

By: Representative Myers

To: Banking and Financial Services

HOUSE BILL NO. 777

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, 2015.

