

112TH CONGRESS
2D SESSION

H. R. 4058

To amend title 11 of the United States Code to provide authority to modify certain mortgages on principal residences of debtors to prevent foreclosure; and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 16, 2012

Mr. BLUMENAUER introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Financial Services and Veterans' Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title 11 of the United States Code to provide authority to modify certain mortgages on principal residences of debtors to prevent foreclosure; 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 “Bankruptcy Equity
5 Act of 2012”.

1 **TITLE I—AMENDMENTS TO**
2 **TITLE 11 OF THE UNITED**
3 **STATES CODE**

4 **SEC. 101. ELIGIBILITY FOR RELIEF.**

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

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

11 “(1) debts secured by the debtor’s principal res-
12 idence if the current value of that residence is less
13 than the secured debt limit; or

14 “(2) debts secured or formerly secured by real
15 property that was the debtor’s principal residence
16 that was sold in foreclosure or that the debtor sur-
17 rendered to the creditor if the current value of such
18 real property is less than the secured debt limit.”;
19 and

20 (2) by adding at the end of subsection (h) the
21 following:

22 “(5) The requirements of paragraph (1) shall not
23 apply in a case under chapter 13 with respect to a debtor
24 who submits to the court a certification that the debtor
25 has received notice that the holder of a claim secured by

1 the debtor's principal residence may commence a fore-
2 closure on the debtor's principal residence.”.

3 **SEC. 102. 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) and other-
14 wise applicable nonbankruptcy law, with respect to a
15 claim for a loan originated before the effective date
16 of this paragraph and secured by a security interest
17 in the debtor's principal residence that is the subject
18 of a notice that a foreclosure may be commenced
19 with respect to such loan, modify the rights of the
20 holder of such claim (and the rights of the holder of
21 any claim secured by a subordinate security interest
22 in such residence)—

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

1 “(B) if any applicable rate of interest is
2 adjustable under the terms of such security in-
3 terest by prohibiting, reducing, or delaying ad-
4 justments to such rate of interest applicable on
5 and after the 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
5 claim; and”, and

6 (2) by adding at the end the following:

7 “(g) A claim may be reduced under subsection
8 (b)(11)(A) only on the condition that if the debtor sells
9 the principal residence securing such claim, before receiv-
10 ing a discharge under this chapter and receives net pro-
11 ceeds from the sale of such residence, then the debtor
12 agrees to pay to such holder—

13 “(1) if such residence is sold in the 1st year oc-
14 ccurring after the effective date of the plan, 80 per-
15 cent of the amount of the difference between the
16 sales price and the amount of such claim (plus costs
17 of sale and improvements), but not to exceed the
18 amount of the allowed secured claim determined as
19 if such claim had not been reduced under such sub-
20 section;

21 “(2) if such residence is sold in the 2d year oc-
22 ccurring after the effective date of the plan, 60 per-
23 cent of the amount of the difference between the
24 sales price and the amount of such claim (plus costs
25 of sale and improvements), but not to exceed the

1 amount of the allowed secured claim determined as
2 if such claim had not been reduced under such sub-
3 section;

4 “(3) if such residence is sold in the 3d year oc-
5 ccurring after the effective date of the plan, 40 per-
6 cent of the amount of the difference between the
7 sales price and the amount of such claim (plus costs
8 of sale and improvements), but not to exceed the
9 amount of the allowed secured claim determined as
10 if such claim had not been reduced under such sub-
11 section; and

12 “(4) if such residence is sold in the 4th year oc-
13 ccurring after the effective date of the plan, 20 per-
14 cent of the amount of the difference between the
15 sales price and the amount of such claim (plus costs
16 of sale and improvements), but not to exceed the
17 amount of the allowed secured claim determined as
18 if such claim had not been reduced under such sub-
19 section.

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

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

1 “(A) the debtor certifies that the debtor
 2 attempted, not less than 15 days before the
 3 commencement of the case, to contact the hold-
 4 er of such claim (or the entity collecting pay-
 5 ments on behalf of such holder) regarding
 6 modification of the loan that is the subject of
 7 such claim; or

8 “(B) a foreclosure sale is scheduled to
 9 occur on a date in the 30-day period beginning
 10 on the date the case is commenced; and

11 “(2) in any other case pending under this chap-
 12 ter, unless the debtor certifies that the debtor at-
 13 tempted to contact the holder of such claim (or the
 14 entity collecting payments on behalf of such holder)
 15 regarding modification of the loan that is the subject
 16 of such claim, before—

17 “(A) filing a plan under section 1321 that
 18 contains a modification under the authority of
 19 subsection (b)(11); or

20 “(B) modifying a plan under section 1323
 21 or 1329 to contain a modification under the au-
 22 thority of subsection (b)(11).”.

23 **SEC. 103. COMBATING EXCESSIVE FEES.**

24 Section 1322(c) of title 11, the United States Code,
 25 is amended—

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

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

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

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

11 “(A) the holder of the claim for such debt
12 files with the court (annually or, in order to
13 permit filing consistent with clause (ii), at such
14 more frequent periodicity as the court deter-
15 mines necessary) notice of such fee, cost, or
16 charge before the earlier of—

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

19 “(ii) 60 days before the closing of the
20 case; and

21 “(B) such fee, cost, or charge—

22 “(i) is lawful under applicable non-
23 bankruptcy law, reasonable, and provided
24 for in the applicable security agreement;
25 and

1 “(ii) is secured by property the value
2 of which is greater than the amount of
3 such claim, including such fee, cost, or
4 charge;

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

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

16 **SEC. 104. CONFIRMATION OF PLAN.**

17 Section 1325(a) of title 11, the United States Code,
18 is amended—

19 (1) in paragraph (8) by striking “and” at the
20 end,

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

23 (3) by inserting after paragraph (9) the fol-
24 lowing:

1 “(10) notwithstanding subclause (I) of para-
 2 graph (5)(B)(i), the plan provides that the holder of
 3 a claim whose rights are modified pursuant to sec-
 4 tion 1322(b)(11) retain the lien until the later of—

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

7 “(B) discharge under section 1328; and

8 “(11) the plan modifies a claim in accordance
 9 with section 1322(b)(11), and the court finds that
 10 such modification is in good faith.”.

11 **SEC. 105. DISCHARGE.**

12 Section 1328 of title 11, the United States Code, is
 13 amended—

14 (1) in subsection (a)—

15 (A) by inserting “(other than payments to
 16 holders of claims whose rights are modified
 17 under section 1322(b)(11)” after “paid” the
 18 1st place it appears, and

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

23 (2) in subsection (c)(1) by inserting “or, to the
 24 extent of the unpaid portion of an allowed secured

1 claim, provided for in section 1322(b)(11)” after
2 “1322(b)(5)”.

3 **SEC. 106. EFFECTIVE DATE; APPLICATION OF AMEND-**
4 **MENTS.**

5 (a) EFFECTIVE DATE.—Except as provided in sub-
6 section (b), this title and the amendments made by this
7 title shall take effect on the date of the enactment of this
8 Act.

9 (b) APPLICATION OF AMENDMENTS.—

10 (1) IN GENERAL.—Except as provided in para-
11 graph (2), the amendments made by this title shall
12 apply with respect to cases commenced under title
13 11 of the United States Code before, on, or after the
14 date of the enactment of this Act.

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

1 **TITLE II—RELATED MORTGAGE**
2 **MODIFICATION PROVISIONS**

3 **SEC. 201. ADJUSTMENTS AS A RESULT OF MODIFICATION**
4 **IN BANKRUPTCY OF HOUSING LOANS GUAR-**
5 **ANTEED BY THE DEPARTMENT OF VETERANS**
6 **AFFAIRS.**

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

9 (1) in subsection (a)—

10 (A) by redesignating paragraph (2) as sub-
11 paragraph (A) of paragraph (2), and

12 (2) by inserting after subparagraph (A) the fol-
13 lowing new subparagraph:

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

1 terest, claims, evidence, and records with re-
2 spect to the housing loan.”.

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

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

11 **SEC. 202. PAYMENT OF FHA MORTGAGE INSURANCE BENE-**
12 **FITS.**

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

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

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

20 “(i) AUTHORITY.—If an order is en-
21 tered under the authority provided under
22 section 1322(b) of title 11, United States
23 Code, that (a) determines the amount of
24 an allowed secured claim under a mortgage
25 in accordance with section 506(a)(1) of

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

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

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

14 “(II) ASSIGNMENT OF UNSE-
15 CURED CLAIM.—The Secretary may
16 make a partial payment of the insur-
17 ance benefits for any unsecured claim
18 under the mortgage, but only upon
19 the assignment to the Secretary of
20 any unsecured claim of the mortgagee
21 against the mortgagor or others aris-
22 ing out of such order. Such assign-
23 ment shall be deemed valid irrespec-
24 tive of whether such claim has been or
25 will be discharged under title 11 of

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

9 “(III) INTEREST PAYMENTS.—

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

18 “(ii) DELIVERY OF EVIDENCE OF
19 ENTRY OF ORDER.—Notwithstanding any
20 other provision of this paragraph, no insur-
21 ance benefits may be paid pursuant to this
22 subparagraph for a mortgage before deliv-
23 ery to the Secretary of evidence of the
24 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. 203. 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.

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