

Union Calendar No. 382

110TH CONGRESS
2D SESSION

H. R. 5579

[Report No. 110-615]

To remove an impediment to troubled debt restructuring on the part of holders of residential mortgage loans, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 11, 2008

Mr. CASTLE (for himself and Mr. KANJORSKI) introduced the following bill;
which was referred to the Committee on Financial Services

MAY 1, 2008

Additional sponsor: Mr. SHERMAN

MAY 1, 2008

Reported with an amendment, committed to the Committee of the Whole
House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italics]

[For text of introduced bill, see copy of bill as introduced on March 11, 2008]

A BILL

To remove an impediment to troubled debt restructuring
on the part of holders of residential mortgage loans,
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,*

1 **SECTION 1. SHORT TITLE.**

2 *This Act may be cited as the “Emergency Mortgage*
 3 *Loan Modification Act of 2008”.*

4 **SEC. 2. SAFE HARBOR FOR QUALIFIED LOAN MODIFICA-**
 5 **TIONS OR WORKOUT PLANS FOR CERTAIN**
 6 **RESIDENTIAL MORTGAGE LOANS.**

7 (a) *STANDARD FOR LOAN MODIFICATIONS OR WORK-*
 8 *OUT PLANS.*—*Absent contractual provisions to the con-*
 9 *trary—*

10 (1) *the duty to maximize, or to not adversely af-*
 11 *fect, the recovery of total proceeds from pooled resi-*
 12 *dential mortgage loans is owed by a servicer of such*
 13 *pooled loans to the securitization vehicle for the ben-*
 14 *efit of all investors and holders of beneficial interests*
 15 *in the pooled loans, in the aggregate, and not to any*
 16 *individual party or group of parties; and*

17 (2) *a servicer of pooled residential mortgage*
 18 *loans shall be deemed to be acting on behalf of the*
 19 *securitization vehicle in the best interest of all inves-*
 20 *tors and holders of beneficial interests in the pooled*
 21 *loans, in the aggregate, if for a loan that is in pay-*
 22 *ment default under the loan agreement or for which*
 23 *payment default is imminent or reasonably foresee-*
 24 *able, the loan servicer makes reasonable and docu-*
 25 *mented efforts to implement a modification or work-*
 26 *out plan or, if such efforts are unsuccessful or such*

1 *plan would be infeasible, engages in other loss mitiga-*
2 *tion, including accepting a short payment or partial*
3 *discharge of principal, or agreeing to a short sale of*
4 *the property, to the extent that the servicer reasonably*
5 *believes the particular modification or workout plan*
6 *or other mitigation actions will maximize the net*
7 *present value to be realized on the loan, including*
8 *over that which would be realized through foreclosure.*

9 *(b) SAFE HARBOR.—Absent contractual provisions to*
10 *the contrary, a servicer of a residential mortgage loan that*
11 *acts in a manner consistent with the duty set forth in sub-*
12 *section (a), shall not be liable for entering into a qualified*
13 *loan modification or workout plan, to—*

14 *(1) any person, based on that person’s ownership*
15 *of a residential mortgage loan or any interest in a*
16 *pool of residential mortgage loans or in securities that*
17 *distribute payments out of the principal, interest and*
18 *other payments in loans on the pool;*

19 *(2) any person who is obligated pursuant to a*
20 *derivatives instrument to make payments determined*
21 *in reference to any loan or any interest referred to in*
22 *paragraph (1); or*

23 *(3) any person that insures any loan or any in-*
24 *terest referred to in paragraph (1) under any law or*
25 *regulation of the United States or any law or regula-*

1 *tion of any State or political subdivision of any*
2 *State.*

3 (c) *RULE OF CONSTRUCTION.*—*No provision of this*
4 *section shall be construed as limiting the ability of a*
5 *servicer to enter into loan modifications or workout plans*
6 *other than qualified loan modification or workout plans.*

7 (d) *DEFINITIONS.*—*For purposes of this section, the*
8 *following definitions shall apply:*

9 (1) *QUALIFIED LOAN MODIFICATION OR WORK-*
10 *OUT PLAN.*—*The term “qualified loan modification or*
11 *workout plan” means a modification or plan that—*

12 (A) *is scheduled to remain in place until*
13 *the borrower sells or refinances the property, or*
14 *for at least 5 years from the date of adoption of*
15 *the plan, whichever is sooner;*

16 (B) *does not provide for a repayment sched-*
17 *ule that results in negative amortization at any*
18 *time; and*

19 (C) *does not require the borrower to pay ad-*
20 *ditional points and fees.*

21 (2) *NEGATIVE AMORTIZATION.*—*For purposes of*
22 *paragraph (1), the term “negative amortization” does*
23 *not include the capitalization of delinquent interest*
24 *and arrearages.*

1 (3) *RESIDENTIAL MORTGAGE LOAN DEFINED.*—

2 *The term “residential mortgage loan” means a loan*
3 *that is secured by a lien on an owner-occupied resi-*
4 *dential dwelling.*

5 (4) *SECURITIZATION VEHICLE.*—*The term*
6 *“securitization vehicle” means a trust, corporation,*
7 *partnership, limited liability entity, special purpose*
8 *entity, or other structure that—*

9 *(A) is the issuer, or is created by the issuer,*
10 *of mortgage pass-through certificates, participa-*
11 *tion certificates, mortgage-backed securities, or*
12 *other similar securities backed by a pool of assets*
13 *that includes residential mortgage loans; and*

14 *(B) holds such loans.*

15 (e) *EFFECTIVE PERIOD.*—*This section shall apply only*
16 *with respect to qualified loan modification or workout plans*
17 *initiated prior to January 1, 2011.*

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