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To: Banking and Financial
Services; Judiciary A

HOUSE BILL NO. 1267

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) From and after July 1, 2016, all newly filed mortgage
58 foreclosure actions filed against a homestead residence shall be
59 referred to the RMFM Program unless the plaintiff and borrower
60 agree in writing otherwise or unless pre-suit mediation was
61 conducted in accordance with Section 25 of this act. The parties
62 to the foreclosure action shall comply with the conditions and
63 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) From and after July 1, 2016, all newly filed residential
70 mortgage foreclosure actions involving property that is not a
71 homestead residence shall comply with the requirements of filing a
72 RMFM Program Form as required by Section 7 of this act and the
73 requirements of Section 20 of this act (plaintiff's certification
74 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 July 1, 2016, to
78 residences that are not homestead residences, and any other
79 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.** From and after July 1, 2016, in all actions to
106 foreclose a mortgage on residential property the plaintiff shall
107 attach to the summons to be served on each defendant a notice
108 regarding managed mediation for homestead residences.

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



117 along with the case number of the action and contact information
118 for all of the parties. The contact information must include at a
119 minimum the last known mailing address and phone number for each
120 party.

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

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



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

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

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



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

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



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

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

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

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

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

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

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

215 **SECTION 10.** All information to be provided to the program
216 manager to advance the mediation process, such as the RMFM Program



217 Form, borrower's financial disclosure for mediation, plaintiff's
218 disclosure for mediation, as well as the case number of the action
219 and contact information for the parties, shall be submitted
220 electronically in a format approved by the circuit court judge via
221 a secure dedicated email address or in a web-enabled information
222 platform with XML data elements.

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



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

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



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

282 (2) Mediation shall not be scheduled until the borrower has
283 had an opportunity to meet with an approved foreclosure counselor
284 and the borrower's financial disclosure for mediation has been
285 transmitted to the plaintiff via a secure dedicated email address
286 or uploaded to the web-enabled information platform described in
287 Section 10 of this act. Mediation shall not be scheduled earlier
288 than thirty (30) days after the borrower's financial disclosure
289 for mediation has been transmitted to the plaintiff.



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

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

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



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

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



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

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

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



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

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



389 least one (1) of the plaintiff's representative named in the RMFM
390 Program Form appeared for mediation.

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

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

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



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

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

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

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

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



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

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

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

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

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



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

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

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



488 2016, and whether the RMFM Program fees have been paid if the
489 residence is a homestead residence. The program manager shall
490 send compliance reports to the circuit court judge or the judge's
491 designee in the format and with the frequency required by the
492 judge.

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

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

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

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

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



513 and the other a representative of the entity servicing the
514 plaintiff's mortgages, if any, and, if none, a representative of
515 the plaintiff. Plaintiff's counsel shall provide written notice
516 of the name, phone number (including extension), email, and
517 mailing address of both liaisons to the circuit court judge and
518 the program manager within thirty (30) days after July 1, 2016,
519 and on the first Monday of each July thereafter while this act is
520 in effect.

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

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



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

552 (2) Mediators who are on the list of approved mediators
553 maintained by the program manager on July 1, 2016 may continue to
554 mediate cases referred to the RMFM Program; however, those
555 mediators shall not continue working in the RMFM Program if they
556 have not completed the training requirements imposed by Section 4
557 of this act within ninety (90) days after the effective date of
558 this act.

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



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

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

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

586 **SECTION 26.** This act shall take effect and be in force from
587 and after July 1, 2016.

