

Calendar No. 51

111TH CONGRESS
1ST SESSION**S. 895**

To prevent mortgage foreclosures and enhance mortgage credit availability.

IN THE SENATE OF THE UNITED STATES

APRIL 24, 2009

Mr. DODD (for himself, Mr. DURBIN, and Mr. SCHUMER) introduced the following bill; which was read the first time

APRIL 27, 2009

Read the second time and placed on the calendar

A BILL

To prevent mortgage foreclosures and enhance mortgage credit availability.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as “Help-
5 ing Families Save Their Homes Act of 2009”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is the following:

Sec. 1. Short title; table of contents.

TITLE I—PREVENTION OF MORTGAGE FORECLOSURES

Subtitle A—Modification of Residential Mortgages

- Sec. 100. Definition.
- Sec. 101. Eligibility for relief.
- Sec. 102. Prohibiting claims arising from violations of the Truth in Lending Act.
- Sec. 103. Authority to modify certain mortgages.
- Sec. 104. Combating excessive fees.
- Sec. 105. Confirmation of plan.
- Sec. 106. Discharge.
- Sec. 107. Standing trustee fees.
- Sec. 108. Effective date; application of amendments.
- Sec. 109. GAO study.
- Sec. 110. Report to Congress.

Subtitle B—Related Mortgage Modification Provisions

- Sec. 121. Adjustments as a result of modification in bankruptcy of housing loans guaranteed by the Department of Veterans Affairs.
- Sec. 122. Payment of FHA mortgage insurance benefits.
- Sec. 123. Adjustments as result of modification of rural single family housing loans in bankruptcy.
- Sec. 124. Unenforceability of certain provision as being contrary to public policy.
- Sec. 125. Mortgage modification data collecting and reporting.

TITLE II—FORECLOSURE MITIGATION AND CREDIT AVAILABILITY

- Sec. 201. Servicer safe harbor for mortgage loan modifications.
- Sec. 202. Changes to HOPE for Homeowners Program.
- Sec. 203. Requirements for FHA-approved mortgagees.
- Sec. 204. Enhancement of liquidity and stability of insured depository institutions to ensure availability of credit and reduction of foreclosures.
- Sec. 205. Application of GSE conforming loan limit to mortgages assisted with TARP funds.
- Sec. 206. Mortgages on certain homes on leased land.
- Sec. 207. Sense of Congress regarding mortgage revenue bond purchases.

TITLE III—MORTGAGE FRAUD

- Sec. 301. Short title.
- Sec. 302. Nationwide Mortgage Fraud Task Force.

TITLE IV—FORECLOSURE MORATORIUM PROVISIONS

- Sec. 401. Sense of the Congress on foreclosures.

1 **TITLE I—PREVENTION OF**
2 **MORTGAGE FORECLOSURES**
3 **Subtitle A—Modification of**
4 **Residential Mortgages**

5 **SEC. 100. DEFINITION.**

6 Section 101 of title 11, United States Code, is
7 amended by inserting after paragraph (43) the following
8 (and make such technical and conforming changes as may
9 be appropriate):

10 “(43A) The term ‘qualified loan modification’
11 means a loan modification agreement made in ac-
12 cordance with the guidelines of the Obama Adminis-
13 tration’s Homeowner Affordability and Stability
14 Plan as implemented March 4, 2009, that—

15 “(A) reduces the debtor’s payment (includ-
16 ing principal and interest, and payments for
17 real estate taxes, hazard insurance, mortgage
18 insurance premium, homeowners’ association
19 dues, ground rent, and special assessments) on
20 a loan secured by a senior security interest in
21 the principal residence of the debtor, to a per-
22 centage of the debtor’s income in accordance
23 with such guidelines, without any period of neg-
24 ative amortization or under which the aggregate
25 amount of the regular periodic payments would

1 not fully amortize the outstanding principal
2 amount of such loan;

3 “(B) requires no fees or charges to be paid
4 by the debtor in order to obtain such modifica-
5 tion; and

6 “(C) permits the debtor to continue to
7 make payments under the modification agree-
8 ment notwithstanding the filing of a case under
9 this title, as if such case had not been filed.”.

10 **SEC. 101. ELIGIBILITY FOR RELIEF.**

11 Section 109 of title 11, United States Code, is
12 amended—

13 (1) by adding at the end of subsection (e) the
14 following: “For purposes of this subsection, the com-
15 putation of debts shall not include the secured or
16 unsecured portions of—

17 “(1) debts secured by the debtor’s principal res-
18 idence if the value of such residence as of the date
19 of the order for relief under chapter 13 is less than
20 the applicable maximum amount of noncontingent,
21 liquidated, secured debts specified in this subsection;
22 or

23 “(2) debts secured or formerly secured by what
24 was the debtor’s principal residence that was sold in
25 foreclosure or that the debtor surrendered to the

1 creditor if the value of such real property as of the
2 date of the order for relief under chapter 13 was less
3 than the applicable maximum amount of noncontin-
4 gent, liquidated, secured debts specified in this sub-
5 section.”, and

6 (2) by adding at the end of subsection (h) the
7 following:

8 “(5) Notwithstanding the 180-day period speci-
9 fied in paragraph (1), with respect to a debtor in a
10 case under chapter 13 who submits to the court a
11 certification that the debtor has received notice that
12 the holder of a claim secured by the debtor’s prin-
13 cipal residence may commence a foreclosure on the
14 debtor’s principal residence, the requirements of
15 paragraph (1) shall be considered to be satisfied if
16 the debtor satisfies such requirements not later than
17 the expiration of the 30-day period beginning on the
18 date of the filing of the petition.”.

19 **SEC. 102. PROHIBITING CLAIMS ARISING FROM VIOLA-**
20 **TIONS OF THE TRUTH IN LENDING ACT.**

21 Section 502(b) of title 11, United States Code, is
22 amended—

23 (1) in paragraph (8) by striking “or” at the
24 end,

1 (2) in paragraph (9) by striking the period at
2 the end and inserting “; or”, and

3 (3) by adding at the end the following:

4 “(10) the claim for a loan secured by a security
5 interest in the debtor’s principal residence is subject
6 to a remedy for rescission under the Truth in Lend-
7 ing Act notwithstanding the prior entry of a fore-
8 closure judgment, except that nothing in this para-
9 graph shall be construed to modify, impair, or super-
10 secede any other right of the debtor.”.

11 **SEC. 103. AUTHORITY TO MODIFY CERTAIN MORTGAGES.**

12 Section 1322 of title 11, United States Code, is
13 amended—

14 (1) in subsection (b)—

15 (A) by redesignating paragraph (11) as
16 paragraph (12),

17 (B) in paragraph (10) by striking “and” at
18 the end, and

19 (C) by inserting after paragraph (10) the
20 following:

21 “(11) notwithstanding paragraph (2), with re-
22 spect to a claim for a loan originated before the ef-
23 fective date of this paragraph and secured by a secu-
24 rity interest in the debtor’s principal residence that
25 is the subject of a notice that a foreclosure may be

1 commenced with respect to such loan, modify the
2 rights of the holder of such claim (and the rights of
3 the holder of any claim secured by a subordinate se-
4 curity interest in such residence)—

5 “(A) by providing for payment of the
6 amount of the allowed secured claim as deter-
7 mined under section 506(a)(1);

8 “(B) if any applicable rate of interest is
9 adjustable under the terms of such loan by pro-
10 hibiting, reducing, or delaying adjustments to
11 such rate of interest applicable on and after the
12 date of filing of the plan;

13 “(C) by modifying the terms and condi-
14 tions of such loan—

15 “(i) to extend the repayment period
16 for a period that is no longer than the
17 longer of 40 years (reduced by the period
18 for which such loan has been outstanding)
19 or the remaining term of such loan, begin-
20 ning on the date of the order for relief
21 under this chapter; and

22 “(ii) to provide for the payment of in-
23 terest accruing after the date of the order
24 for relief under this chapter at a fixed an-
25 nual rate equal to the currently applicable

1 average prime offer rate as of the date of
2 the order for relief under this chapter, cor-
3 responding to the repayment term deter-
4 mined under the preceding paragraph, as
5 published by the Federal Financial Institu-
6 tions Examination Council in its table enti-
7 tled ‘Average Prime Offer Rates—Fixed’,
8 plus a reasonable premium for risk; and

9 “(D) by providing for payments of such
10 modified loan directly to the holder of the claim
11 or, at the discretion of the court, through the
12 trustee during the term of the plan; and”, and
13 (2) by adding at the end the following:

14 “(g) A claim may be reduced under subsection
15 (b)(11)(A) only on the condition that if the debtor sells
16 the principal residence securing such claim, before com-
17 pleting all payments under the plan (or, if applicable, be-
18 fore receiving a discharge under section 1328(b)) and re-
19 ceives net proceeds from the sale of such residence, then
20 the debtor agrees to pay to such holder not later than 15
21 days after receiving such proceeds—

22 “(1) if such residence is sold in the 1st year oc-
23 ccurring after the effective date of the plan, 90 per-
24 cent of the amount of the difference between the
25 sales price and the amount of such claim as origi-

1 nally determined under subsection (b)(11) (plus
2 costs of sale and improvements), but not to exceed
3 the unpaid amount of the allowed secured claim de-
4 termined as if such claim had not been reduced
5 under such subsection;

6 “(2) if such residence is sold in the 2d year oc-
7 ccurring after the effective date of the plan, 70 per-
8 cent of the amount of the difference between the
9 sales price and the amount of such claim as origi-
10 nally determined under subsection (b)(11) (plus
11 costs of sale and improvements), but not to exceed
12 the unpaid amount of the allowed secured claim de-
13 termined as if such claim had not been reduced
14 under such subsection;

15 “(3) if such residence is sold in the 3d year oc-
16 ccurring after the effective date of the plan, 50 per-
17 cent of the amount of the difference between the
18 sales price and the amount of such claim as origi-
19 nally determined under subsection (b)(11) (plus
20 costs of sale and improvements), but not to exceed
21 the unpaid amount of the allowed secured claim de-
22 termined as if such claim had not been reduced
23 under such subsection;

24 “(4) if such residence is sold in the 4th year oc-
25 ccurring after the effective date of the plan, 30 per-

1 cent of the amount of the difference between the
2 sales price and the amount of such claim as origi-
3 nally determined under subsection (b)(11) (plus
4 costs of sale and improvements), but not to exceed
5 the unpaid amount of the allowed secured claim de-
6 termined as if such claim had not been reduced
7 under such subsection; and

8 “(5) if such residence is sold in the 5th year oc-
9 ccurring after the effective date of the plan, 10 per-
10 cent of the amount of the difference between the
11 sales price and the amount of such claim as origi-
12 nally determined under subsection (b)(11) (plus
13 costs of sale and improvements), but not to exceed
14 the unpaid amount of the allowed secured claim de-
15 termined as if such claim had not been reduced
16 under such subsection.

17 “(h) With respect to a claim of the kind described
18 in subsection (b)(11), the plan may not contain a modi-
19 fication under the authority of subsection (b)(11)—

20 “(1) in a case commenced under this chapter
21 after the expiration of the 30-day period beginning
22 on the effective date of this subsection, unless—

23 “(A) the debtor certifies that the debtor—

24 “(i) not less than 30 days before the
25 commencement of the case, contacted the

1 holder of such claim (or the entity col-
2 lecting payments on behalf of such holder)
3 regarding modification of the loan that is
4 the subject of such claim;

5 “(ii) provided the holder of the claim
6 (or the entity collecting payments on be-
7 half of such holder) a written statement of
8 the debtor’s current income, expenses, and
9 debt substantially conforming with the
10 schedules required under section 521(a) or
11 such other form as is promulgated by the
12 Judicial Conference of the United States
13 for such purpose; and

14 “(iii) considered any qualified loan
15 modification offered to the debtor by the
16 holder of the claim (or the entity collecting
17 payments on behalf of such holder); or

18 “(B) a foreclosure sale is scheduled to
19 occur on a date in the 30-day period beginning
20 on the date of case is commenced;

21 “(2) in any other case pending under this chap-
22 ter, unless the debtor certifies that the debtor at-
23 tempted to contact the holder of such claim (or the
24 entity collecting payments on behalf of such holder)

1 regarding modification of the loan that is the subject
2 of such claim, before—

3 “(A) filing a plan under section 1321 that
4 contains a modification under the authority of
5 subsection (b)(11); or

6 “(B) modifying a plan under section 1323
7 or 1329 to contain a modification under the au-
8 thority of subsection (b)(11).

9 “(i) In determining the holder’s allowed secured claim
10 under section 506(a)(1) for purposes of subsection
11 (b)(11)(A), the value of the debtor’s principal residence
12 shall be the fair market value of such residence on the
13 date such value is determined and, if the issue of value
14 is contested, the court shall determine such value in ac-
15 cordance with the appraisal rules used by the Federal
16 Housing Administration.”.

17 **SEC. 104. COMBATING EXCESSIVE FEES.**

18 Section 1322(c) of title 11, United States Code, is
19 amended—

20 (1) in paragraph (1) by striking “and” at the
21 end,

22 (2) in paragraph (2) by striking the period at
23 the end and inserting a semicolon, and

24 (3) by adding at the end the following:

1 “(3) the debtor, the debtor’s property, and
2 property of the estate are not liable for a fee, cost,
3 or charge that is incurred while the case is pending
4 and arises from a debt that is secured by the debt-
5 or’s principal residence except to the extent that—

6 “(A) the holder of the claim for such debt
7 files with the court and serves on the trustee,
8 the debtor, and the debtor’s attorney (annually
9 or, in order to permit filing consistent with
10 clause (ii), at such more frequent periodicity as
11 the court determines necessary) notice of such
12 fee, cost, or charge before the earlier of—

13 “(i) 1 year after such fee, cost, or
14 charge is incurred; or

15 “(ii) 60 days before the closing of the
16 case; and

17 “(B) such fee, cost, or charge—

18 “(i) is lawful under applicable non-
19 bankruptcy law, reasonable, and provided
20 for in the applicable security agreement;
21 and

22 “(ii) is secured by property the value
23 of which is greater than the amount of
24 such claim, including such fee, cost, or
25 charge;

1 “(4) the failure of a party to give notice de-
2 scribed in paragraph (3) shall be deemed a waiver
3 of any claim for fees, costs, or charges described in
4 paragraph (3) for all purposes, and any attempt to
5 collect such fees, costs, or charges shall constitute a
6 violation of section 524(a)(2) or, if the violation oc-
7 curs before the date of discharge, of section 362(a);
8 and

9 “(5) a plan may provide for the waiver of any
10 prepayment penalty on a claim secured by the debt-
11 or’s principal residence.”.

12 **SEC. 105. CONFIRMATION OF PLAN.**

13 (a) Section 1325(a) of title 11, United States Code,
14 is amended—

15 (1) in the matter preceding paragraph (1)
16 strike “subsection (b)” and insert “subsections (b)
17 and (d)”.

18 (2) in paragraph (5)—

19 (A) by inserting “except as otherwise pro-
20 vided in section 1322(b)(11),” after “(5)”, and

21 (B) in subparagraph (B)(iii)(I) by insert-
22 ing “(including payments of a claim modified
23 under section 1322(b)(11))” after “payments”
24 the 1st place it appears,

1 (3) in paragraph (8) by striking “and” at the
2 end,

3 (4) in paragraph (9) by striking the period at
4 the end and inserting a semicolon, and

5 (5) by inserting after paragraph (9) the fol-
6 lowing:

7 “(10) notwithstanding subclause (I) of para-
8 graph (5)(B)(i), whenever the plan modifies a claim
9 in accordance with section 1322(b)(11), the holder
10 of a claim whose rights are modified pursuant to
11 section 1322(b)(11) shall retain the lien until the
12 later of—

13 “(A) the payment of such holder’s allowed
14 secured claim; or

15 “(B) completion of all payments under the
16 plan (or, if applicable, receipt of a discharge
17 under section 1328(b)); and

18 “(11) whenever the plan modifies a claim in ac-
19 cordance with section 1322(b)(11), the court finds
20 that such modification is in good faith (Lack of good
21 faith exists if the debtor has no need for relief under
22 this paragraph because the debtor can pay all of his
23 or her debts and any future payment increases on
24 such debts without difficulty for the foreseeable fu-
25 ture, including the positive amortization of mortgage

1 debt. In determining whether a reduction of the
2 principal amount of the loan resulting from a modi-
3 fication made under the authority of section
4 1322(b)(11) is made in good faith, the court shall
5 consider whether the holder of such claim (or the en-
6 tity collecting payments on behalf of such holder)
7 has offered to the debtor a qualified loan modifica-
8 tion that would enable the debtor to pay such debts
9 and such loan without reducing such principal
10 amount.) and does not find that the debtor has been
11 convicted of obtaining by actual fraud the extension,
12 renewal, or refinancing of credit that gives rise to a
13 modified claim.”.

14 (b) Section 1325 of title 11, United States Code, is
15 amended by adding at the end the following (and make
16 such technical and conforming changes as may be appro-
17 priate):

18 “(d) Notwithstanding section 1322(b)(11)(C)(ii), the
19 court, on request of the debtor or the holder of a claim
20 secured by a senior security interest in the debtor’s prin-
21 cipal residence, may confirm a plan proposing a reduction
22 in the interest rate on the loan secured by such security
23 interest and that does not reduce the principal, provided
24 the total monthly mortgage payment is reduced to a per-
25 centage of the debtor’s income in accordance with the

1 guidelines of the Obama Administration’s Homeowner Af-
2 fordability and Stability Plan as implemented March 4,
3 2009, if, taking into account the debtor’s financial situa-
4 tion, after allowance of expenses that would be permitted
5 for a debtor under this chapter subject to paragraph (3)
6 of subsection (b), regardless of whether the debtor is oth-
7 erwise subject to such paragraph, and taking into account
8 additional debts and fees that are to be paid in this chap-
9 ter and thereafter, the debtor would be able to prevent
10 foreclosure and pay a fully amortizing 30-year loan at
11 such reduced interest rate without such reduction in prin-
12 cipal.”.

13 **SEC. 106. DISCHARGE.**

14 Section 1328(a) of title 11, United States Code, is
15 amended—

16 (1) by inserting “(other than payments to hold-
17 ers of claims whose rights are modified under sec-
18 tion 1322(b)(11))” after “paid”, and

19 (2) in paragraph (1) by inserting “or, to the ex-
20 tent of the unpaid portion of an allowed secured
21 claim, provided for in section 1322(b)(11)” after
22 “1322(b)(5)”.

1 **SEC. 107. STANDING TRUSTEE FEES.**

2 (a) AMENDMENT TO TITLE 28.—Section
3 586(e)(1)(B)(i) of title 28, United States Code, is amend-
4 ed—

5 (1) by inserting “(I) except as provided in sub-
6 paragraph (II)” after “(i)”,

7 (2) by striking “or” at the end and inserting
8 “and”, and

9 (3) by adding at the end the following:

10 “(II) 4 percent with respect to pay-
11 ments received under section 1322(b)(11)
12 of title 11 by the individual as a result of
13 the operation of section 1322(b)(11)(D) of
14 title 11, unless the bankruptcy court
15 waives all fees with respect to such pay-
16 ments based on a determination that such
17 individual has income less than 150 per-
18 cent of the income official poverty line (as
19 defined by the Office of Management and
20 Budget, and revised annually in accord-
21 ance with section 673(2) of the Omnibus
22 Budget Reconciliation Act of 1981) appli-
23 cable to a family of the size involved and
24 payment of such fees would render the
25 debtor’s plan infeasible.”.

1 (b) CONFORMING PROVISION.—The amendments
2 made by this section shall apply to any trustee to whom
3 the provisions of section 302(d)(3) of the Bankruptcy
4 Judges, United States Trustees, and Family Farmer
5 Bankruptcy Act of 1986 (Public Law 99–554; 100 Stat.
6 3121) apply.

7 **SEC. 108. EFFECTIVE DATE; APPLICATION OF AMEND-**
8 **MENTS.**

9 (a) EFFECTIVE DATE.—Except as provided in sub-
10 section (b), this subtitle and the amendments made by this
11 subtitle shall take effect on the date of the enactment of
12 this Act.

13 (b) APPLICATION OF AMENDMENTS.—

14 (1) IN GENERAL.—Except as provided in para-
15 graph (2), the amendments made by this subtitle
16 shall apply with respect to cases commenced under
17 title 11 of the United States Code before, on, or
18 after the date of the enactment of this Act.

19 (2) LIMITATION.—Paragraph (1) shall not
20 apply with respect to cases closed under title 11 of
21 the United States Code as of the date of the enact-
22 ment of this Act that are neither pending on appeal
23 in, nor appealable to, any court of the United
24 States.

1 **SEC. 109. GAO STUDY.**

2 The Comptroller General shall carry out a study, and
3 submit to the Committee on the Judiciary of the House
4 of Representatives and the Committee on the Judiciary
5 of the Senate, not later than 2 years after the date of
6 the enactment of this Act a report containing—

7 (1) the results of such study of—

8 (A) the number of debtors who filed, dur-
9 ing the 1-year period beginning on the date of
10 the enactment of this Act, cases under chapter
11 13 of title 11 of the United States Code for the
12 purpose of restructuring their principal resi-
13 dence mortgages,

14 (B) the number of mortgages restructured
15 under the amendments made by this subtitle
16 that subsequently resulted in default and fore-
17 closure,

18 (C) a comparison between the effectiveness
19 of mortgages restructured under programs out-
20 side of bankruptcy, such as Hope Now and
21 Help for Homeowners, and mortgages restruc-
22 tured under the amendments made by this sub-
23 title,

24 (D) the number of cases presented to the
25 bankruptcy courts where mortgages were re-

1 structured under the amendments made by this
2 subtitle that were appealed,

3 (E) the number of cases presented to the
4 bankruptcy courts where mortgages were re-
5 structured under the amendments made by the
6 subtitle that were overturned on appeal, and

7 (F) the number of bankruptcy judges dis-
8 ciplined as a result of actions taken to restruc-
9 ture mortgages under the amendments made by
10 this subtitle, and

11 (2) a recommendation as to whether such
12 amendments should be amended to include a sunset
13 clause.

14 **SEC. 110. REPORT TO CONGRESS.**

15 Not later than 18 months after the date of the enact-
16 ment of this Act, the Comptroller General, in consultation
17 with the Federal Housing Administration, shall submit to
18 the Congress, a report containing—

19 (1) a comprehensive review of the effects of the
20 amendments made by this subtitle on bankruptcy
21 court,

22 (2) a survey of whether the program should
23 limit the types of homeowners eligible for the pro-
24 gram, and

1 (3) a recommendation on whether such amend-
2 ments should remain in effect.

3 **Subtitle B—Related Mortgage**
4 **Modification Provisions**

5 **SEC. 121. ADJUSTMENTS AS A RESULT OF MODIFICATION**
6 **IN BANKRUPTCY OF HOUSING LOANS GUAR-**
7 **ANTEED BY THE DEPARTMENT OF VETERANS**
8 **AFFAIRS.**

9 (a) IN GENERAL.—Section 3732 of title 38, United
10 States Code, is amended—

11 (1) in subsection (a)—

12 (A) by redesignating paragraph (2) as sub-
13 paragraph (A) of paragraph (2), and

14 (2) by inserting after subparagraph (A) the fol-
15 lowing new subparagraph:

16 “(B) In the event that a housing loan
17 guaranteed under this chapter is modified
18 under the authority provided under section
19 1322(b) of title 11, United States Code, the
20 Secretary may pay the holder of the obligation
21 the unpaid balance of the obligation due as of
22 the date of the filing of the petition under title
23 11, United States Code, plus accrued interest,
24 but only upon the assignment, transfer, and de-
25 livery to the Secretary (in a form and manner

1 satisfactory to the Secretary) of all rights, in-
 2 interest, claims, evidence, and records with re-
 3 spect to the housing loan.”.

4 (b) MATURITY OF HOUSING LOANS.—Paragraph (1)
 5 of section (d) of section 3703 of title 38, United States
 6 Code, is amended by inserting “at the time of origination”
 7 after “loan”.

8 (c) IMPLEMENTATION.—The Secretary of Veterans
 9 Affairs may implement the amendments made by this sec-
 10 tion through notice, procedure notice, or administrative
 11 notice.

12 **SEC. 122. PAYMENT OF FHA MORTGAGE INSURANCE BENE-**
 13 **FITS.**

14 (a) IN GENERAL.—Subsection (a) of section 204 of
 15 the National Housing Act (12 U.S.C. 1710(a)) is amend-
 16 ed—

17 (1) in paragraph (1), by adding at the end the
 18 following new subparagraph:

19 “(E) MODIFICATION OF MORTGAGE IN
 20 BANKRUPTCY.—

21 “(i) AUTHORITY.—If an order is en-
 22 tered under the authority provided under
 23 section 1322(b) of title 11, United States
 24 Code, that (a) determines the amount of
 25 an allowed secured claim under a mortgage

1 in accordance with section 506(a)(1) of
2 title 11, United States Code, and the
3 amount of such allowed secured claim is
4 less than the amount due under the mort-
5 gage as of the date of the filing of the peti-
6 tion under title 11, United States Code, or
7 (b) reduces the interest to be paid under a
8 mortgage in accordance with section 1325
9 of such title, the Secretary may pay insur-
10 ance benefits for the mortgage as follows:

11 “(I) FULL PAYMENT AND AS-
12 SIGNMENT.—The Secretary may pay
13 the insurance benefits for the mort-
14 gage, but only upon the assignment,
15 transfer, and delivery to the Secretary
16 of all rights, interest, claims, evidence,
17 and records with respect to the mort-
18 gage specified in clauses (i) through
19 (iv) of paragraph (1)(A). The insur-
20 ance benefits shall be paid in the
21 amount equal to the original principal
22 obligation of the mortgage (with such
23 additions and deductions as the Sec-
24 retary determines are appropriate)
25 which was unpaid upon the date of

1 the filing of by the mortgagor of the
2 petition under title 11 of the United
3 States Code. Nothing in this Act may
4 be construed to prevent the Secretary
5 from providing insurance under this
6 title for a mortgage that has pre-
7 viously been assigned to the Secretary
8 under this subclause. The decision of
9 whether to utilize the authority under
10 this subclause for payment and as-
11 signment shall be at the election of
12 the mortgagee, subject to such terms
13 and conditions as the Secretary may
14 establish.

15 “(II) ASSIGNMENT OF UNSE-
16 CURED CLAIM.—The Secretary may
17 make a partial payment of the insur-
18 ance benefits for any unsecured claim
19 under the mortgage, but only upon
20 the assignment to the Secretary of
21 any unsecured claim of the mortgagee
22 against the mortgagor or others aris-
23 ing out of such order. Such assign-
24 ment shall be deemed valid irrespec-
25 tive of whether such claim has been or

1 will be discharged under title 11 of
2 the United States Code. The insur-
3 ance benefits shall be paid in the
4 amount specified in subclause (I) of
5 this clause, as such amount is reduced
6 by the amount of the allowed secured
7 claim. Such allowed secured claim
8 shall continue to be insured under sec-
9 tion 203.

10 “(III) INTEREST PAYMENTS.—

11 The Secretary may make periodic pay-
12 ments, or a one-time payment, of in-
13 surance benefits for interest payments
14 that are reduced pursuant to such
15 order, as determined by the Secretary,
16 but only upon assignment to the Sec-
17 retary of all rights and interest re-
18 lated to such payments.

19 “(ii) DELIVERY OF EVIDENCE OF
20 ENTRY OF ORDER.—Notwithstanding any
21 other provision of this paragraph, no insur-
22 ance benefits may be paid pursuant to this
23 subparagraph for a mortgage before deliv-
24 ery to the Secretary of evidence of the
25 entry of the order issued pursuant to title

1 11, United States Code, in a form satisfac-
2 tory to the Secretary.”;

3 (2) in paragraph (5), in the matter preceding
4 subparagraph (A), by inserting after “section 520,
5 and” the following: “, except as provided in para-
6 graph (1)(E),”; and

7 (3) by adding at the end the following new
8 paragraph:

9 “(10) LOAN MODIFICATION PROGRAM.—

10 “(A) AUTHORITY.—The Secretary may
11 carry out a program solely to encourage loan
12 modifications for eligible delinquent mortgages
13 through the payment of insurance benefits and
14 assignment of the mortgage to the Secretary
15 and the subsequent modification of the terms of
16 the mortgage according to a loan modification
17 approved by the mortgagee.

18 “(B) PAYMENT OF BENEFITS AND ASSIGN-
19 MENT.—Under the program under this para-
20 graph, the Secretary may pay insurance bene-
21 fits for a mortgage, in the amount determined
22 in accordance with paragraph (5)(A), without
23 reduction for any amounts modified, but only
24 upon the assignment, transfer, and delivery to
25 the Secretary of all rights, interest, claims, evi-

1 dence, and records with respect to the mortgage
2 specified in clauses (i) through (iv) of para-
3 graph (1)(A).

4 “(C) DISPOSITION.—After modification of
5 a mortgage pursuant to this paragraph, the
6 Secretary may provide insurance under this
7 title for the mortgage. The Secretary may sub-
8 sequently—

9 “(i) re-assign the mortgage to the
10 mortgagee under terms and conditions as
11 are agreed to by the mortgagee and the
12 Secretary;

13 “(ii) act as a Government National
14 Mortgage Association issuer, or contract
15 with an entity for such purpose, in order
16 to pool the mortgage into a Government
17 National Mortgage Association security; or

18 “(iii) re-sell the mortgage in accord-
19 ance with any program that has been es-
20 tablished for purchase by the Federal Gov-
21 ernment of mortgages insured under this
22 title, and the Secretary may coordinate
23 standards for interest rate reductions
24 available for loan modification with inter-
25 est rates established for such purchase.

1 “(D) LOAN SERVICING.—In carrying out
2 the program under this section, the Secretary
3 may require the existing servicer of a mortgage
4 assigned to the Secretary under the program to
5 continue servicing the mortgage as an agent of
6 the Secretary during the period that the Sec-
7 retary acquires and holds the mortgage for the
8 purpose of modifying the terms of the mort-
9 gage. If the mortgage is resold pursuant to sub-
10 paragraph (C)(iii), the Secretary may provide
11 for the existing servicer to continue to service
12 the mortgage or may engage another entity to
13 service the mortgage.”.

14 (b) AMENDMENT TO PARTIAL CLAIM AUTHORITY.—
15 Paragraph (1) of section 230(b) of the National Housing
16 Act (12 U.S.C. 1715u(b)(1)) is amended by striking “12
17 of the monthly mortgage payments” and inserting “30
18 percent of the unpaid principal balance of the mortgage”.

19 (c) IMPLEMENTATION.—The Secretary of Housing
20 and Urban Development may implement the amendments
21 made by this section through notice or mortgagee letter.

1 **SEC. 123. ADJUSTMENTS AS RESULT OF MODIFICATION OF**
2 **RURAL SINGLE FAMILY HOUSING LOANS IN**
3 **BANKRUPTCY.**

4 (a) **GUARANTEED RURAL HOUSING LOANS.**—Sub-
5 section (h) of section 502 of the Housing Act of 1949 (42
6 U.S.C. 1472(h)) is amended—

7 (1) in paragraph (7)—

8 (A) in subparagraph (A), by inserting be-
9 fore the period at the end the following: “, un-
10 less the maturity date of the loan is modified in
11 a bankruptcy proceeding or at the discretion of
12 the Secretary”; and

13 (B) in subparagraph (B), by inserting be-
14 fore the semicolon the following: “, unless such
15 rate is modified in a bankruptcy proceeding”;

16 (2) by redesignating paragraphs (13) and (14)
17 as paragraphs (14) and (15), respectively; and

18 (3) by inserting after paragraph (12) the fol-
19 lowing new paragraph:

20 “(13) **PAYMENT OF GUARANTEE.**—In addition
21 to all other authorities to pay a guarantee claim, the
22 Secretary may also pay the guaranteed portion of
23 any losses incurred by the holder of a note or the
24 servicer resulting from a modification of a note by
25 a bankruptcy proceeding.”.

1 (b) INSURED RURAL HOUSING LOANS.—Subsection
2 (j) of section 517 of the Housing Act of 1949 (42 U.S.C.
3 1487(j)) is amended—

4 (1) by redesignating paragraphs (2) through
5 (7) as paragraphs (3) through (8), respectively; and

6 (2) by inserting after paragraph (1) the fol-
7 lowing new paragraph:

8 “(2) to pay for losses incurred by holders or
9 servicers in the event of a modification pursuant to
10 a bankruptcy proceeding;”.

11 (c) IMPLEMENTATION.—The Secretary of Agriculture
12 may implement the amendments made by this section
13 through notice, procedure notice, or administrative notice.

14 **SEC. 124. UNENFORCEABILITY OF CERTAIN PROVISION AS**
15 **BEING CONTRARY TO PUBLIC POLICY.**

16 No provision in any investment contract between a
17 servicer and a securitization vehicle or investor in effect
18 as of the date of enactment of this Act that requires excess
19 bankruptcy losses that exceed a certain dollar amount on
20 residential mortgages to be borne by classes of certificates
21 on a pro rata basis that refers to types of bankruptcy
22 losses that could not have been incurred under the law
23 in effect at the time such contract was entered into shall
24 be enforceable, as such provision shall be contrary to pub-
25 lic policy. Notwithstanding this section, such reference to

1 types of bankruptcy losses that could have been incurred
2 under the law in effect at the time such contract was en-
3 tered into shall be enforceable.

4 **SEC. 125. MORTGAGE MODIFICATION DATA COLLECTING**
5 **AND REPORTING.**

6 (a) **REPORTING REQUIREMENTS.**—Not later than
7 120 days after the date of the enactment of this Act, and
8 quarterly thereafter, the Comptroller of the Currency, in
9 coordination with the Director of the Office of Thrift Su-
10 pervision, shall submit a report to the Committee on
11 Banking, Housing, and Urban Affairs of the Senate, the
12 Committee on Financial Services of the House of Rep-
13 resentatives, and the Joint Economic Committee on the
14 volume of mortgage modifications reported to the Office
15 of the Comptroller of the Currency and the Office of
16 Thrift Supervision, under the mortgage metrics program
17 of each such Office, during the previous quarter, including
18 the following:

19 (1) A copy of the data collection instrument
20 currently used by the Office of the Comptroller of
21 the Currency and the Office of Thrift Supervision to
22 collect data on loan modifications.

23 (2) The total number of mortgage modifications
24 resulting in each of the following:

1 (A) Additions of delinquent payments and
2 fees to loan balances.

3 (B) Interest rate reductions and freezes.

4 (C) Term extensions.

5 (D) Reductions of principal.

6 (E) Deferrals of principal.

7 (F) Combinations of modifications de-
8 scribed in subparagraph (A), (B), (C), (D), or
9 (E).

10 (3) The total number of mortgage modifications
11 in which the total monthly principal and interest
12 payment resulted in the following:

13 (A) An increase.

14 (B) Remained the same.

15 (C) Decreased less than 10 percent.

16 (D) Decreased between 10 percent and 20
17 percent.

18 (E) Decreased 20 percent or more.

19 (4) The total number of loans that have been
20 modified and then entered into default, where the
21 loan modification resulted in—

22 (A) higher monthly payments by the home-
23 owner;

24 (B) equivalent monthly payments by the
25 homeowner;

1 (C) lower monthly payments by the home-
2 owner of up to 10 percent;

3 (D) lower monthly payments by the home-
4 owner of between 10 percent to 20 percent; or

5 (E) lower monthly payments by the home-
6 owner of more than 20 percent.

7 (b) DATA COLLECTION.—

8 (1) REQUIRED.—

9 (A) IN GENERAL.—Not later than 60 days
10 after the date of the enactment of this Act, the
11 Comptroller of the Currency and the Director
12 of the Office of Thrift Supervision, shall issue
13 mortgage modification data collection and re-
14 porting requirements to institutions covered
15 under the reporting requirement of the mort-
16 gage metrics program of the Comptroller or the
17 Director.

18 (B) INCLUSIVENESS OF COLLECTIONS.—

19 The requirements under subparagraph (A) shall
20 provide for the collection of all mortgage modi-
21 fication data needed by the Comptroller of the
22 Currency and the Director of the Office of
23 Thrift Supervision to fulfill the reporting re-
24 quirements under subsection (a).

1 (2) REPORT.—The Comptroller of the Currency
2 shall report all requirements established under para-
3 graph (1) to each committee receiving the report re-
4 quired under subsection (a).

5 **TITLE II—FORECLOSURE MITI-**
6 **GATION AND CREDIT AVAIL-**
7 **ABILITY**

8 **SEC. 201. SERVICER SAFE HARBOR FOR MORTGAGE LOAN**
9 **MODIFICATIONS.**

10 (a) SAFE HARBOR.—

11 (1) LOAN MODIFICATIONS AND WORKOUT
12 PLANS.—Notwithstanding any other provision of
13 law, and notwithstanding any investment contract
14 between a servicer and a securitization vehicle or in-
15 vestor, a servicer that acts consistent with the duty
16 set forth in section 129A(a) of Truth in Lending Act
17 (15 U.S.C. 1639a) shall not be liable for entering
18 into a loan modification, workout, or other loss miti-
19 gation plan, including, but not limited to, disposi-
20 tion, including any modification or refinancing un-
21 dertaken pursuant to standard loan modification,
22 sale, or disposition guidelines issued by the Sec-
23 retary of the Treasury or his designee under the
24 Emergency Economic Stabilization Act of 2008, with

1 respect to any such mortgage that meets all of the
2 criteria set forth in paragraph (2)(B) to—

3 (A) any person, based on that person’s
4 ownership of a residential mortgage loan or any
5 interest in a pool of residential mortgage loans
6 or in securities that distribute payments out of
7 the principal, interest and other payments in
8 loans on the pool;

9 (B) any person who is obligated pursuant
10 to a derivatives instrument to make payments
11 determined in reference to any loan or any in-
12 terest referred to in subparagraph (A); or

13 (C) any person that insures any loan or
14 any interest referred to in subparagraph (A)
15 under any law or regulation of the United
16 States or any law or regulation of any State or
17 political subdivision of any State.

18 (2) ABILITY TO MODIFY MORTGAGES.—

19 (A) ABILITY.—Notwithstanding any other
20 provision of law, and notwithstanding any in-
21 vestment contract between a servicer and a
22 securitization vehicle or investor, a servicer—

23 (i) shall not be limited in the ability
24 to modify mortgages, the number of mort-
25 gages that can be modified, the frequency

1 of loan modifications, or the range of per-
2 missible modifications; and

3 (ii) shall not be obligated to repur-
4 chase loans from or otherwise make pay-
5 ments to the securitization vehicle on ac-
6 count of a modification, workout, or other
7 loss mitigation plan for a residential mort-
8 gage or a class of residential mortgages
9 that constitute a part or all of the mort-
10 gages in the securitization vehicle,

11 if any mortgage so modified meets all of the cri-
12 teria set forth in subparagraph (B).

13 (B) CRITERIA.—The criteria under this
14 subparagraph with respect to a mortgage are as
15 follows:

16 (i) Default on the payment of such
17 mortgage has occurred or is reasonably
18 foreseeable.

19 (ii) The property securing such mort-
20 gage is occupied by the mortgagor of such
21 mortgage.

22 (iii) The servicer reasonably and in
23 good faith believes that the anticipated re-
24 covery on the principal outstanding obliga-
25 tion of the mortgage under the particular

1 modification or workout plan or other loss
2 mitigation action will exceed, on a net
3 present value basis, the anticipated recov-
4 ery on the principal outstanding obligation
5 of the mortgage to be realized through
6 foreclosure.

7 (3) APPLICABILITY.—This subsection shall
8 apply only with respect to modifications, workouts,
9 and other loss mitigation plans initiated before Jan-
10 uary 1, 2012.

11 (b) REPORTING.—Each servicer that engages in loan
12 modifications or workout plans subject to the safe harbor
13 in subsection (a) shall report to the Secretary on a regular
14 basis regarding the extent, scope and results of the
15 servicer’s modification activities. The Secretary shall pre-
16 scribe regulations specifying the form, content, and timing
17 of such reports.

18 (c) DEFINITIONS.—For purposes of this section, the
19 following definitions shall apply:

20 (1) SECRETARY.—The term “Secretary” means
21 the Secretary of the Treasury.

22 (2) SECURITIZATION VEHICLE.—The term
23 “securitization vehicle” means a trust, corporation,
24 partnership, limited liability entity, special purpose
25 entity, or other structure that—

1 (A) is the issuer, or is created by the
2 issuer, of mortgage pass-through certificates,
3 participation certificates, mortgage-backed secu-
4 rities, or other similar securities backed by a
5 pool of assets that includes residential mortgage
6 loans; and

7 (B) holds such mortgages.

8 **SEC. 202. CHANGES TO HOPE FOR HOMEOWNERS PRO-**
9 **GRAM.**

10 (a) PROGRAM CHANGES.—Section 257 of the Na-
11 tional Housing Act (12 U.S.C. 1715z–23) is amended—

12 (1) in subsection (c)—

13 (A) in the heading for paragraph (1), by
14 striking “THE BOARD” and inserting “SEC-
15 RETARY”;

16 (B) in paragraph (1), by striking “Board”
17 inserting “Secretary, after consultation with the
18 Board,”; and

19 (C) by adding after paragraph (2) the fol-
20 lowing:

21 “(3) DUTIES OF BOARD.—The Board shall ad-
22 vise the Secretary regarding the establishment and
23 implementation of the HOPE for Homeowners Pro-
24 gram.”.

1 (2) by striking “Board” each place such term
2 appears in subsections (e), (h)(1), (h)(3), (j), (l),
3 (n), (s)(3), and (v) and inserting “Secretary”;

4 (3) in subsection (e)—

5 (A) by striking paragraph (1) and insert-
6 ing the following:

7 “(1) BORROWER CERTIFICATION.—

8 “(A) NO INTENTIONAL DEFAULT OR
9 FALSE INFORMATION.—The mortgagor shall
10 provide a certification to the Secretary that the
11 mortgagor has not intentionally defaulted on
12 the existing mortgage or mortgages and has not
13 knowingly, or willfully and with actual knowl-
14 edge, furnished material information known to
15 be false for the purpose of obtaining the eligible
16 mortgage to be insured and has not been con-
17 victed under Federal or State law for fraud
18 during the 10-year period ending upon the in-
19 surance of the mortgage under this section.

20 “(B) LIABILITY FOR REPAYMENT.—The
21 mortgagor shall agree in writing that the mort-
22 gagor shall be liable to repay to the Secretary
23 any direct financial benefit achieved from the
24 reduction of indebtedness on the existing mort-
25 gage or mortgages on the residence refinanced

1 under this section derived from misrepresenta-
2 tions made by the mortgagor in the certifi-
3 cations and documentation required under this
4 paragraph, subject to the discretion of the Sec-
5 retary.”;

6 (B) in paragraph (4)(A), by striking “;
7 subject to standards established by the Board
8 under subparagraph (B),”;

9 (C) in paragraph (7), by striking “and pro-
10 vided that” and all that follows through “new
11 second lien” and inserting “and except that the
12 Secretary may, under such terms and condi-
13 tions as the Secretary may establish, permit the
14 establishment of a second lien on a property
15 under an eligible mortgage to be insured, for
16 the purpose of facilitating payment of closing or
17 refinancing costs by a State or locality using
18 funds provided under the HOME Investment
19 Partnerships program under title II of the
20 Cranston-Gonzalez National Affordable Hous-
21 ing Act (42 U.S.C. 12721 et seq.) or the com-
22 munity development block grants program
23 under title I of the Housing and Community
24 Development Act of 1974 (42 U.S.C. 5301 et

1 seq.) or by a State or local housing finance
2 agency”;

3 (D) in paragraph (9)—

4 (i) by striking “by procuring (A) an
5 income tax return transcript of the income
6 tax return of the mortgagor, or (B)” and
7 inserting “in accordance with procedures
8 and standards that the Secretary shall es-
9 tablish, which may include requiring the
10 mortgagee to procure”; and

11 (ii) by striking “and by any other
12 method, in accordance with procedures and
13 standards that the Board shall establish”;

14 (E) by striking subparagraph (10);

15 (F) in paragraph (11), by inserting before
16 the period at the end the following: “, except
17 that the Secretary may provide exceptions to
18 such latter requirement (relating to present
19 ownership interest) for any mortgagor who has
20 inherited a property or for any mortgagor who
21 has relocated to a new jurisdiction, and is in
22 the process of trying to sell such property or
23 has been unable to sell such property due to ad-
24 verse market conditions”;

1 (G) by redesignating paragraph (11) as
2 paragraph (10); and

3 (H) by adding at the end:

4 “(11) BAN ON MILLIONAIRES.—The mortgagor
5 shall not have a net worth, as of the date the mort-
6 gator first applies for a mortgage to be insured
7 under the Program under this section, that exceeds
8 \$1,000,000.”;

9 (4) in subsection (h)(2)—

10 (A) by striking “The Board shall prohibit
11 the Secretary from paying” and inserting “The
12 Secretary shall not pay”; and

13 (B) by inserting after the period at the end
14 the following: “In implementing this provision
15 with respect to a failure by a mortgagor to
16 make a first payment, the Secretary shall estab-
17 lish policies and timing of endorsements as con-
18 sistent as is possible with endorsement policies
19 established with respect to mortgages insured
20 under section 203(b)”;

21 (5) in subsection (i)—

22 (A) by inserting “, after weighing maxi-
23 mization of participation with consideration of
24 collection of premiums,” after “Secretary
25 shall”;

1 (B) in paragraph (1), by striking “equal to
2 3 percent” and inserting “not more than 2 per-
3 cent”; and

4 (C) in paragraph (2), by striking “equal to
5 1.5 percent” and inserting “not more than 1
6 percent”;

7 (6) in subsection (k)—

8 (A) by striking the subsection heading and
9 inserting “EXIT FEE”;

10 (B) in paragraph (1), in the matter pre-
11 ceding subparagraph (A), by striking “such sale
12 or refinancing” and inserting “the mortgage
13 being insured under this section”; and

14 (C) in paragraph (2), by striking “and the
15 mortgagor” and all that follows through the
16 end and inserting “may, upon any sale or dis-
17 position of the property to which the mortgage
18 relates, be entitled to up to 50 percent of ap-
19 preciation, up to the appraised value of the
20 home at the time when the mortgage being refi-
21 nanced under this section was originally made.
22 The Secretary may share any amounts received
23 under this paragraph with the holder of the eli-
24 gible mortgage refinanced under this section.”;

1 (7) in the heading for subsection (n), by strik-
2 ing “THE BOARD” and inserting “SECRETARY”;

3 (8) in subsection (p), by striking “Under the di-
4 rection of the Board, the” and inserting “The”;

5 (9) in subsection (s)—

6 (A) in the first sentence of paragraph (2),
7 by striking “Board of Directors of” and insert-
8 ing “Advisory Board for”; and

9 (B) in paragraph (3)(A)(ii), by striking
10 “subsection (e)(1)(B) and such other” and in-
11 serting “such”;

12 (10) in subsection (v), by inserting after the pe-
13 riod at the end the following: “The Secretary shall
14 conform documents, forms, and procedures for mort-
15 gages insured under this section to those in place for
16 mortgages insured under section 203(b) to the max-
17 imum extent possible consistent with the require-
18 ments of this section.”; and

19 (11) by adding at the end the following new
20 subsections:

21 “(x) PAYMENT TO EXISTING LOAN SERVICER.—The
22 Secretary may establish a payment to the servicer of the
23 existing senior mortgage for every loan insured under the
24 HOPE for Homeowners Program in an amount, for each
25 such loan, that does not exceed \$1,000.

1 (2) by inserting after subsection (c) the fol-
2 lowing new subsection:

3 “(d) LIMITATIONS ON PARTICIPATION IN ORIGINA-
4 TION AND MORTGAGEE APPROVAL.—

5 “(1) REQUIREMENT.—Any person or entity
6 that is not approved by the Secretary to serve as a
7 mortgagee, as such term is defined in subsection
8 (c)(7), shall not participate in the origination of an
9 FHA-insured loan except as authorized by the Sec-
10 retary.

11 “(2) ELIGIBILITY FOR APPROVAL.—In order to
12 be eligible for approval by the Secretary, an appli-
13 cant mortgagee shall not be, and shall not have any
14 officer, partner, director, principal, manager, super-
15 visor, loan processor, loan underwriter, or loan origi-
16 nator of the applicant mortgagee who is—

17 “(A) currently suspended, debarred, under
18 a limited denial of participation (LDP), or oth-
19 erwise restricted under part 24 or 25 of title 24
20 of the Code of Federal Regulations, or any suc-
21 cessor regulations to such parts, or under simi-
22 lar provisions of any other Federal agency;

23 “(B) under indictment for, or has been
24 convicted of, an offense that reflects adversely
25 upon the applicant’s integrity, competence or

1 fitness to meet the responsibilities of an ap-
2 proved mortgagee;

3 “(C) subject to unresolved findings con-
4 tained in a Department of Housing and Urban
5 Development or other governmental audit, in-
6 vestigation, or review;

7 “(D) engaged in business practices that do
8 not conform to generally accepted practices of
9 prudent mortgagees or that demonstrate irre-
10 sponsibility;

11 “(E) convicted of, or who has pled guilty
12 or nolo contendere to, a felony related to partici-
13 pation in the real estate or mortgage loan in-
14 dustry—

15 “(i) during the 7-year period pre-
16 ceding the date of the application for li-
17 censing and registration; or

18 “(ii) at any time preceding such date
19 of application, if such felony involved an
20 act of fraud, dishonesty, or a breach of
21 trust, or money laundering;

22 “(F) in violation of provisions of the
23 S.A.F.E. Mortgage Licensing Act of 2008 (12
24 U.S.C. 5101 et seq.) or any applicable provision
25 of State law; or

1 “(G) in violation of any other requirement
2 as established by the Secretary.

3 “(3) RULEMAKING AND IMPLEMENTATION.—

4 The Secretary shall conduct a rulemaking to carry
5 out this subsection. The Secretary shall implement
6 this subsection not later than the expiration of the
7 60-day period beginning upon the date of the enact-
8 ment of this subsection by notice, mortgagee letter,
9 or interim final regulations, which shall take effect
10 upon issuance.”; and

11 (3) by adding at the end the following new sub-
12 section:

13 “(h) USE OF NAME.—The Secretary shall, by regula-
14 tion, require each mortgagee approved by the Secretary
15 for participation in the FHA mortgage insurance pro-
16 grams of the Secretary—

17 “(1) to use the business name of the mortgagee
18 that is registered with the Secretary in connection
19 with such approval in all advertisements and pro-
20 motional materials, as such terms are defined by the
21 Secretary, relating to the business of such mort-
22 gagee in such mortgage insurance programs; and

23 “(2) to maintain copies of all such advertise-
24 ments and promotional materials, in such form and
25 for such period as the Secretary requires.”.

1 (c) CHANGE OF STATUS.—The National Housing Act
2 is amended by striking section 532 (12 U.S.C. 1735f–10)
3 and inserting the following new section:

4 **“SEC. 532. CHANGE OF MORTGAGEE STATUS.**

5 “(a) NOTIFICATION.—Upon the occurrence of any ac-
6 tion described in subsection (b), an approved mortgagee
7 shall immediately submit to the Secretary, in writing, noti-
8 fication of such occurrence.

9 “(b) ACTIONS.—The actions described in this sub-
10 section are as follows:

11 “(1) The debarment, suspension of a Limited
12 Denial of Participation (LDP), or application of
13 other sanctions, fines, or penalties applied to the
14 mortgagee or to any officer, partner, director, prin-
15 cipal, manager, supervisor, loan processor, loan un-
16 derwriter, or loan originator of the mortgagee pursu-
17 ant to applicable provisions of State or Federal law.

18 “(2) The revocation of a State-issued mortgage
19 loan originator license issued pursuant to the
20 S.A.F.E. Mortgage Licensing Act of 2008 (12
21 U.S.C. 5101 et seq.) or any other similar declaration
22 of ineligibility pursuant to State law.”.

23 (d) CIVIL MONEY PENALTIES.—Section 536 of the
24 National Housing Act (12 U.S.C. 1735f–14) is amend-
25 ed—

1 (1) in subsection (b)—

2 (A) in paragraph (1)—

3 (i) in the matter preceding subpara-
4 graph (A), by inserting “or any of its own-
5 ers, officers, or directors” after “mort-
6 gagee or lender”;

7 (ii) in subparagraph (H), by striking
8 “title I” and all that follows through “Act
9 of 1989)” and inserting “title I or II”; and

10 (iii) by inserting after subparagraph
11 (J) the following:

12 “(K) Violation of section 202(d) of this
13 Act (12 U.S.C. 1708(d)).”; and

14 (B) in paragraph (2)—

15 (i) in subparagraph (B), by striking
16 “or” at the end;

17 (ii) in subparagraph (C), by striking
18 the period at the end and inserting “; or”;
19 and

20 (iii) by adding at the end the fol-
21 lowing new subparagraph:

22 “(D) causing or participating in any of the
23 violations set forth in paragraph (1) of this sub-
24 section.”; and

1 (2) in subsection (g), by striking “The term”
2 and all that follows through the end of the sentence
3 and inserting “For purposes of this section, a person
4 acts knowingly when a person has actual knowledge
5 of acts or should have known of the acts.”.

6 (e) EXPANDED REVIEW OF FHA MORTGAGEE AP-
7 PLICANTS AND NEWLY APPROVED MORTGAGEES.—Not
8 later than the expiration of the 3-month period beginning
9 upon the date of the enactment of this Act, the Secretary
10 of Housing and Urban Development shall—

11 (1) expand the existing process for reviewing
12 new applicants for approval for participation in the
13 mortgage insurance programs of the Secretary for
14 mortgages on 1- to 4-family residences for the pur-
15 pose of identifying applicants who represent a high
16 risk to the Mutual Mortgage Insurance Fund; and

17 (2) implement procedures that, for mortgagees
18 approved during the 12-month period ending upon
19 such date of enactment—

20 (A) expand the number of mortgages origi-
21 nated by such mortgagees that are reviewed for
22 compliance with applicable laws, regulations,
23 and policies; and

24 (B) include a process for random reviews
25 of such mortgagees and a process for reviews

1 that is based on volume of mortgages originated
2 by such mortgagees.

3 **SEC. 204. ENHANCEMENT OF LIQUIDITY AND STABILITY OF**
4 **INSURED DEPOSITORY INSTITUTIONS TO EN-**
5 **SURE AVAILABILITY OF CREDIT AND REDUC-**
6 **TION OF FORECLOSURES.**

7 (a) PERMANENT INCREASE IN DEPOSIT INSUR-
8 ANCE.—

9 (1) AMENDMENTS TO FEDERAL DEPOSIT IN-
10 SURANCE ACT.—Effective upon the date of the en-
11 actment of this Act, section 11(a) of the Federal De-
12 posit Insurance Act (12 U.S.C. 1821(a)) is amend-
13 ed—

14 (A) in paragraph (1)(E), by striking
15 “\$100,000” and inserting “\$250,000”;

16 (B) in paragraph (1)(F)(i), by striking
17 “2010” and inserting “2015”;

18 (C) in subclause (I) of paragraph
19 (1)(F)(i), by striking “\$100,000” and inserting
20 “\$250,000”;

21 (D) in subclause (II) of paragraph
22 (1)(F)(i), by striking “the calendar year pre-
23 ceding the date this subparagraph takes effect
24 under the Federal Deposit Insurance Reform

1 Act of 2005” and inserting “calendar year
2 2008”; and

3 (E) in paragraph (3)(A), by striking “, ex-
4 cept that \$250,000 shall be substituted for
5 \$100,000 wherever such term appears in such
6 paragraph”.

7 (2) AMENDMENT TO FEDERAL CREDIT UNION
8 ACT.—Section 207(k) of the Federal Credit Union
9 Act (12 U.S.C. 1787(k)) is amended—

10 (A) in paragraph (3)—

11 (i) by striking the opening quotation
12 mark before “\$250,000”;

13 (ii) by striking “, except that
14 \$250,000 shall be substituted for \$100,000
15 wherever such term appears in such sec-
16 tion”; and

17 (iii) by striking the closing quotation
18 mark after the closing parenthesis; and

19 (B) in paragraph (5), by striking
20 “\$100,000” and inserting “\$250,000”.

21 (3) REPEAL OF EESA PROVISION.—Section 136
22 of the Emergency Economic Stabilization Act (12
23 U.S.C. 5241) is hereby repealed.

24 (b) EXTENSION OF RESTORATION PLAN PERIOD.—
25 Section 7(b)(3)(E)(ii) of the Federal Deposit Insurance

1 Act (12 U.S.C. 1817(b)(3)(E)(ii)) is amended by striking
2 “5-year period” and inserting “8-year period”.

3 (c) FDIC AND NCUA BORROWING AUTHORITY.—

4 (1) FDIC.—Section 14(a) of the Federal De-
5 posit Insurance Act (12 U.S.C. 1824(a)) is amended
6 by striking “\$30,000,000,000” and inserting
7 “\$100,000,000,000”.

8 (2) NCUA.—Section 203(d)(1) of the Federal
9 Credit Union Act (12 U.S.C. 1783(d)(1)) is amend-
10 ed by striking “\$100,000,000” and inserting
11 “\$6,000,000,000”.

12 (d) EXPANDING SYSTEMIC RISK SPECIAL ASSESS-
13 MENTS.—Section 13(c)(4)(G)(ii) of the Federal Deposit
14 Insurance Act (12 U.S.C. 1823(c)(4)(G)(ii)) is amended
15 to read as follows:

16 “(ii) REPAYMENT OF LOSS.—

17 “(I) IN GENERAL.—The Corpora-
18 tion shall recover the loss to the De-
19 posit Insurance Fund arising from
20 any action taken or assistance pro-
21 vided with respect to an insured de-
22 pository institution under clause (i)
23 from 1 or more special assessments on
24 insured depository institutions, depository
25 institution holding companies

1 (with the concurrence of the Secretary
2 of the Treasury with respect to hold-
3 ing companies), or both, as the Cor-
4 poration determines to be appropriate.

5 “(II) TREATMENT OF DEPOSI-
6 TORY INSTITUTION HOLDING COMPA-
7 NIES.—For purposes of this clause,
8 sections 7(c)(2) and 18(h) shall apply
9 to depository institution holding com-
10 panies as if they were insured deposi-
11 tory institutions.

12 “(III) REGULATIONS.—The Cor-
13 poration shall prescribe such regula-
14 tions as it deems necessary to imple-
15 ment this clause. In prescribing such
16 regulations, defining terms, and set-
17 ting the appropriate assessment rate
18 or rates, the Corporation shall estab-
19 lish rates sufficient to cover the losses
20 incurred as a result of the actions of
21 the Corporation under clause (i) and
22 shall consider: the types of entities
23 that benefit from any action taken or
24 assistance provided under this sub-
25 paragraph; economic conditions, the

1 effects on the industry, and such
2 other factors as the Corporation
3 deems appropriate and relevant to the
4 action taken or the assistance pro-
5 vided. Any funds so collected that ex-
6 ceed actual losses shall be placed in
7 the Deposit Insurance Fund.”.

8 (e) ESTABLISHMENT OF A NATIONAL CREDIT UNION
9 SHARE INSURANCE FUND RESTORATION PLAN PE-
10 RIOD.—Section 202(c)(2) of the Federal Credit Union Act
11 (12 U.S.C. 1782(c)(2)) is amended by adding at the end
12 the following new subparagraph:

13 “(D) FUND RESTORATION PLANS.—

14 “(i) IN GENERAL.—Whenever—

15 “(I) the Board projects that the
16 equity ratio of the Fund will, within 6
17 months of such determination, fall
18 below the minimum amount specified
19 in subparagraph (C) for the des-
20 ignated equity ratio; or

21 “(II) the equity ratio of the Fund
22 actually falls below the minimum
23 amount specified in subparagraph (C)
24 for the equity ratio without any deter-

1 mination under sub-clause (I) having
2 been made,
3 the Board shall establish and implement a
4 Share Insurance Fund restoration plan
5 within 90 days that meets the require-
6 ments of clause (ii) and such other condi-
7 tions as the Board determines to be appro-
8 priate.

9 “(ii) REQUIREMENTS OF RESTORA-
10 TION PLAN.—A Share Insurance Fund res-
11 toration plan meets the requirements of
12 this clause if the plan provides that the eq-
13 uity ratio of the Fund will meet or exceed
14 the minimum amount specified in subpara-
15 graph (C) for the designated equity ratio
16 before the end of the 5-year period begin-
17 ning upon the implementation of the plan
18 (or such longer period as the Board may
19 determine to be necessary due to extraor-
20 dinary circumstances).

21 “(iii) TRANSPARENCY.—Not more
22 than 30 days after the Board establishes
23 and implements a restoration plan under
24 clause (i), the Board shall publish in the
25 Federal Register a detailed analysis of the

1 factors considered and the basis for the ac-
2 tions taken with regard to the plan.”.

3 **SEC. 205. APPLICATION OF GSE CONFORMING LOAN LIMIT**
4 **TO MORTGAGES ASSISTED WITH TARP**
5 **FUNDS.**

6 In making any assistance available to prevent and
7 mitigate foreclosures on residential properties, including
8 any assistance for mortgage modifications, using any
9 amounts made available to the Secretary of the Treasury
10 under title I of the Emergency Economic Stabilization Act
11 of 2008, the Secretary shall provide that the limitation
12 on the maximum original principal obligation of a mort-
13 gage that may be modified, refinanced, made, guaranteed,
14 insured, or otherwise assisted, using such amounts shall
15 not be less than the dollar amount limitation on the max-
16 imum original principal obligation of a mortgage that may
17 be purchased by the Federal Home Loan Mortgage Cor-
18 poration that is in effect, at the time that the mortgage
19 is modified, refinanced, made, guaranteed, insured, or oth-
20 erwise assisted using such amounts, for the area in which
21 the property involved in the transaction is located.

1 **SEC. 206. MORTGAGES ON CERTAIN HOMES ON LEASED**
 2 **LAND.**

3 Section 255(b)(4) of the National Housing Act (12
 4 U.S.C. 1715z–20(b)(4)) is amended by striking subpara-
 5 graph (B) and inserting:

6 “(B) under a lease that has a term that
 7 ends no earlier than the minimum number of
 8 years, as specified by the Secretary, beyond the
 9 actuarial life expectancy of the mortgagor or co-
 10 mortgagor, whichever is the later date.”.

11 **SEC. 207. SENSE OF CONGRESS REGARDING MORTGAGE**
 12 **REVENUE BOND PURCHASES.**

13 It is the sense of the Congress that the Secretary of
 14 the Treasury should use amounts made available in this
 15 Act to purchase mortgage revenue bonds for single-family
 16 housing issued through State housing finance agencies
 17 and through units of local government and agencies there-
 18 of.

19 **TITLE III—MORTGAGE FRAUD**

20 **SEC. 301. SHORT TITLE.**

21 This title may be cited as the “Nationwide Mortgage
 22 Fraud Task Force Act of 2009”.

23 **SEC. 302. NATIONWIDE MORTGAGE FRAUD TASK FORCE.**

24 (a) ESTABLISHMENT.—There is established in the
 25 Department of Justice the Nationwide Mortgage Fraud
 26 Task Force (hereinafter referred to in this section as the

1 “Task Force”) to address mortgage fraud in the United
2 States.

3 (b) SUPPORT.—The Attorney General shall provide
4 the Task Force with the appropriate staff, administrative
5 support, and other resources necessary to carry out the
6 duties of the Task Force.

7 (c) EXECUTIVE DIRECTOR.—The Attorney General
8 shall appoint one staff member provided to the Task Force
9 to be the Executive Director of the Task Force and such
10 Executive Director shall ensure that the duties of the Task
11 Force are carried out.

12 (d) BRANCHES.—The Task Force shall establish,
13 oversee, and direct branches in each of the 10 States de-
14 termined by the Attorney General to have the highest con-
15 centration of mortgage fraud.

16 (e) MANDATORY FUNCTIONS.—The Task Force, in-
17 cluding the branches of the Task Force established under
18 subsection (d), shall—

19 (1) establish coordinating entities, and solicit
20 the voluntary participation of Federal, State, and
21 local law enforcement and prosecutorial agencies in
22 such entities, to organize initiatives to address mort-
23 gage fraud, including initiatives to enforce State
24 mortgage fraud laws and other related Federal and
25 State laws;

1 (2) provide training to Federal, State, and local
2 law enforcement and prosecutorial agencies with re-
3 spect to mortgage fraud, including related Federal
4 and State laws;

5 (3) collect and disseminate data with respect to
6 mortgage fraud, including Federal, State, and local
7 data relating to mortgage fraud investigations and
8 prosecutions; and

9 (4) perform other functions determined by the
10 Attorney General to enhance the detection of, pre-
11 vention of, and response to mortgage fraud in the
12 United States.

13 (f) OPTIONAL FUNCTIONS.—The Task Force, includ-
14 ing the branches of the Task Force established under sub-
15 section (d), may—

16 (1) initiate and coordinate Federal mortgage
17 fraud investigations and, through the coordinating
18 entities established under subsection (e), State and
19 local mortgage fraud investigations;

20 (2) establish a toll-free hotline for—

21 (A) reporting mortgage fraud;

22 (B) providing the public with access to in-
23 formation and resources with respect to mort-
24 gage fraud; and

1 (C) directing reports of mortgage fraud to
2 the appropriate Federal, State, and local law
3 enforcement and prosecutorial agency, including
4 to the appropriate branch of the Task Force es-
5 tablished under subsection (d);

6 (3) create a database with respect to suspen-
7 sions and revocations of mortgage industry licenses
8 and certifications to facilitate the sharing of such in-
9 formation by States;

10 (4) make recommendations with respect to the
11 need for and resources available to provide the
12 equipment and training necessary for the Task
13 Force to combat mortgage fraud; and

14 (5) propose legislation to Federal, State, and
15 local legislative bodies with respect to the elimination
16 and prevention of mortgage fraud, including meas-
17 ures to address mortgage loan procedures and prop-
18 erty appraiser practices that provide opportunities
19 for mortgage fraud.

20 (g) DEFINITION.—In this section, the term “mort-
21 gage fraud” means a material misstatement, misrepresen-
22 tation, or omission relating to the property or potential
23 mortgage relied on by an underwriter or lender to fund,
24 purchase, or insure a loan.

1 **TITLE IV—FORECLOSURE**
2 **MORATORIUM PROVISIONS**

3 **SEC. 401. SENSE OF THE CONGRESS ON FORECLOSURES.**

4 (a) IN GENERAL.—It is the sense of the Congress
5 that mortgage holders, institutions, and mortgage
6 servicers should not initiate a foreclosure proceeding or
7 a foreclosure sale on any homeowner until the foreclosure
8 mitigation provisions, like the Hope for Homeowners pro-
9 gram, as required under title II, and the President’s
10 “Homeowner Affordability and Stability Plan” have been
11 implemented and determined to be operational by the Sec-
12 retary of Housing and Urban Development and the Sec-
13 retary of the Treasury.

14 (b) SCOPE OF MORATORIUM.—The foreclosure mora-
15 torium referred to in subsection (a) should apply only for
16 first mortgages secured by the owner’s principal dwelling.

17 (c) FHA-REGULATED LOAN MODIFICATION AGREE-
18 MENTS.—If a mortgage holder, institution, or mortgage
19 servicer to which subsection (a) applies reaches a loan
20 modification agreement with a homeowner under the aus-
21 pices of the Federal Housing Administration before any
22 plan referred to in such subsection takes effect, subsection
23 (a) shall cease to apply to such institution as of the effec-
24 tive date of the loan modification agreement.

1 (d) DUTY OF CONSUMER TO MAINTAIN PROPERTY.—
2 Any homeowner for whose benefit any foreclosure pro-
3 ceeding or sale is barred under subsection (a) from being
4 instituted, continued , or consummated with respect to any
5 homeowner mortgage should not, with respect to any prop-
6 erty securing such mortgage, destroy, damage, or impair
7 such property, allow the property to deteriorate, or commit
8 waste on the property.

9 (e) DUTY OF CONSUMER TO RESPOND TO REASON-
10 ABLE INQUIRIES.—Any homeowner for whose benefit any
11 foreclosure proceeding or sale is barred under subsection
12 (a) from being instituted, continued, or consummated with
13 respect to any homeowner mortgage should respond to
14 reasonable inquiries from a creditor or servicer during the
15 period during which such foreclosure proceeding or sale
16 is barred.

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111TH CONGRESS
1ST Session

S. 895

A BILL

To prevent mortgage foreclosures and enhance
mortgage credit availability.

APRIL 27, 2009

Read the second time and placed on the calendar