available to the court, including dismissal of the cause
419 of action without further notice.

420 **SECTION 20.** (1) If the plaintiff certifies in the RMFM
421 Program Form that the property is not a homestead residence when
422 suit is filed, plaintiff's counsel must file and serve with the
423 complaint a certification identifying the agent of plaintiff who
424 has full authority to settle the case without further
425 consultation.

426 (2) If the plaintiff certifies in the RMFM Program Form that
427 the property is not a homestead residence, the matter may proceed
428 to a final hearing, summary judgment, or default final judgment in
429 accordance with the Mississippi Rules of Civil Procedure without
430 any further requirement to attend mediation, unless otherwise
431 ordered by the circuit court judge.

432 **SECTION 21.** (1) The fee structure for the RMFM Program is
433 based on the assumption that a successful mediation can be
434 accomplished with one (1) mediation session. Accordingly, the
435 reasonable program fees for the managed mediation, including
436 foreclosure counseling, the mediator's fee, and administration of
437 the managed mediation program, is a total of no more than Seven
438 Hundred Fifty Dollars (\$750.00) payable as follows:



439 (a) Not more than Four Hundred Dollars (\$400.00) paid
440 by plaintiff at the time suit is filed, for administrative fees of
441 the RMFM Program in the amount of Two Hundred Seventy-five Dollars
442 (\$275.00), and fees for outreach to the borrower and foreclosure
443 counseling in the amount of One Hundred Twenty-five Dollars
444 (\$125.00); and

445 (b) Not more than Three Hundred Fifty Dollars (\$350.00)
446 paid by plaintiff within ten (10) days after notice of the
447 mediation conference is filed for the mediation fee component of
448 the RMFM Program fees.

449 (2) If more than one (1) mediation session is needed, the
450 total program fee stated above will also cover a second mediation
451 session. However, if an additional mediation session is needed
452 after the second session, the plaintiff shall be responsible for
453 the payment of the program fees for the additional mediation
454 sessions, unless the parties agree otherwise. The program fees
455 for the third and each later mediation session shall be not more
456 than Three Hundred Fifty Dollars (\$350.00) per session.

457 (3) All program fees shall be paid directly to the program
458 manager. If the case is not resolved through the mediation
459 process, the circuit court judge may tax the program fees, in
460 whole or in part, as a cost or apply it as a set off in the final
461 judgment of foreclosure.

462 (4) If the borrower cannot be located, chooses not to
463 participate in the RMFM Program, or if the borrower does not make



464 any contact with the foreclosure counselor, the plaintiff shall be
465 entitled to a refund of the portion of the program fees
466 attributable to foreclosure counseling. If mediation is scheduled
467 and the borrower announces an intention not to participate further
468 in the RMFM Program before the mediation session, or if the case
469 settles and the program manager has notice of the settlement at
470 least five (5) days before the mediation session, the plaintiff
471 shall be entitled to a refund of the program fees allocated for
472 the mediation session. If notice of settlement is not received by
473 the program manager at least five (5) days before the scheduled
474 mediation session, the plaintiff shall not be entitled to any
475 refund of mediation fees.

476 (5) The total fees include the mediator's fees and costs;
477 the cost for the borrower to attend a foreclosure counseling
478 session with an approved mortgage foreclosure counselor; and the
479 cost to the program manager for administration of the managed
480 mediation program, which includes, but is not limited to,
481 providing neutral meeting and caucus space, scheduling, telephone
482 lines and instruments, infrastructure to support a web-enabled
483 information platform, a secure dedicated email address or other
484 secure system for information transmittal, and other related
485 expenses incurred in managing the foreclosure mediation program.

486 **SECTION 22.** (1) The program manager shall be responsible
487 for monitoring whether the RMFM Program Form has been filed in all
488 residential foreclosure actions that begin after the effective



489 date of this act and whether the RMFM Program fees have been paid
490 if the residence is a homestead residence. The program manager
491 shall send compliance reports to the circuit court judge or the
492 judge's designee in the format and with the frequency required by
493 the judge.

494 (2) The program manager may assist with enforcing compliance
495 with this act upon filing a written motion authorized by the
496 Mississippi Rules of Civil Procedure, stating with particularity
497 the grounds therefor and the relief or order sought.

498 (3) The program manager shall also provide the circuit court
499 judge with periodic reports as to whether plaintiffs and borrowers
500 are satisfied with the RMFM Program.

501 (4) The program manager shall also provide the circuit court
502 judge with reports with statistical information about the status
503 of cases in the RMFM Program and RMFM Program finances in the
504 format and with the frequency required by the judge.

505 (5) The program manager shall provide to the clerk of court
506 all original compliance reports, together with the activity
507 report; all original mediators' reports; and any original motions
508 submitted to the program manager. The program manager shall use
509 E-filing (where available) to file the paperwork with the clerk of
510 court.

511 **SECTION 23.** (1) Any plaintiff who has filed five (5) or
512 more foreclosure actions while this act is in effect shall appoint
513 two (2) RMFM Program liaisons, one (1) of whom shall be a lawyer



514 and the other a representative of the entity servicing the
515 plaintiff's mortgages, if any, and, if none, a representative of
516 the plaintiff. Plaintiff's counsel shall provide written notice
517 of the name, phone number (including extension), email, and
518 mailing address of both liaisons to the circuit court judge and
519 the program manager within thirty (30) days after the effective
520 date of this act, and on the first Monday of each July thereafter
521 while this act is in effect.

522 (2) The liaisons shall be informed of the requirements of
523 this act and shall be capable of answering questions concerning
524 the administrative status of pending cases and the party's
525 internal procedures relating to the processing of foreclosure
526 cases, and be readily accessible to discuss administrative and
527 logistical issues affecting the progress of the plaintiff's cases
528 through the RMFM Program. Plaintiff's counsel shall promptly
529 inform the circuit court judge and program manager of any changes
530 in designation of the liaisons and the contact information of the
531 liaisons. The liaisons shall act as the court's point of contact
532 if the plaintiff fails to comply with this act on multiple
533 occasions and there is a need to communicate with the plaintiff
534 concerning administrative matters of mutual interest.

535 **SECTION 24.** (1) The program manager shall post on the
536 website of the RMFM Program the list of the mediators on the List
537 of Court Annexed Mediation Program Mediators that it will use to
538 implement the RMFM Program and will state in writing the criteria,



539 subject to approval of the circuit court judge, the program will
540 use in selecting mediators. The program manager shall also state
541 in writing the procedure, subject to the approval of the circuit
542 court judge, that the program will use to rotate the appointment
543 of mediators, and maintain a list of the mediation site(s) in the
544 circuit court district that the mediators designate their
545 willingness to mediate. The RMFM Program shall encourage the use
546 of mediators who have been trained to mediate mortgage foreclosure
547 cases, reflecting the diversity of the community in which it
548 operates. Assignment of mediators shall be on a rotation basis
549 that fairly spreads work throughout the pool of mediators working
550 in the RMFM Program, unless the parties mutually agree on a
551 specific mediator or the case requires a particular skill on the
552 part of the mediator.

553 (2) Mediators who are on the list of approved mediators
554 maintained by the program manager on the effective date of this
555 act may continue to mediate cases referred to the RMFM Program;
556 however, those mediators shall not continue working in the RMFM
557 Program if they have not completed the training requirements
558 imposed by Section 4 of this act within ninety (90) days after the
559 effective date of this act.

560 **SECTION 25.** (1) Mortgage lenders, whether private
561 individuals, commercial institutions, or mortgage servicing
562 companies, are encouraged to use any form of alternative dispute
563 resolution, including mediation, before filing a mortgage



564 foreclosure lawsuit with the clerk of the court. Lenders are
565 encouraged to enter into the mediation process with their
566 borrowers before filing foreclosure actions to reduce the costs to
567 the parties for maintaining the litigation and to reduce to the
568 greatest extent possible the stress on the limited resources of
569 the courts caused by the large numbers of those actions being
570 filed across the state.

571 (2) If the parties participated in pre-suit mediation using
572 the RMFM Program or participated in any other pre-suit mediation
573 program having procedures substantially complying with the
574 requirements of this act, including provisions authorizing the
575 exchange of information, foreclosure counseling, and requiring use
576 of mediators specially trained to mediate residential mortgage
577 foreclosure actions, the plaintiff shall so certify in the RMFM
578 Program Form, in which case the plaintiff and borrower shall not
579 be required to participate in mediation again unless ordered to do
580 so by the circuit court judge. A borrower may file a motion
581 contesting whether pre-suit mediation occurred in substantial
582 compliance with the RMFM Program.

583 (3) Nothing in this section precludes the circuit court
584 judge from sending the case to mediation after suit is filed, even
585 if pre-suit mediation resulted in an impasse or there was a breach
586 of the pre-suit mediation agreement.

587 **SECTION 26.** This act shall take effect and be in force from
588 and after July 1, 2014.

