

112TH CONGRESS
1ST SESSION

H. R. 1587

To amend title 11 of the United States Code with respect to modification of certain mortgages on principal residences, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 15, 2011

Mr. CONYERS (for himself, Mr. NADLER, Mr. COHEN, and Mr. MILLER of North Carolina) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 11 of the United States Code with respect to modification of certain mortgages on principal residences, and for other purposes.

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.**

4 This Act may be cited as the “Home Foreclosure Re-
5 duction Act of 2011”.

6 **SEC. 2. DEFINITION.**

7 Section 101 of title 11, United States Code, is
8 amended by inserting after paragraph (43) the following

1 (and make such technical and conforming changes as may
2 be appropriate):

3 “(43A) The term ‘qualified loan modification’
4 means a loan modification agreement made in ac-
5 cordance with the guidelines of the Obama Adminis-
6 tration’s Homeowner Affordability and Stability
7 Plan as implemented March 4, 2009, that—

8 “(A) reduces the debtor’s payment (includ-
9 ing principal and interest, and payments for
10 real estate taxes, hazard insurance, mortgage
11 insurance premium, homeowners’ association
12 dues, ground rent, and special assessments) on
13 a loan secured by a senior security interest in
14 the principal residence of the debtor, to a per-
15 centage of the debtor’s income in accordance
16 with such guidelines, without any period of neg-
17 ative amortization or under which the aggregate
18 amount of the regular periodic payments would
19 not fully amortize the outstanding principal
20 amount of such loan;

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

24 “(C) permits the debtor to continue to
25 make payments under the modification agree-

1 ment notwithstanding the filing of a case under
2 this title, as if such case had not been filed.”.

3 **SEC. 3. ELIGIBILITY FOR RELIEF.**

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

6 (1) by adding at the end of subsection (e) the
7 following: “For purposes of this subsection, the com-
8 putation of debts shall not include the secured or
9 unsecured portions of—

10 “(1) debts secured by the debtor’s principal res-
11 idence if the value of such residence as of the date
12 of the order for relief under chapter 13 is less than
13 the applicable maximum amount of noncontingent,
14 liquidated, secured debts specified in this subsection;
15 or

16 “(2) debts secured or formerly secured by what
17 was the debtor’s principal residence that was sold in
18 foreclosure or that the debtor surrendered to the
19 creditor if the value of such real property as of the
20 date of the order for relief under chapter 13 was less
21 than the applicable maximum amount of noncontin-
22 gent, liquidated, secured debts specified in this sub-
23 section.”, and

24 (2) by adding at the end of subsection (h) the
25 following:

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

12 **SEC. 4. PROHIBITING CLAIMS ARISING FROM VIOLATIONS**
13 **OF THE TRUTH IN LENDING ACT.**

14 Section 502(b) of title 11, United States Code, is
15 amended—

16 (1) in paragraph (8) by striking “or” at the
17 end,

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

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

21 “(10) the claim for a loan secured by a security
22 interest in the debtor’s principal residence is subject
23 to a remedy for rescission under the Truth in Lend-
24 ing Act notwithstanding the prior entry of a fore-
25 closure judgment, except that nothing in this para-

1 graph shall be construed to modify, impair, or super-
2 sede any other right of the debtor.”.

3 **SEC. 5. AUTHORITY TO MODIFY CERTAIN MORTGAGES.**

4 Section 1322 of title 11, United States Code, is
5 amended—

6 (1) in subsection (b)—

7 (A) by redesignating paragraph (11) as
8 paragraph (12),

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

11 (C) by inserting after paragraph (10) the
12 following:

13 “(11) notwithstanding paragraph (2), with re-
14 spect to a claim for a loan originated before the ef-
15 fective date of this paragraph and secured by a secu-
16 rity interest in the debtor’s principal residence that
17 is the subject of a notice that a foreclosure may be
18 commenced with respect to such loan, modify the
19 rights of the holder of such claim (and the rights of
20 the holder of any claim secured by a subordinate se-
21 curity interest in such residence)—

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

1 “(B) if any applicable rate of interest is
2 adjustable under the terms of such loan by pro-
3 hibiting, reducing, or delaying adjustments to
4 such rate of interest applicable on and after the
5 date of filing of the plan;

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

8 “(i) to extend the repayment period
9 for a period that is no longer than the
10 longer of 40 years (reduced by the period
11 for which such loan has been outstanding)
12 or the remaining term of such loan, begin-
13 ning on the date of the order for relief
14 under this chapter; and

15 “(ii) to provide for the payment of in-
16 terest accruing after the date of the order
17 for relief under this chapter at a fixed an-
18 nual rate equal to the currently applicable
19 average prime offer rate as of the date of
20 the order for relief under this chapter, cor-
21 responding to the repayment term deter-
22 mined under the preceding paragraph, as
23 published by the Federal Financial Institu-
24 tions Examination Council in its table enti-

1 tled ‘Average Prime Offer Rates—Fixed’,
2 plus a reasonable premium for risk; and

3 “(D) by providing for payments of such
4 modified loan directly to the holder of the claim
5 or, at the discretion of the court, through the
6 trustee during the term of the plan; and”, and
7 (2) by adding at the end the following:

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

16 “(1) if such residence is sold in the 1st year oc-
17 curring after the effective date of the plan, 90 per-
18 cent of the amount of the difference between the
19 sales price and the amount of such claim as origi-
20 nally determined under subsection (b)(11) (plus
21 costs of sale and improvements), but not to exceed
22 the unpaid amount of the allowed secured claim de-
23 termined as if such claim had not been reduced
24 under such subsection;

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

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

19 “(4) if such residence is sold in the 4th year oc-
20 curring after the effective date of the plan, 30 per-
21 cent of the amount of the difference between the
22 sales price and the amount of such claim as origi-
23 nally determined under subsection (b)(11) (plus
24 costs of sale and improvements), but not to exceed
25 the unpaid amount of the allowed secured claim de-

1 terminated as if such claim had not been reduced
2 under such subsection; and

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

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

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

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

19 “(i) not less than 30 days before the
20 commencement of the case, contacted the
21 holder of such claim (or the entity col-
22 lecting payments on behalf of such holder)
23 regarding modification of the loan that is
24 the subject of such claim;

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

10 “(iii) considered any qualified loan
11 modification offered to the debtor by the
12 holder of the claim (or the entity collecting
13 payments on behalf of such holder); or

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

17 “(2) in any other case pending under this chap-
18 ter, unless the debtor certifies that the debtor at-
19 tempted to contact the holder of such claim (or the
20 entity collecting payments on behalf of such holder)
21 regarding modification of the loan that is the subject
22 of such claim, before—

23 “(A) filing a plan under section 1321 that
24 contains a modification under the authority of
25 subsection (b)(11); or

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

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

12 **SEC. 6. COMBATING EXCESSIVE FEES.**

13 Section 1322(c) of title 11, United States Code, is
14 amended—

15 (1) in paragraph (1) by striking “and” at the
16 end,

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

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

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

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

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

10 “(ii) 60 days before the closing of the
11 case; and

12 “(B) such fee, cost, or charge—

13 “(i) is lawful under applicable non-
14 bankruptcy law, reasonable, and provided
15 for in the applicable security agreement;
16 and

17 “(ii) is secured by property the value
18 of which is greater than the amount of
19 such claim, including such fee, cost, or
20 charge;

21 “(4) the failure of a party to give notice de-
22 scribed in paragraph (3) shall be deemed a waiver
23 of any claim for fees, costs, or charges described in
24 paragraph (3) for all purposes, and any attempt to
25 collect such fees, costs, or charges shall constitute a

1 violation of section 524(a)(2) or, if the violation oc-
2 curs before the date of discharge, of section 362(a);
3 and

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

7 **SEC. 7. CONFIRMATION OF PLAN.**

8 (a) Section 1325(a) of title 11, United States Code,
9 is amended—

10 (1) in the matter preceding paragraph (1)
11 strike “subsection (b)” and insert “subsections (b)
12 and (d)”.

13 (2) in paragraph (5)—

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

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

20 (3) in paragraph (8) by striking “and” at the
21 end,

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

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

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

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

9 “(B) completion of all payments under the
10 plan (or, if applicable, receipt of a discharge
11 under section 1328(b)); and

12 “(11) whenever the plan modifies a claim in ac-
13 cordance with section 1322(b)(11), the court finds
14 that such modification is in good faith (Lack of good
15 faith exists if the debtor has no need for relief under
16 this paragraph because the debtor can pay all of his
17 or her debts and any future payment increases on
18 such debts without difficulty for the foreseeable fu-
19 ture, including the positive amortization of mortgage
20 debt. In determining whether a reduction of the
21 principal amount of the loan resulting from a modi-
22 fication made under the authority of section
23 1322(b)(11) is made in good faith, the court shall
24 consider whether the holder of such claim (or the en-
25 tity collecting payments on behalf of such holder)

1 has offered to the debtor a qualified loan modifica-
2 tion that would enable the debtor to pay such debts
3 and such loan without reducing such principal
4 amount.) and does not find that the debtor has been
5 convicted of obtaining by actual fraud the extension,
6 renewal, or refinancing of credit that gives rise to a
7 modified claim.”.

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

12 “(d) Notwithstanding section 1322(b)(11)(C)(ii), the
13 court, on request of the debtor or the holder of a claim
14 secured by a senior security interest in the debtor’s prin-
15 cipal residence, may confirm a plan proposing a reduction
16 in the interest rate on the loan secured by such security
17 interest and that does not reduce the principal, provided
18 the total monthly mortgage payment is reduced to a per-
19 centage of the debtor’s income in accordance with the
20 guidelines of the Obama Administration’s Homeowner Af-
21 fordability and Stability Plan as implemented March 4,
22 2009, if, taking into account the debtor’s financial situa-
23 tion, after allowance of expenses that would be permitted
24 for a debtor under this chapter subject to paragraph (3)
25 of subsection (b), regardless of whether the debtor is oth-

1 erwise subject to such paragraph, and taking into account
2 additional debts and fees that are to be paid in this chap-
3 ter and thereafter, the debtor would be able to prevent
4 foreclosure and pay a fully amortizing 30-year loan at
5 such reduced interest rate without such reduction in prin-
6 cipal.”.

7 **SEC. 8. DISCHARGE.**

8 Section 1328(a) of title 11, United States Code, is
9 amended—

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

13 (2) in paragraph (1) by inserting “or, to the ex-
14 tent of the unpaid portion of an allowed secured
15 claim, provided for in section 1322(b)(11)” after
16 “1322(b)(5)”.

17 **SEC. 9. STANDING TRUSTEE FEES.**

18 (a) AMENDMENT TO TITLE 28.—Section
19 586(e)(1)(B)(i) of title 28, United States Code, is amend-
20 ed—

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

23 (2) by striking “or” at the end and inserting
24 “and”, and

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

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

17 (b) CONFORMING PROVISION.—The amendments
18 made by this section shall apply to any trustee to whom
19 the provisions of section 302(d)(3) of the Bankruptcy
20 Judges, United States Trustees, and Family Farmer
21 Bankruptcy Act of 1986 (Public Law 99–554; 100 Stat.
22 3121) apply.

23 **SEC. 10. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

24 (a) EFFECTIVE DATE.—Except as provided in sub-
25 section (b), this subtitle and the amendments made by this

1 subtitle shall take effect on the date of the enactment of
2 this Act.

3 (b) APPLICATION OF AMENDMENTS.—

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

9 (2) LIMITATION.—Paragraph (1) shall not
10 apply with respect to cases closed under title 11 of
11 the United States Code as of the date of the enact-
12 ment of this Act that are neither pending on appeal
13 in, nor appealable to, any court of the United
14 States.

15 **SEC. 11. GAO STUDY.**

16 The Comptroller General shall carry out a study, and
17 submit to the Committee on the Judiciary of the House
18 of Representatives and the Committee on the Judiciary
19 of the Senate, not later than 2 years after the date of
20 the enactment of this Act a report containing—

21 (1) the results of such study of—

22 (A) the number of debtors who filed, dur-
23 ing the 1-year period beginning on the date of
24 the enactment of this Act, cases under chapter
25 13 of title 11 of the United States Code for the

1 purpose of restructuring their principal resi-
2 dence mortgages,

3 (B) the number of mortgages restructured
4 under the amendments made by this subtitle
5 that subsequently resulted in default and fore-
6 closure,

7 (C) a comparison between the effectiveness
8 of mortgages restructured under programs out-
9 side of bankruptcy, such as Hope Now and
10 Help for Homeowners, and mortgages restruc-
11 tured under the amendments made by this sub-
12 title,

13 (D) the number of cases presented to the
14 bankruptcy courts where mortgages were re-
15 structured under the amendments made by this
16 subtitle that were appealed,

17 (E) the number of cases presented to the
18 bankruptcy courts where mortgages were re-
19 structured under the amendments made by the
20 subtitle that were overturned on appeal, and

21 (F) the number of bankruptcy judges dis-
22 ciplined as a result of actions taken to restruc-
23 ture mortgages under the amendments made by
24 this subtitle, and

1 (2) a recommendation as to whether such
2 amendments should be amended to include a sunset
3 clause.

4 **SEC. 12. REPORT TO CONGRESS.**

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

9 (1) a comprehensive review of the effects of the
10 amendments made by this subtitle on bankruptcy
11 court,

12 (2) a survey of whether the program should
13 limit the types of homeowners eligible for the pro-
14 gram, and

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

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