HELPING FAMILIES SAVE THEIR HOMES ACT OF 2009

The SPEAKER pro tempore. Pursuant to House Resolution 205 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 1106.

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IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the further consideration of the bill (H.R. 1106) to prevent mortgage foreclosures and enhance mortgage credit availability, with Mr. SALAZAR (Acting Chair) in the chair.

The Clerk read the title of the bill.

The Acting CHAIR. When the Committee of the Whole rose on Thursday, February 26, 2009, all time for general debate pursuant to House Resolution 190 had expired.

Pursuant to House Resolution 205, amendment No. 1, printed in House Report 111–21, shall be considered as perfected by the modification printed in House Report 111–23.

Pursuant to House Resolution 190, the bill shall be considered read for amendment under the 5-minute rule.

The text of the bill is as follows:

H.R. 1106

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as ''Helping Families Save Their Homes Act of 2009''.

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

TITLE I—PREVENTION OF MORTGAGE FORECLOSURES

Subtitle A—Modification of Residential Mortgages

SEC. 101. ELIGIBILITY FOR RELIEF.

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

(1) by adding at the end of subsection (e) the following: ''For purposes of this subsection, the computation of debts shall not include the secured or unsecured portions of—

''(1) debts secured by the debtor's principal residence if the value of such residence as of the date of the order for relief under chapter 13 is less than the applicable maximum amount of noncontingent, liquidated, secured debts specified in this subsection; or

''(2) debts secured or formerly secured by what was the debtor's principal residence that was sold in foreclosure or that the debtor surrendered to the creditor if the value of such real property as of the date of the order for relief under chapter 13 was less than the applicable maximum amount of noncontingent, liquidated, secured debts specified in this subsection.'', and

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

''(5) The requirements of paragraph (1) shall not apply in a case under chapter 13 with respect to a debtor who submits to the court a certification that the debtor has received notice that the holder of a claim secured by the debtor's principal residence may commence a foreclosure on the debtor's principal residence.''.

SEC. 102. PROHIBITING CLAIMS ARISING FROM VIOLATIONS OF THE TRUTH IN LENDING ACT.

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

(1) in paragraph (8) by striking ''or'' at the end,

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

(3) by adding at the end the following:

''(10) the claim for a loan secured by a security interest in the debtor's principal residence is subject to a remedy for rescission under the Truth in Lending Act notwithstanding the prior entry of a foreclosure judgment, except that nothing in this paragraph shall be construed to modify, impair, or supersede any other right of the debtor.''.

SEC. 103. AUTHORITY TO MODIFY CERTAIN MORTGAGES.

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

(1) in subsection (b)—

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

(B) in paragraph (10) by striking ''and'' at the end, and

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

''(11) notwithstanding paragraph (2), with respect to a claim for a loan originated before the effective date of this paragraph and secured by a security interest in the debtor's principal residence that is the subject of a notice that a foreclosure may be commenced with respect to such loan, modify the rights of the holder of such claim (and the rights of the holder of any claim secured by a subordinate security interest in such residence)—

''(A) by providing for payment of the amount of the allowed secured claim as determined under section 506(a)(1);

''(B) if any applicable rate of interest is adjustable under the terms of such loan by prohibiting, reducing, or delaying adjustments to such rate of interest applicable on and after the date of filing of the plan;

''(C) by modifying the terms and conditions of such loan—

''(i) to extend the repayment period for a period that is no longer than the longer of 40 years (reduced by the period for which such loan has been outstanding) or the remaining term of such loan, beginning on the date of the order for relief under this chapter; and

''(ii) to provide for the payment of interest accruing after the date of the order for relief under this chapter at a fixed annual rate equal to the currently applicable average prime offer rate as of the date of the order for relief under this chapter, corresponding to the repayment term determined under the preceding paragraph, as published by the Federal Financial Institutions Examination Council in its table entitled 'Average Prime Offer Rates—Fixed', plus a reasonable premium for risk; and

''(D) by providing for payments of such modified loan directly to the holder of the claim or, at the discretion of the court, through the trustee during the term of the plan; and'', and

(2) by adding at the end the following:

''(g) A claim may be reduced under subsection (b)(11)(A) only on the condition that if the debtor sells the principal residence securing such claim, before completing all payments under the plan (or, if applicable, before receiving a discharge under section 1328(b)) and receives net proceeds from the sale of such residence, then the debtor agrees to pay to such holder not later than 15 days after receiving such proceeds—

''(1) if such residence is sold in the 1st year occurring after the effective date of the plan, 80 percent of the amount of the difference between the sales price and the amount of such claim as originally determined under section 1322(b)(11) (plus costs of sale and improvements), but not to exceed the unpaid amount of the allowed secured claim determined as if such claim had not been reduced under such subsection;

''(2) if such residence is sold in the 2d year occurring after the effective date of the plan, 60 percent of the amount of the difference between the sales price and the amount of such claim as originally determined under section 1322(b)(11) (plus costs of sale and improvements), but not to exceed the unpaid amount of the allowed secured claim determined as if such claim had not been reduced under such subsection;

''(3) if such residence is sold in the 3d year occurring after the effective date of the plan, 40 percent of the amount of the difference between the sales price and the amount of such claim as originally determined under section 1322(b)(11) (plus costs of sale and improvements), but not to exceed the unpaid amount of the allowed secured claim determined as if such claim had not been reduced under such subsection; and

''(4) if such residence is sold in the 4th year occurring after the effective date of the plan, 20 percent of the amount of the difference between the sales price and the amount of such claim as originally determined under section 1322(b)(11) (plus costs of sale and improvements), but not to exceed the unpaid amount of the allowed secured claim determined as if such claim had not been reduced under such subsection.

''(h) With respect to a claim of the kind described in subsection (b)(11), the plan may not contain a modification under the authority of subsection (b)(11)—

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

''(A) the debtor certifies that the debtor attempted, not less than 15 days before the commencement of the case, to contact the holder of such claim (or the entity collecting payments on behalf of such holder) regarding modification of the loan that is the subject of such claim; or

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

''(2) in any other case pending under this chapter, unless the debtor certifies that the debtor attempted to contact the holder of such claim (or the entity collecting payments on behalf of such holder) regarding modification of the loan that is the subject of such claim, before—

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

''(B) modifying a plan under section 1323 or 1329 to contain a modification under the authority of subsection (b)(11).

''(i) In determining the holder's allowed secured claim under section 506(a)(1) for purposes of subsection (b)(11)(A), the value of the debtor's principal residence shall be the fair market value of such residence on the date such value is determined.''.

SEC. 104. COMBATING EXCESSIVE FEES.

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

(1) in paragraph (1) by striking ''and'' at the end,

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

(3) by adding at the end the following:

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

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

''(i) 1 year after such fee, cost, or charge is incurred; or

''(ii) 60 days before the closing of the case; and

''(B) such fee, cost, or charge—

''(i) is lawful under applicable nonbankruptcy law, reasonable, and provided for in the applicable security agreement; and

''(ii) is secured by property the value of which is greater than the amount of such claim, including such fee, cost, or charge;

''(4) the failure of a party to give notice described in paragraph (3) shall be deemed a waiver of any claim for fees, costs, or charges described in paragraph (3) for all purposes, and any attempt to collect such fees, costs, or charges shall constitute a violation of section 524(a)(2) or, if the violation occurs before the date of discharge, of section 362(a); and

''(5) a plan may provide for the waiver of any prepayment penalty on a claim secured by the debtor's principal residence.''.

SEC. 105. CONFIRMATION OF PLAN.

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

(1) in paragraph (5) by inserting ''except as otherwise provided in section 1322(b)(11),'' after ''(5)'',

(2) in paragraph (8) by striking ''and'' at the end,

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

(4) by inserting after paragraph (9) the following:

''(10) notwithstanding subclause (I) of paragraph (5)(B)(i), whenever the plan modifies a claim in accordance with section 1322(b)(11), the holder of a claim whose rights are modified pursuant to section 1322(b)(11) shall retain the lien until the later of—

''(A) the payment of such holder's allowed secured claim; or

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

''(11) whenever the plan modifies a claim in accordance with section 1322(b)(11), the court finds that such modification is in good faith and does not find that the debtor has been convicted of obtaining by actual fraud the extension, renewal, or refinancing of credit that gives rise to a modified claim.''.

SEC. 106. DISCHARGE.

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

(1) by inserting ''(other than payments to holders of claims whose rights are modified under section 1322(b)(11))'' after ''paid'', and

(2) in paragraph (1) by inserting ''or, to the extent of the unpaid portion of an allowed secured claim, provided for in section 1322(b)(11)'' after ''1322(b)(5)''.

SEC. 107. STANDING TRUSTEE FEES.

(a) AMENDMENT TO TITLE 28.—Section 586(e)(1)(B)(i) of title 28, United States Code, is amended—

(1) by inserting ''(I) except as provided in subparagraph (II)'' after ''(i)'',

(2) by striking ''or'' at the end and inserting ''and'', and

(3) by adding at the end the following:

''(II) 4 percent with respect to payments received under section 1322(b)(11) of title 11 by the individual as a result of the operation of section 1322(b)(11)(D) of title 11, unless the bankruptcy court waives all fees with respect to such payments based on a determination that such individual has income less than 150 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved and payment of such fees would render the debtor's plan infeasible.''.

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

SEC. 108. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this subtitle and the amendments made by this subtitle shall take effect on the date of the enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—

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

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

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.

(a) IN GENERAL.—Subsection (a) of section 3732 of title 38, United States Code is amended—

(1) in subsection (a)—

(A) by redesignating paragraph (2) as subparagraph (A) of paragraph (2), and

(2) by inserting after subparagraph (A) the following new subparagraph:

''(B) In the event that a housing loan guaranteed under this chapter is modified under the authority provided under section 1322(b) of title 11, United States Code, the Secretary may pay the holder of the obligation the unpaid balance of the obligation due as of the date of the filing of the petition under title 11, United States Code, plus accrued interest, but only upon the assignment, transfer, and delivery to the Secretary (in a form and manner satisfactory to the Secretary) of all rights, interest, claims, evidence, and records with respect to the housing loan.''.

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

(c) IMPLEMENTATION.—The Secretary of Veterans Affairs may implement the amendments made by this section through notice, procedure notice, or administrative notice.

SEC. 122. PAYMENT OF FHA MORTGAGE INSURANCE BENEFITS.

(a) IN GENERAL.—Subsection (a) of section 204 of the National Housing Act (12 U.S.C. 1710(a)) is amended—

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

''(E) MODIFICATION OF MORTGAGE IN BANKRUPTCY.—

''(i) AUTHORITY.—If an order is entered under the authority provided under section 1322(b) of title 11, United States Code, that (a) determines the amount of an allowed secured claim under a mortgage in accordance with section 506(a)(1) of title 11, United States Code, and the amount of such allowed secured claim is less than the amount due under the mortgage as of the date of the filing of the petition under title 11, United States Code, or (b) reduces the interest to be paid under a mortgage in accordance with section 1325 of such title, the Secretary may pay insurance benefits for the mortgage as follows:

''(I) FULL PAYMENT AND ASSIGNMENT.—The Secretary may pay the insurance benefits for the mortgage, but only upon the assignment, transfer, and delivery to the Secretary of all rights, interest, claims, evidence, and records with respect to the mortgage specified in clauses (i) through (iv) of paragraph (1)(A). The insurance benefits shall be paid in the amount equal to the original principal obligation of the mortgage (with such additions and deductions as the Secretary determines are appropriate) which was unpaid upon the date of the filing of by the mortgagor of the petition under title 11 of the United States Code. Nothing in this Act may be construed to prevent the Secretary from providing insurance under this title for a mortgage that has previously been assigned to the Secretary under this subclause. The decision of whether to utilize the authority under this subclause for payment and assignment shall be at the election of the mortgagee, subject to such terms and conditions as the Secretary may establish.

''(II) ASSIGNMENT OF UNSECURED CLAIM.—The Secretary may make a partial payment of the insurance benefits for any unsecured claim under the mortgage, but only upon the assignment to the Secretary of any unsecured claim of the mortgagee against the mortgagor or others arising out of such order. Such assignment shall be deemed valid irrespective of whether such claim has been or will be discharged under title 11 of the United States Code. The insurance benefits shall be paid in the amount specified in subclause (I) of this clause, as such amount

is reduced by the amount of the allowed secured claim. Such allowed secured claim shall continue to be insured under section 203.

''(III) INTEREST PAYMENTS.—The Secretary may make periodic payments, or a one-time payment, of insurance benefits for interest payments that are reduced pursuant to such order, as determined by the Secretary, but only upon assignment to the Secretary of all rights and interest related to such payments.

''(ii) DELIVERY OF EVIDENCE OF ENTRY OF ORDER.—Notwithstanding any other provision of this paragraph, no insurance benefits may be paid pursuant to this subparagraph for a mortgage before delivery to the Secretary of evidence of the entry of the order issued pursuant to title 11, United States Code, in a form satisfactory to the Secretary.'';

(2) in paragraph (5), in the matter preceding subparagraph (A), by inserting after ''section 520, and'' the following: '', except as provided in paragraph (1)(E),''; and

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

''(10) LOAN MODIFICATION PROGRAM.—

''(A) AUTHORITY.—The Secretary may carry out a program solely to encourage loan modifications for eligible delinquent mortgages through the payment of insurance benefits and assignment of the mortgage to the Secretary and the subsequent modification of the terms of the mortgage according to a loan modification approved by the mortgagee.

''(B) PAYMENT OF BENEFITS AND ASSIGNMENT.—Under the program under this paragraph, the Secretary may pay insurance benefits for a mortgage, in the amount determined in accordance with paragraph (5)(A), without reduction for any amounts modified, but only upon the assignment, transfer, and delivery to the Secretary of all rights, interest, claims, evidence, and records with respect to the mortgage specified in clauses (i) through (iv) of paragraph (1)(A).

''(C) DISPOSITION.—After modification of a mortgage pursuant to this paragraph, the Secretary may provide insurance under this title for the mortgage. The Secretary may subsequently—

''(i) re-assign the mortgage to the mortgagee under terms and conditions as are agreed to by the mortgagee and the Secretary;

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

''(iii) re-sell the mortgage in accordance with any program that has been established for purchase by the Federal Government of mortgages insured under this title, and the Secretary may coordinate standards for interest rate reductions available for loan modification with interest rates established for such purchase.

''(D) LOAN SERVICING.—In carrying out the program under this section, the Secretary may require the existing servicer of a mortgage assigned to the Secretary under the program to continue servicing the mortgage as an agent of the Secretary during the period that the Secretary acquires and holds the mortgage for the purpose of modifying the terms of the mortgage. If the mortgage is resold pursuant to subparagraph (C)(iii), the Secretary may provide for the existing servicer to continue to service the mortgage or may engage another entity to service the mortgage.''.

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

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

SEC. 123. ADJUSTMENTS AS RESULT OF MODIFICATION OF RURAL SINGLE FAMILY HOUSING LOANS IN BANKRUPTCY.

(a) GUARANTEED RURAL HOUSING LOANS.—Subsection (h) of section 502 of the Housing Act of 1949 (42 U.S.C. 1472(h)) is amended—

(1) in paragraph (7)—

(A) in subparagraph (A), by inserting before the period at the end the following: '', unless the maturity date of the loan is modified in a bankruptcy proceeding or at the discretion of the Secretary''; and

(B) in subparagraph (B), by inserting before the semicolon the following: '', unless such rate is modified in a bankruptcy proceeding'';

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

(3) by inserting after paragraph (12) the following new paragraph:

''(13) PAYMENT OF GUARANTEE.—In addition to all other authorities to pay a guarantee claim, the Secretary may also pay the guaranteed portion of any losses incurred by the holder of a note or the servicer resulting from a modification of a note by a bankruptcy proceeding.''.

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

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

(2) by inserting after paragraph (1) the following new paragraph:

''(2) to pay for losses incurred by holders or servicers in the event of a modification pursuant to a bankruptcy proceeding;''.

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

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

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

TITLE II—FORECLOSURE MITIGATION AND CREDIT AVAILABILITY

SEC. 201. SERVICER SAFE HARBOR FOR MORTGAGE LOAN MODIFICATIONS.

(a) SAFE HARBOR.—

(1) LOAN MODIFICATIONS AND WORKOUT PLANS.—Notwithstanding any other provision of law, and notwithstanding any investment contract between a servicer and a securitization vehicle or investor, a servicer that acts consistent with the duty set forth in section 129A(a) of Truth in Lending Act (15 U.S.C. 1639a) shall not be liable for entering into a loan modification, workout, or other loss mitigation plan, including, but not limited to, disposition with respect to any such mortgage that meets all of the criteria set forth in paragraph (2)(B) to—

(A) any person, based on that person's ownership of a residential mortgage loan or any interest in a pool of residential mortgage loans or in securities that distribute payments out of the principal, interest and other payments in loans on the pool;

(B) any person who is obligated pursuant to a derivatives instrument to make payments determined in reference to any loan or any interest referred to in subparagraph (A); or

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

(2) ABILITY TO MODIFY MORTGAGES.—

(A) ABILITY.—Notwithstanding any other provision of law, and notwithstanding any investment contract between a servicer and a securitization vehicle or investor, a servicer—

(i) shall not be limited in the ability to modify mortgages, the number of mortgages that can be modified, the frequency of loan modifications, or the range of permissible modifications; and

(ii) shall not be obligated to repurchase loans from or otherwise make payments to the securitization vehicle on account of a modification, workout, or other loss mitigation plan for a residential mortgage or a class of residential mortgages that constitute a part or all of the mortgages in the securitization vehicle,

if any mortgage so modified meets all of the criteria set forth in subparagraph (B).

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

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

(ii) The property securing such mortgage is occupied by the mortgagor of such mortgage.

(iii) The servicer reasonably and in good faith believes that the anticipated recovery on the principal outstanding obligation of the mortgage under the particular modification or workout plan or other loss mitigation action will exceed, on a net present value basis, the anticipated recovery on the principal outstanding obligation of the mortgage to be realized through foreclosure.

(3) APPLICABILITY.—This subsection shall apply only with respect to modifications, workouts, and other loss mitigation plans initiated before January 1, 2012.

(b) REPORTING.—Each servicer that engages in loan modifications or workout plans subject to the safe harbor in subsection (a) shall report to the Secretary on a regular basis regarding the extent, scope and results of the servicer's modification activities. The Secretary shall prescribe regulations specifying the form, content, and timing of such reports.

(c) DEFINITION OF SECURITIZATION VEHICLES.—For purposes of this section, the term ''securitization vehicle'' means a trust, corporation, partnership, limited liability entity, special purpose entity, or other structure that—

(1) is the issuer, or is created by the issuer, of mortgage pass-through certificates, participation certificates, mortgage-backed securities, or other similar securities backed by a pool of assets that includes residential mortgage loans; and

(2) holds such mortgages.

SEC. 202. CHANGES TO HOPE FOR HOMEOWNERS PROGRAM.

(a) PROGRAM CHANGES.—Section 257 of the National Housing Act (12 U.S.C. 1715z–23) is amended—

(1) in subsection (c)—

(A) in the heading for paragraph (1), by striking ''THE BOARD'' and inserting ''SECRETARY'';

(B) in paragraph (1), by striking ''Board'' inserting ''Secretary, after consultation with the Board,''; and

(C) by adding after paragraph (2) the following:

''(3) DUTIES OF BOARD.—The Board shall advise the Secretary regarding the establishment and implementation of the HOPE for Homeowners Program.''.

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

(3) in subsection (e)—

(A) by striking paragraph (1) and inserting the following:

''(1) BORROWER CERTIFICATION.—

''(A) NO INTENTIONAL DEFAULT OR FALSE INFORMATION.—The mortgagor shall provide a certification to the Secretary that the mortgagor has not intentionally defaulted on the existing mortgage or mortgages and has not knowingly, or willfully and with actual knowledge, furnished material information known to be false for the purpose of obtaining the eligible mortgage to be insured.

''(B) LIABILITY FOR REPAYMENT.—The mortgagor shall agree in writing that the mortgagor shall be liable to repay to the Secretary any direct financial benefit achieved from the reduction of indebtedness on the existing mortgage or mortgages on the residence refinanced under this section derived from misrepresentations made by the mortgagor in the certifications and documentation required under this paragraph, subject to the discretion of the Secretary.'';

(B) in paragraph (7), by striking the semicolon and all that follows through ''new second lien'';

(C) in paragraph (9)—

(i) by striking ''by procuring (A) an income tax return transcript of the income tax return of the mortgagor, or (B)'' and inserting ''in accordance with procedures and standards that the Secretary shall establish, which may include requiring the mortgagee to procure''; and

(ii) by striking ''and by any other method, in accordance with procedures and standards that the Board shall establish''; and

(D) by adding after paragraph (11) the following new paragraph:

''(12) BAN ON MILLIONAIRES.—The mortgagor shall not have a net worth, as of the date the mortgagor first applies for a mortgage to be insured under the Program under this section, that exceeds $1,000,000.'';

(4) in subsection (h)(2)—

(A) by striking ''The Board shall prohibit the Secretary from paying'' and inserting ''The Secretary shall not pay''; and

(B) by inserting after the period at the end the following: ''In implementing this provision with respect to a failure by a mortgagor to make a first payment, the Secretary shall establish policies and timing of endorsements as consistent as is possible with endorsement policies established with respect to mortgages insured under section 203(b)'';

(5) in subsection (i)—

(A) by inserting '', after weighing maximization of participation with consideration of collection of premiums,'' after ''Secretary shall'';

(B) in paragraph (1), by striking ''equal to 3 percent'' and inserting ''not more than 2 percent''; and

(C) in paragraph (2), by striking ''equal to 1.5 percent'' and inserting ''not more than 1 percent'';

(6) in subsection (k)—

(A) by striking the subsection heading and inserting ''EXIT FEE'';

(B) in paragraph (1), in the matter preceding subparagraph (A), by striking ''such sale or refinancing'' and inserting ''the mortgage being insured under this section''; and

(C) in paragraph (2), by striking ''and the mortgagor'' and all that follows through the end and inserting ''may, upon any sale or disposition of the property to which the mortgage relates, be entitled to up to 50 percent of appreciation, up to the appraised value of the home at the time when the mortgage being refinanced under this section was originally made. The Secretary may share any amounts received under this paragraph with the holder of the eligible mortgage refinanced under this section.'';

(7) in the heading for subsection (n), by striking ''THE BOARD'' and inserting ''SECRETARY'';

(8) in subsection (p), by striking ''Under the direction of the Board, the'' and inserting ''The'';

(9) in subsection (s)—

(A) in the first sentence of paragraph (2), by striking ''Board of Directors of'' and inserting ''Advisory Board for''; and

(B) in paragraph (3)(A)(ii), by striking ''subsection (e)(1)(B) and such other'' and inserting ''such'';

(10) in subsection (v), by inserting after the period at the end the following: ''The Secretary shall conform documents, forms, and procedures for mortgages insured under this section to those in place for mortgages insured under section 203(b) to the maximum extent possible consistent with the requirements of this section.''; and

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

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

''(y) AUCTIONS.—The Secretary, with the concurrence of the Board, shall, if feasible, establish a structure and organize procedures for an auction to refinance eligible mortgages on a wholesale or bulk basis.''.

(b) REDUCING TARP FUNDS TO OFFSET COSTS OF PROGRAM CHANGES.—Paragraph (3) of section 115(a) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5225) is amended by inserting '', as such amount is reduced by $2,316,000,000,'' after ''$700,000,000,000''.

SEC. 203. REQUIREMENTS FOR FHA-APPROVED MORTGAGEES.

(a) MORTGAGEE REVIEW BOARD.—Paragraph (2) of section 202(c) of the National Housing Act (12 U.S.C. 1708(c)) is amended—

(1) in subparagraph (E), by inserting ''and'' after the semicolon;

(2) in subparagraph (F), by striking ''; and'' and inserting a period; and

(3) by striking subparagraph (G).

(b) LIMITATIONS ON PARTICIPATION AND MORTGAGEE APPROVAL AND USE OF NAME.—Section 202 of the National Housing Act (12 U.S.C. 1708) is amended—

(1) by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively;

(2) by inserting after subsection (c) the following new subsection:

''(d) LIMITATIONS ON PARTICIPATION IN ORIGINATION AND MORTGAGEE APPROVAL.—

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

''(2) ELIGIBILITY FOR APPROVAL.—In order to be eligible for approval by the Secretary, an applicant mortgagee shall not be, and shall not have any officer, partner, director, principal, or employee of the applicant mortgagee who is—

''(A) currently suspended, debarred, under a limited denial of participation (LDP), or otherwise restricted under part 24 or 25 of title 24 of the Code of Federal Regulations, or any successor regulations to such parts, or under similar provisions of any other Federal agency;

''(B) under indictment for, or has been convicted of, an offense that reflects adversely upon the applicant's integrity, competence or fitness to meet the responsibilities of an approved mortgagee;

''(C) subject to unresolved findings contained in a Department of Housing and Urban Development or other governmental audit, investigation, or review;

''(D) engaged in business practices that do not conform to generally accepted practices of prudent mortgagees or that demonstrate irresponsibility;

''(E) convicted of, or who has pled guilty or nolo contendre to, a felony related to participation in the real estate or mortgage loan industry—

''(i) during the 7-year period preceding the date of the application for licensing and registration; or

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

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

''(G) in violation of any other requirement as established by the Secretary.''; and

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

''(h) USE OF NAME.—The Secretary shall, by regulation, require each mortgagee approved by the Secretary for participation in the FHA mortgage insurance programs of the Secretary—

''(1) to use the business name of the mortgagee that is registered with the Secretary in connection with such approval in all advertisements and promotional materials, as such terms are defined by the Secretary, relating to the business of such mortgagee in such mortgage insurance programs; and

''(2) to maintain copies of all such advertisements and promotional materials, in such form and for such period as the Secretary requires.''.

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

''SEC. 532. CHANGE OF MORTGAGEE STATUS.

''(a) NOTIFICATION.—Upon the occurrence of any action described in subsection (b), an approved mortgagee shall immediately submit to the Secretary, in writing, notification of such occurrence.

''(b) ACTIONS.—The actions described in this subsection are as follows:

''(1) The debarment, suspension of a Limited Denial of Participation (LDP), or application of other sanctions, fines, or penalties applied to the mortgagee or to any officer, partner, director, principal, manager, supervisor, loan processor, loan underwriter, or loan originator of the mortgagee pursuant to applicable provisions of State or Federal law.

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

(d) CIVIL MONEY PENALTIES.—Section 536 of the National Housing Act (12 U.S.C. 1735f–14) is amended—

(1) in subsection (b)—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by inserting ''or any of its owners, officers, or directors'' after ''mortgagee or lender'';

(ii) in subparagraph (H), by striking ''title I'' and all that follows through ''Act of 1989)'' and inserting ''title I or II''; and

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

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

(B) in paragraph (2)—

(i) in subparagraph (B), by striking ''or'' at the end;

(ii) in subparagraph (C), by striking the period at the end and inserting ''; or''; and

(iii) by adding at the end the following new subparagraph:

''(D) causing or participating in any of the violations set forth in paragraph (1) of this subsection.''; and

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

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

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

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

(A) expand the number of mortgages originated by such mortgagees that are reviewed for compliance with applicable laws, regulations, and policies; and

(B) include a process for random reviews of such mortgagees and a process for reviews that is based on volume of mortgages originated by such mortgagees.

SEC. 204. ENHANCEMENT OF LIQUIDITY AND STABILITY OF INSURED DEPOSITORY INSTITUTIONS TO ENSURE AVAILABILITY OF CREDIT AND REDUCTION OF FORECLOSURES.

(a) PERMANENT INCREASE IN DEPOSIT INSURANCE.—

(1) AMENDMENTS TO FEDERAL DEPOSIT INSURANCE ACT.—Effective upon the date of the enactment of this Act, section 11(a) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)) is amended—

(A) in paragraph (1)(E), by striking ''$100,000'' and inserting ''$250,000'';

(B) in paragraph (1)(F)(i), by striking ''2010'' and inserting ''2015'';

(C) in subclause (I) of paragraph (1)(F)(i), by striking ''$100,000'' and inserting ''$250,000'';

(D) in subclause (II) of paragraph (1)(F)(i), by striking ''the calendar year preceding the date this subparagraph takes effect under the Federal Deposit Insurance Reform Act of 2005'' and inserting ''calendar year 2008''; and

(E) in paragraph (3)(A), by striking '', except that $250,000 shall be substituted for $100,000 wherever such term appears in such paragraph''.

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

(A) in paragraph (3)—

(i) by striking the opening quotation mark before ''$250,000'';

(ii) by striking '', except that $250,000 shall be substituted for $100,000 wherever such term appears in such section''; and

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

(B) in paragraph (5), by striking ''$100,000'' and inserting ''$250,000''.

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

(b) EXTENSION OF RESTORATION PLAN PERIOD.—Section 7(b)(3)(E)(ii) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(3)(E)(ii)) is amended by striking ''5-year period'' and inserting ''8-year period''.

(c) FDIC AND NCUA BORROWING AUTHORITY.—

(1) FDIC.—Section 14(a) of the Federal Deposit Insurance Act (12 U.S.C. 1824(a)) is amended by striking ''$30,000,000,000'' and inserting ''$100,000,000,000''.

(2) NCUA.—Section 203(d)(1) of the Federal Credit Union Act (12 U.S.C. 1783(d)(1)) is amended by striking ''$100,000,000'' and inserting ''$6,000,000,000''.

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

''(ii) REPAYMENT OF LOSS.—

''(I) IN GENERAL.—The Corporation shall recover the loss to the Deposit Insurance Fund arising from any action taken or assistance provided with respect to an insured depository institution under clause (i) from 1 or more special assessments on insured depository institutions, depository institution holding companies (with the concurrence of the Secretary of the Treasury with respect to holding companies), or both, as the Corporation determines to be appropriate.

''(II) TREATMENT OF DEPOSITORY INSTITUTION HOLDING COMPANIES.—For purposes of this clause, sections 7(c)(2) and 18(h) shall apply to depository institution holding companies as if they were insured depository institutions.

''(III) REGULATIONS.—The Corporation shall prescribe such regulations as it deems necessary to implement this clause. In prescribing such regulations, defining terms, and setting the appropriate assessment rate or rates, the Corporation shall establish rates sufficient to cover the losses incurred as a result of the actions of the Corporation under clause (i) and shall consider: the types of entities that benefit from any action taken or assistance provided under this subparagraph; economic conditions, the effects on the industry, and such other factors as the Corporation deems appropriate and relevant to the action taken or the assistance provided. Any funds so collected that exceed actual losses shall be placed in the Deposit Insurance Fund.''.

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

''(D) FUND RESTORATION PLANS.—

''(i) IN GENERAL.—Whenever—

''(I) the Board projects that the equity ratio of the Fund will, within 6 months of such determination, fall below the minimum amount specified in subparagraph (C) for the designated equity ratio; or

''(II) the equity ratio of the Fund actually falls below the minimum amount specified in subparagraph (C) for the equity ratio without any determination under sub-clause (I) having been made,

the Board shall establish and implement a Share Insurance Fund restoration plan within 90 days that meets the requirements of clause (ii) and such other conditions as the Board determines to be appropriate.

''(ii) REQUIREMENTS OF RESTORATION PLAN.—A Share Insurance Fund restoration plan meets the requirements of this clause if the plan provides that the equity ratio of the Fund will meet or exceed the minimum amount specified in subparagraph (C) for the designated equity ratio before the end of the 5-year period beginning upon the implementation of the plan (or such longer period as the Board may determine to be necessary due to extraordinary circumstances).

''(iii) TRANSPARENCY.—Not more than 30 days after the Board establishes and implements a restoration plan under clause (i), the Board shall publish in the Federal Register a detailed analysis of the factors considered and the basis for the actions taken with regard to the plan.''.

The Acting CHAIR. No amendment to the bill is in order except those printed in House Report 111–21. Each amendment may be offered only in the order printed in the report, by a Member designated in the report, shall be considered read, shall be debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent of the amendment, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

AMENDMENT NO. 1 OFFERED BY MS. ZOE LOFGREN OF CALIFORNIA, AS MODIFIED

The Acting CHAIR. It is now in order to consider amendment No. 1 printed in House Report 111–21, as perfected by the modification printed in House Report 111–23.

Ms. ZOE LOFGREN of California. I have this amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 offered by Ms. ZOE LOFGREN of California, as modified:

In the table of contents of the bill, in the item relating to section 121, strike ''department of veterans affairs'' and insert ''Department of Veterans Affairs''.

Page 2, after line 6, insert the following (and make such technical and conforming changes as may be appropriate):

SEC. 100. DEFINITION.

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

''(43A) The term 'qualified loan modification' means a loan modification agreement made in accordance with the guidelines of the Obama Administration's Homeowner Affordability and Stability Plan as implemented March 4, 2009, that—

''(A) reduces the debtor's payment (including principal and interest, and payments for real estate taxes, hazard insurance, mortgage insurance premium, homeowners' association dues, ground rent, and special assessments) on a loan secured by a senior security interest in the principal residence of the debtor, to a percentage of the debtor's income in accordance with such guidelines, without any period of negative amortization or under which the aggregate amount of the regular periodic payments would not fully amortize the outstanding principal amount of such loan;

''(B) requires no fees or charges to be paid by the debtor in order to obtain such modification; and

''(C) permits the debtor to continue to make payments under the modification

agreement notwithstanding the filing of a case under this title, as if such case had not been filed.''.

Beginning on page 7, strike line 6 and all that follows through line 16 on page 8, and insert the following:

''(1) if such residence is sold in the 1st year occurring after the effective date of the plan, 90 percent of the amount of the difference between the sales price and the amount of such claim as originally determined under subsection (b)(11) (plus costs of sale and improvements), but not to exceed the unpaid amount of the allowed secured claim determined as if such claim had not been reduced under such subsection;

'(2) if such residence is sold in the 2d year occurring after the effective date of the plan, 70 percent of the amount of the difference between the sales price and the amount of such claim as originally determined under subsection (b)(11) (plus costs of sale and improvements), but not to exceed the unpaid amount of the allowed secured claim determined as if such claim had not been reduced under such subsection;

''(3) if such residence is sold in the 3d year occurring after the effective date of the plan, 50 percent of the amount of the difference between the sales price and the amount of such claim as originally determined under subsection (b)(11) (plus costs of sale and improvements), but not exceed the unpaid amount of the allowed secured claim determined as if such claim had not been reduced under such subsection;

''(4) if such residence is sold in the 4th year occurring after the effective date of the plan, 30 percent of the amount of the difference between the sales price and the amount of such claim as originally determined under subsection (b)(11) (plus costs of sale and improvements), but not to exceed the unpaid amount of the allowed secured claim determined as if such claim had not been reduced under such subsection; and

''(5) if such residence is sold in the 5th year occurring after the effective date of the plan, 10 percent of the amount of the difference between the sales price and the amount of such claim as originally determined under subsection (b)(11) (plus costs of sale and improvements), but not to exceed the unpaid amount of the allowed secured claim determined as if such claim had not been reduced under such subsection.''.

Beginning on page 8, strike line 17 and all that follows through line 7 on page 9, and insert the following (and make such technical and conforming changes as may be appropriate):

''(h) With respect to a claim of the kind described in subsection (b)(11), the plan may not contain a modification under the authority of subsection (b)(11)—

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

''(A) the debtor certifies that the debtor—

''(i) not less than 30 days before the commencement of the case, contacted the holder of such claim (or the entity collecting payments on behalf of such holder) regarding modification of the loan that is the subject of such claim;

''(ii) provided the holder of the claim (or the entity collecting payments on behalf of such holder) a written statement of the debtor's current income, expenses, and debt substantially conforming with the schedules required under section 521(a) or such other form as is promulgated by the Judicial Conference of the United States for such purpose; and

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

''(B) a foreclosure sale is scheduled to occur on a date in the 30-day period beginning on the date of case is commenced;''.

Page 9, line 24, insert ''and, if the issue of value is contested, the court shall determine such value in accordance with the appraisal rules used by the Federal Housing Administration'' after ''determined''.

Page 11, strike lines 23 through 25, insert the following (and make such technical and conforming changes as may be appropriate):

(1) in the matter preceding paragraph (1) strike ''subsection (b)'' and insert ''subsections (b) and (d)''.

(2) in paragraph (5)—

(A) by inserting ''except as otherwise provided in section 1322(b)(11),'' after ''(5)'', and

(B) in subparagraph (B)(iii)(I) by inserting ''(including payments of a claim modified under section 1322(b)(11))'' after ''payments'' the 1st place it appears,

Page 12, line 20, insert the following after ''faith'':

(Lack of good faith exists if the debtor has no need for relief under this paragraph because the debtor can pay all of his or her debts and any future payment increases on such debts without difficulty for the foreseeable future, including the positive amortization of mortgage debt. In determining whether a reduction of the principal amount of loan resulting from a modification made under the authority of section 1322(b)(11) is made in good faith, the court shall consider whether the holder of such claim (or the entity collecting payments on behalf of such holder) has offered to the debtor a qualified loan modification that would enable the debtor to pay such debts and such loan without reducing such principal amount.)''.

Page 12, after line 24, insert the following (and make such technical and conforming changes as may be appropriate):

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

''(d) Notwithstanding section 1322(b)(11)(C)(ii), the court, on request of the debtor or the holder of a claim secured by a senior security interest in the debtor's principal residence, may confirm a plan proposing a reduction in the interest rate on the loan secured by such security interest and that does not reduce the principal, provided the total monthly mortgage payment is reduced to a percentage of the debtor's income in accordance with the guidelines of the Obama Administration's Homeowner Affordability and Stability Plan as implemented March 4, 2009, if, taking into account the debtor's financial situation, after allowance of expenses that would be permitted for a debtor under this chapter subject to paragraph (3) of subsection (b), regardless of whether the debtor is otherwise subject to such paragraph, and taking into account additional debts and fees that are to be paid in this chapter and thereafter, the debtor would be able to prevent foreclosure and pay a fully amortizing 30-year loan at such reduced interest rate without such reduction in principal.''.

Page 15, after line 8, insert the following (and make such technical and conforming changes as may be appropriate):

SEC. 109. GAO STUDY.

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

(1) the results of such study of—

(A) the number of debtors who filed, during the 1-year period beginning on the date of the enactment of this Act, cases under chapter 13 of title 11 of the United States Code for the purpose of restructuring their principal residence mortgages,

(B) the number of mortgages restructured under the amendments made by this subtitle that subsequently resulted in default and foreclosure,

(C) a comparison between the effectiveness of mortgages restructured under programs outside of bankruptcy, such as Hope Now and Help for Homeowners, and mortgages restructured under the amendments made by this subtitle,

(D) the number of cases presented to the bankruptcy courts where mortgages were restructured under the amendments made by this subtitle that were appealed,

(E) the number of cases presented to the bankruptcy courts where mortgages were restructured under the amendments made by the subtitle that were overturned on appeal, and

(F) the number of bankruptcy judges disciplined as a result of actions taken to restructure mortgages under the amendments made by this subtitle, and

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

SEC. 110. REPORT TO CONGRESS.

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

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

(2) a survey of whether the program should limit the types of homeowners eligible for the program., and

(3) a recommendation on whether such amendments should remain in effect.

Page 15, line 15, strike ''Subsection (a) of section'' and insert ''Section''.

Page 25, after line 9, insert the following (and make such technical and conforming changes as may be appropriate):

SEC. 125. MORTGAGE MODIFICATION DATA COLLECTING AND REPORTING.

(a) REPORTING REQUIREMENTS.—Not later than 120 days after the date of the enactment of this Act, and quarterly thereafter, the Comptroller of the Currency, in coordination with the Director of the Office of Thrift Supervision, shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate, the Committee on Financial Services of the House of Representatives, and the Joint Economic Committee on the volume of mortgage modifications reported to the Office of the Comptroller of the Currency and the Office of Thrift Supervision, under the mortgage metrics program of each such Office, during the previous quarter, including the following:

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

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

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

(B) Interest rate reductions and freezes.

(C) Term extensions.

(D) Reductions of principal.

(E) Deferrals of principal.

(F) Combinations of modifications described in subparagraph (A), (B), (C), (D), or (E).

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

(A) An increase.
(B) Remained the same.
(C) Decreased less than 10 percent.
(D) Decreased between 10 percent and 20 percent.
(E) Decreased 20 percent or more.
(4) The total number of loans that have been modified and then entered into default, where the loan modification resulted in—
(A) higher monthly payments by the homeowner;
(B) equivalent monthly payments by the homeowner;
(C) lower monthly payments by the homeowner of up to 10 percent;
(D) lower monthly payments by the homeowner of between 10 percent to 20 percent; or
(E) lower monthly payments by the homeowner of more than 20 percent.
(b) DATA COLLECTION.—
(1) REQUIRED.—
(A) IN GENERAL.—Not later than 60 days after the date of the enactment of this Act, the Comptroller of the Currency and the Director of the Office of Thrift Supervision, shall issue mortgage modification data collection and reporting requirements to institutions covered under the reporting requirement of the mortgage metrics program of the Comptroller or the Director.
(B) INCLUSIVENESS OF COLLECTIONS.—The requirements under subparagraph (A) shall provide for the collection of all mortgage modification data needed by the Comptroller of the Currency and the Director of the Office of Thrift Supervision to fulfill the reporting requirements under subsection (a).
(2) REPORT.—The Comptroller of the Currency shall report all requirements established under paragraph (1) to each committee receiving the report required under subsection (a).
Page 25, line 24, after ''disposition'' insert the following: '', including any modification or refinancing undertaken pursuant to standard loan modification, sale, or disposition guidelines issued by the Secretary of the Treasury or his designee under the Emergency Economic Stabilization Act of 2008,''.
Page 28, strike lines 18 and 19 and insert the following:
(c) DEFINITIONS.—For purposes of this section, the following definitions shall apply:
(1) SECRETARY.—The term ''Secretary'' means the Secretary of the Treasury.
(2) SECURITIZATION VEHICLE.—The term ""securitization vehi-
Page 28, strike line 22 and insert the following:
(A) is the issuer, or is created by the issuer, of
Page 29, strike line 3 and insert the following:
(B) holds such mortgages.
Page 30, line 12, before the period insert the following: ''and has not been convicted under Federal or State law for fraud during the 10-year period ending upon the insurance of the mortgage under this section''.
Page 30, after line 23, insert the following:
(B) in paragraph (4)(A), by striking ''; subject to standards established by the Board under subparagraph (B),'';
Page 31, line 1, strike lines 1 through 3 and insert the following:
(C) in paragraph (7), by striking ''and provided that'' and all that follows through ''new second lien'' and inserting ''and except that the Secretary may, under such terms and conditions as the Secretary may establish, permit the establishment of a second lien on a property under an eligible mortgage to be insured, for the purpose of facilitating payment of closing or refinancing costs by a State or locality using funds provided under the HOME Investment Partnerships program under title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12721 et seq.) or the community development block grants program under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) or by a State or local housing finance agency'';
Page 31, line 4, strike ''(C)'' and insert ''(D)''.
Page 31, line 15, strike ''and''.
Page 31, after line 15, insert the following:
(E) by striking subparagraph (10);
(F) in paragraph (11), by inserting before the period at the end the following: '', except that the Secretary may provide exceptions to such latter requirement (relating to present ownership interest) for any mortgagor who has inherited a property or for any mortgagor who has relocated to a new jurisdiction, and is in the process of trying to sell such property or has been unable to sell such property due to adverse market conditions'';
(G) by redesignating paragraph (11) as paragraph (10); and
Page 31, line 16, strike ''(D) by adding after paragraph (11)'' and insert ''(H) by adding at the end''.
Page 31, line 18, strike ''(12)'' and insert ''(11)''.
Page 36, line 6, strike ''or employee'' and insert ''manager, supervisor, loan processor, loan underwriter, or loan originator''.
Page 37, strike the quotation marks in line 19 and all that follows through the end of the line.
Page 37, after line 19, insert the following:
''(3) RULEMAKING AND IMPLEMENTATION.—The Secretary shall conduct a rulemaking to carry out this subsection. The Secretary shall implement this subsection not later than the expiration of the 60-day period beginning upon the date of the enactment of this subsection by notice, mortgagee letter, or interim final regulations, which shall take effect upon issuance.''; and
Page 47, after line 13, insert the following (and make such technical and conforming changes as may be appropriate):

SEC. 205. APPLICATION OF GSE CONFORMING LOAN LIMIT TO MORTGAGES ASSISTED WITH TARP FUNDS.

In making any assistance available to prevent and mitigate foreclosures on residential properties, including any assistance for mortgage modifications, using any amounts made available to the Secretary of the Treasury under title I of the Emergency Economic Stabilization Act of 2008, the Secretary shall provide that the limitation on the maximum original principal obligation of a mortgage that may be modified, refinanced, made, guaranteed, insured, or otherwise assisted, using such amounts shall not be less than the dollar amount limitation on the maximum original principal obligation of a mortgage that may be purchased by the Federal Home Loan Mortgage Corporation that is in effect, at the time that the mortgage is modified, refinanced, made, guaranteed, insured, or otherwise assisted using such amounts, for the area in which the property involved in the transaction is located.

SEC. 206. MORTGAGES ON CERTAIN HOMES ON LEASED LAND.

Section 255(b)(4) of the National Housing Act (12 U.S.C. 1715z–20(b)(4)) is amended by striking subparagraph (B) and inserting:
''(B) under a lease that has a term that ends no earlier than the minimum number of years, as specified by the Secretary, beyond the actuarial life expectancy of the mortgagor or comortgagor, whichever is the later date.''.

SEC. 207. SENSE OF CONGRESS REGARDING MORTGAGE REVENUE BOND PURCHASES.

It is the sense of the Congress that the Secretary of the Treasury should use amounts made available in this Act to purchase mortgage revenue bonds for single-family housing issued through State housing finance agencies and through units of local government and agencies thereof.
Page 47, at the end of title II, add the following (and conform the table of contents accordingly):

TITLE III—MORTGAGE FRAUD

SEC. 301. SHORT TITLE.

This title may be cited as the ''Nationwide Mortgage Fraud Task Force Act of 2009''.

SEC. 302. NATIONWIDE MORTGAGE FRAUD TASK FORCE.

(a) ESTABLISHMENT.—There is established in the Department of Justice the Nationwide Mortgage Fraud Task Force (hereinafter referred to in this section as the ''Task Force'') to address mortgage fraud in the United States.
(b) SUPPORT.—The Attorney General shall provide the Task Force with the appropriate staff, administrative support, and other resources necessary to carry out the duties of the Task Force.
(c) EXECUTIVE DIRECTOR.—The Attorney General shall appoint one staff member provided to the Task Force to be the Executive Director of the Task Force and such Executive Director shall ensure that the duties of the Task Force are carried out.
(d) BRANCHES.—The Task Force shall establish, oversee, and direct branches in each of the 10 States determined by the Attorney General to have the highest concentration of mortgage fraud.
(e) MANDATORY FUNCTIONS.—The Task Force, including the branches of the Task Force established under subsection (d), shall—
(1) establish coordinating entities, and solicit the voluntary participation of Federal, State, and local law enforcement and prosecutorial agencies in such entities, to organize initiatives to address mortgage fraud, including initiatives to enforce State mortgage fraud laws and other related Federal and State laws;
(2) provide training to Federal, State, and local law enforcement and prosecutorial agencies with respect to mortgage fraud, including related Federal and State laws;
(3) collect and disseminate data with respect to mortgage fraud, including Federal, State, and local data relating to mortgage fraud investigations and prosecutions; and
(4) perform other functions determined by the Attorney General to enhance the detection of, prevention of, and response to mortgage fraud in the United States.
(f) OPTIONAL FUNCTIONS.—The Task Force, including the branches of the Task Force established under subsection (d), may—
(1) initiate and coordinate Federal mortgage fraud investigations and, through the coordinating entities established under subsection (e), State and local mortgage fraud investigations;
(2) establish a toll-free hotline for—
(A) reporting mortgage fraud;
(B) providing the public with access to information and resources with respect to mortgage fraud; and
(C) directing reports of mortgage fraud to the appropriate Federal, State, and local law enforcement and prosecutorial agency, including to the appropriate branch of the Task Force established under subsection (d);
(3) create a database with respect to suspensions and revocations of mortgage industry licenses and certifications to facilitate the sharing of such information by States;
(4) make recommendations with respect to the need for and resources available to provide the equipment and training necessary for the Task Force to combat mortgage fraud; and

(5) propose legislation to Federal, State, and local legislative bodies with respect to the elimination and prevention of mortgage fraud, including measures to address mortgage loan procedures and property appraiser practices that provide opportunities for mortgage fraud.

(g) DEFINITION.—In this section, the term ''mortgage fraud'' means a material misstatement, misrepresentation, or omission relating to the property or potential mortgage relied on by an underwriter or lender to fund, purchase, or insure a loan.

Page 47, at the end of the bill, add the following (and conform the table of contents accordingly):

TITLE IV—FORECLOSURE MORATORIUM PROVISIONS

SEC. 401. SENSE OF THE CONGRESS ON FORECLOSURES.

(a) IN GENERAL.—It is the sense of the Congress that mortgage holders, institutions, and mortgage servicers should not initiate a foreclosure proceeding or a foreclosure sale on any homeowner until the foreclosure mitigation provisions, like the Hope for Homeowners program, as required under title II, and the President's ''Homeowner Affordability and Stability Plan'' have been implemented and determined to be operational by the Secretary of Housing and Urban Development and the Secretary of the Treasury.

(b) SCOPE OF MORATORIUM.—The foreclosure moratorium referred to in subsection (a) should apply only for first mortgages secured by the owner's principal dwelling.

(c) FHA-REGULATED LOAN MODIFICATION AGREEMENTS.—If a mortgage holder, institution, or mortgage servicer to which subsection (a) applies reaches a loan modification agreement with a homeowner under the auspices of the Federal Housing Administration before any plan referred to in such subsection takes effect, subsection (a) shall cease to apply to such institution as of the effective date of the loan modification agreement.

(d) DUTY OF CONSUMER TO MAINTAIN PROPERTY.—Any homeowner for whose benefit any foreclosure proceeding or sale is barred under subsection (a) from being instituted, continued , or consummated with respect to any homeowner mortgage should not, with respect to any property securing such mortgage, destroy, damage, or impair such property, allow the property to deteriorate, or commit waste on the property.

(e) DUTY OF CONSUMER TO RESPOND TO REASONABLE INQUIRIES.—Any homeowner for whose benefit any foreclosure proceeding or sale is barred under subsection (a) from being instituted, continued, or consummated with respect to any homeowner mortgage should respond to reasonable inquiries from a creditor or servicer during the period during which such foreclosure proceeding or sale is barred.

The Acting CHAIR. Pursuant to House Resolution 190, the gentlewoman from California (Ms. ZOE LOFGREN) and a Member opposed each will control 15 minutes.

The Chair recognizes the gentlewoman from California.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield myself such time as I may consume.

(Ms. ZOE LOFGREN of California asked and was given permission to revise and extend her remarks.)

Ms. ZOE LOFGREN of California. Mr. Chairman, this important bill gives families whose home mortgages are in distress a better opportunity to come to terms with their lender, to bring their mortgage payments in line with prevailing lending rates in the lending market and with prevailing values in the housing market. This is the same opportunity that owners of vacation homes, investment properties, private jets, and luxury yachts have long enjoyed. I think it's only fair that we offer it now to average families as well. The economic crisis engulfing this country and the world had its start in the housing foreclosure crisis. The Helping Families Save Their Homes Act will begin to address this underlying cause, and it will provide meaningful relief to struggling homeowners.

In developing this legislation, we have benefited at every step of the way from constructive engagement from members on and off the Judiciary Committee, from lenders and brokers, from consumer groups, from bankruptcy judges and trustees. With their help, we've reached consensus on a series of significant changes culminating in the manager's amendment before us today. I should note that the amendment is the Lofgren-Tauscher-Cardoza amendment, and the changes that it encompasses make this a much better bill.

Under the manager's amendment, the homeowner must notify the lender, submit financial records and work in good faith for at least 30 days to try to modify a mortgage outside of the bankruptcy using the Obama mortgage modification plan outlined yesterday. We provide also that, should those efforts not prove fruitful and as a last resort an individual ends up in Chapter 13 proceedings, the court should utilize the Obama mortgage modification plan as a guideline for the court in reviewing and in helping a homeowner to meet obligations.

We also have required that bankruptcy courts will use the FHA appraisal guidelines, repayment plans, and for equal monthly mortgage payments. If a homeowner sells a home while still under a Chapter 13 payment plan, the lender is going to share in the profit, and that's only fair. The closer in time of the mortgage modification, the greater the lender's share, and the manager's amendment actually further increases the lender's share at each point over the period.

Homeowners who engage in bad faith, such as filing for bankruptcy when they could really afford to pay their mortgages, will be disqualified for assistance in chapter 13, and a special Justice Department task force is set up to investigate reports of possible mortgage fraud. These are in addition to improvements already made at earlier stages. The changes are all described in greater detail in a summary that was sent to all of your offices today. I have brought copies of a summary with me today.

In short, we have sought to respond in a reasonable manner to every single concern brought to our attention. We've achieved a balanced reform that will bring meaningful help to families in genuine need without costing taxpayers a dime.

The bill is not going to usher in a rash of bankruptcy filings. In fact, by setting up a homeowner-lender negotiating process that begins well before bankruptcy, it is designed to keep more families out of bankruptcy and out of foreclosure. The number of new chapter 13 mortgage modifications that may result will be far less than the number of foreclosures that will be prevented, and preventing foreclosures is the key. That will benefit not only homeowners and their families but also neighborhoods, their communities, their lenders, and the entire American economy.

It's worth noting that any time there is a foreclosure, the average decline of property values for neighboring property is 9 percent, so this is important to every American to avert these foreclosures.

I thank Mrs. TAUSCHER, Mr. CARDOZA, Mr. MARSHALL, BRAD MILLER, JOHN CONYERS, and all of the other Members who have worked so hard to improve this bill through the manager's amendment.

I reserve the balance of my time.

Mr. SMITH of Texas. Mr. Chairman, I rise in opposition to the amendment, and I will yield myself such time as I may consume.

Unfortunately, this amendment does little to change the fact that the bankruptcy provisions in this legislation will fail to solve the foreclosure crisis. Some claim the manager's amendment will narrow the bill's bankruptcy provisions, but there is nothing in this amendment that meaningfully changes the underlying bill. Meaningful change would have meant a true requirement for bankruptcy petitioners to exhaust other options before going to bankruptcy court.

As Speaker PELOSI observed just this week, ''Bankruptcy, by its nature, should require a judge to see that other remedies had been exhausted and that good faith overtures from the lender had not been dismissed by the borrower.''

The manager's amendment does not do that. Rather, it merely requires that judges consider whether the lender offered the borrower a loan modification when determining whether to approve the borrower's bankruptcy plan. So a judge is free to consider a loan modification the lender offered and then approve a cramdown despite the lender's offer. The judge can approve a cramdown even if the borrower signed a pre-bankruptcy modification with the lender and then went shopping for a sweeter deal in bankruptcy.

The manager's amendment also contains a major loophole that will allow borrowers to avoid any requirement that they contact their lender about a loan modification prior to filing for bankruptcy. Under the manager's amendment, a borrower can do nothing, fail to seek a qualifying loan modification and still be entitled to get a

bankruptcy cramdown once a foreclosure sale was scheduled. In other words, bankruptcy relief is available to those who fail to seek a loan modification under the Obama plan.

Meaningful change also would have meant substantially narrowing the class of loans eligible for bankruptcy modification. Senator DURBIN, the principal sponsor of the companion legislation in the Senate, has acknowledged the merit and proposals to limit the bill to subprime loans.

[From American Banker, Feb. 27, 2009]

TRANSCRIPT OF REMARKS BY SEN. DURBIN

The following is a transcript of remarks between Sen. Richard Durbin and an American Banker reporter, Tuesday evening after President Obama's speech to Congress.

AB Reporter: ''Sen. Durbin, do you have a moment today on bankruptcy reform?''

Sen. Durbin: ''Sure.''

AB Reporter: ''I know that in the House, at least regarding this week, the lenders are still trying to make the restrictions so that you have to exhaust all other recourses before bankruptcy pretty tough, even today I heard about making HUD or one of the regulators certify that you had a modification or something that didn't work before you could go through bankruptcy. What are your thoughts on what the standard ought to be?''

Sen. Durbin: ''I think that it is reasonable to require the borrower to be in communication for a reasonable time before they file for bankruptcy. You know if a borrower will not talk to a bank they should not be able to avail themselves but it's really difficult to write into law a measurement of good faith so the best you can do is give them an opportunity to meet. Remember 99% of foreclosed homes end up owned by the bank so it isn't as if they are going to end up coming out ahead if the person's losing their home. They get stuck with $50,000 in costs and a house to maintain; to protect from vandalism, and to show and try to sell, so the banks ought to be much more forthcoming. Every attempt we've tried, every voluntary attempt we've tried has failed. You have to have this bankruptcy provision as the last resort if there is a failure to negotiate the mortgage.''

AB Reporter: ''Do you know when the Senate might be taking this up?''

Sen. Durbin: ''After the House and we might change it of course. There are variations we're looking at. But I'm willing to restrict this to homeowners to eliminate speculators; to subprime mortgages, only those currently in existence. I want to make this a reasonable limited—

AB Reporter: ''You're willing to limit it to subprime mortgages?''

Sen. Durbin: ''We've talked about that as a possibility. But I am willing to negotiate. I want this to be a reasonable approach, but we have to include it. If we don't include it we'll be stuck in the same mess we're in today.''

AB Reporter: ''What about the time limitation as far as when the loans were originated. I understand there are some who would like to see it limited to loan underwritten in the last few years?''

Sen. Durbin: ''My version will not be prospective. So it has to be existing loans.''

Mr. Chairman, the manager's amendment makes no attempt to narrow the class of eligible loans. That class is as wide as it ever was. Finally, rather than narrowing the bill, the manager's amendment actually provides that, if the judge doesn't want to give a cramdown, he can just rewrite the mortgage as a no-interest loan over the full term of a new 30-year mortgage. What a gift and what an insult to those who pay their mortgages on time. The only borrower the manager's amendment suggests should be denied relief is the borrower who ''can pay all of his or her debts and any future payment increases on such debts without difficulty for the foreseeable future,'' but that person will never need to be in bankruptcy court, by definition.

Mr. Chairman, the manager's amendment continues the majority's policy of punishing the successful, taxing the responsible and holding no one accountable. It is unfair for Congress to bail out mortgage lenders and borrowers on the backs of responsible homeowners who continue to pay their mortgages even in these troubled economic times. Clearly, the American people are not willing to pay for their neighbors' irresponsible actions. The manager's amendment hardly narrows the scope of the underlying bill. In some areas, it actually makes it worse. Members should oppose both this amendment and the underlying bill.

Mr. Chairman, I reserve the balance of my time.

Ms. ZOE LOFGREN of California. Mr. Chairman, I would now like to yield 1 minute to the gentleman from Vermont (Mr. WELCH).

Mr. WELCH. Mr. Chairman, it is important to understand that Citigroup supports this bill. Why? They're a huge lender. It's because they understand that we have to stabilize home values in order to begin the recovery, and they need a tool to accomplish it.

So this is about lenders as much as it is about borrowers. Why? Because these mortgages that have been sliced and diced into 40 or 50 different sections make it impossible even for a mortgage company and a borrower, homeowner or a family to come together to resolve the problem that they share together. So this bankruptcy provision, written narrowly so that it is a last resort, is not only fair, but is necessary to lenders as well as to borrowers.

I applaud both committees for the work that they have done.

The Acting CHAIR. Without objection, the gentleman from Virginia (Mr. GOODLATTE) will control the remainder of the time of the gentleman from Texas (Mr. SMITH).

There was no objection.

Mr. GOODLATTE. Mr. Chairman, at this time, I am pleased to yield 1 minute to the gentlewoman from Minnesota (Mrs. BACHMANN).

Mrs. BACHMANN. Mr. Chairman, of the foundational policies of American exceptionalism, the concepts that have inspired our great Nation are the sanctity of private contracts and upholding the rule of law. This cramdown bill crassly undercuts both of these pillars of American exceptionalism.

Why would a lender make a 30-year loan if they fear the powers of the Federal Government will violate the very terms of that loan? They will only make those loans at a great cost both to the borrower and to our society. Surely as day follows night, we will witness yet another nail in the coffin of home developers who already are reeling under the burden of poisonous government policies.

Experts currently estimate that the additional cost due to this risk of the cramdown bill would raise mortgage rates as much as two full percentage points or would substantially increase required down payments. This is the last thing homeowners need, the last thing our economy needs. There are responsible homeowners all across America who are living within their means, who are making honest representations on their loan applications, who are paying their debts, and who are working hard to achieve the American dream. Let's not disadvantage them.

Ms. ZOE LOFGREN of California. I would just note that yesterday was the anniversary of our Constitution's going into effect, March 4, 1789. In that Constitution was article I, section 8 that provides for bankruptcy.

I would yield 40 seconds to Mr. MARSHALL.

Mr. MARSHALL. Mr. Chairman, there are a number of misconceptions about this bill because it only affects existing mortgages, not home loans in the future. It will have no impact on the cost of borrowing into the future. For all of those homeowners like me who haven't been part of this latest credit crisis, I see my property values declining dramatically, in part, because there are foreclosures and vacancies occurring all over the country.

In essence, what this bill would do is force the parties—the lender and the borrower—without putting any taxpayer dollars in it, to deal with their circumstances without adding more properties vacant on the market, declining home prices that are affecting all Americans. It's good for lenders. It's good for homeowners. It does not pose a risk of an increased cost of credit.

□ 1230

Ms. ZOE LOFGREN of California. Mr. Chairman, I would further yield 1 minute to a member of the committee, Ms. SHEILA JACKSON-LEE of Texas.

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the manager for all of her hard work.

I want to pay tribute to Chairman CONYERS for standing up in early January and insisting that we complete our tasks, and I always come to the floor to say, this is the little guy's day.

I came earlier today to speak of an individual who had foreclosure issues, but as I proceeded to read her case, she actually went into loan modification with her mortgager, her lender, Countrywide. And isn't it interesting that as her fees were paid and the loan was

supposed to be modified, that some days later, here comes the mortgager with the foreclosure notice or a foreclosure person at her door taking pictures trying to decide what the situation was. Interestingly enough, the house had gone into sale.

These are the unscrupulous types of activities that have come about when there is no binding, if you will, judgment that can come about through the bankruptcy court.

Again, this bill forces no one to pay anything. It takes no money out of the government. All it does is it allows us to treat those fairly who are going into foreclosure.

Mr. Chairman, I rise in strong support of H.R. 1106, ''Helping Families Save Their Homes in Bankruptcy Act of 2009.'' I would like to thank Chairman CONYERS of the House Judiciary Committee and Chairman BARNEY FRANK of the Financial Services Committee for their leadership on this issue. I also would like to thank Arthur D. Sidney of my staff who serves as my able Legislative Director.

Mr. Chairman, I urge my colleagues to support this bill because it provides a viable medium for bankruptcy judges to modify the terms of mortgages held by homeowners who have little recourse but to declare bankruptcy.

This bill could not have come at a more timely moment. This bill is on the floor of the House within weeks after the President's address before the Joint Session of Congress where President Obama outlined his economic plan for America and discussed the current economic situation that this country is facing.

To be sure, there are many economic woes that saddle this country. The statistics are staggering.

Home foreclosures are at an all-time high and they will increase as the recession continues. In 2006, there were 1.2 million foreclosures in the United States, representing an increase of 42 percent over the prior year. During 2007 through 2008, mortgage foreclosures were estimated to result in a whopping $400 billion worth of defaults and $100 billion in losses to investors in mortgage securities. This means that one per 62 American households is currently approaching levels not seen since the Depression.

The current economic crisis and the foreclosure blight have affected new home sales and depressed home value generally. New home sales have fallen by about 50 percent. One in six homeowners owes more on a mortgage than the home is worth which raises the possibility of default. Home values have fallen nationwide from an average of 19% from their peak in 2006, and this price plunge has wiped out trillions of dollars in home equity. The tide of foreclosure might become self-perpetuating. The nation could be facing a housing depression—something far worse than a recession.

Obviously, there are substantial societal and economic costs of home foreclosures that adversely impact American families, their neighborhoods, communities and municipalities. A single foreclosure could impose direct costs on local government agencies totaling more than $34,000.

I am glad that this legislation is finally on the floor of the United States House of Representatives. I have long championed in the first TARP bill that was introduced and signed late last Congress, that language be included to specifically address the issue of mortgage foreclosures. I had asked that $100 billion be set aside to address that issue. Now, my idea has been vindicated as the TARP today has included language and we here today are continuing to engage in the dialogue to provide monies to those in mortgage foreclosure. I have also asked for modification of homeowners' existing loans to avoid mortgage foreclosure. I believe that the rules governing these loans should be relaxed. These are indeed tough economic times that require tough measures.

Because of the pervasive home foreclosures, federal legislation is necessary to curb the fallout from the subprime mortgage crisis. For consumers facing a foreclosure sale who want to retain their homes, Chapter 13 of the Bankruptcy Code provides some modicum of protection. The Supreme Court has held that the exception to a Chapter 13's ability to modify the rights of creditors applies even if the mortgage is under-secured. Thus, if a Chapter 13 debtor owes $300,000 on a mortgage for a home that is worth less than $200,000, he or she must repay the entire amount in order to keep his or her home, even though the maximum that the mortgage would receive upon foreclosure is the home's value, i.e., $200,000, less the costs of foreclosure.

Importantly, H.R. 1106 provides for a relaxation of the bankruptcy provisions and waives the mandatory requirement that a debtor must receive credit counseling prior to the filing for bankruptcy relief, under certain circumstances. The waiver applies in a Chapter 13 case where the debtor submits to the court a certification that the debtor has received notice that the holder of a claim secured by the debtor's principal residence may commence a foreclosure proceeding against such residence.

This bill also prohibits claims arising from violations of consumer protection laws. Specifically, this bill amends the Bankruptcy Code to disallow a claim that is subject to any remedy for damages or rescission as a result of the claimant's failure to comply with any applicable requirement under the Truth in Lending Act or other applicable state or federal consumer protection law in effect when the noncompliance took place, notwithstanding the prior entry of a foreclosure judgment.

H.R. 1106 also amends the Bankruptcy Code to permit modification of certain mortgages that are secured by the debtor's principal residence in specified respects. Lastly, the bill provides that the debtor, the debtor's property, and property of the bankruptcy estate are not liable for a fee, cost, or charge incurred while the Chapter 13 case is pending and that arises from a debt secured by the debtor's principal residence, unless the holder of the claim complies with certain requirements.

I have long championed the rights of homeowners, especially those facing mortgage foreclosure. I have worked with the Chairman of the House Judiciary Committee to include language that would relax the bankruptcy provisions to allow those facing mortgage foreclosure to restructure their debt to avoid foreclosure.

Manager's Amendment

Because I have long championed the rights of homeowners facing mortgage foreclose in the recent TARP bill and before the Judiciary Committee, I have worked with Chairman CONYERS and his staff to add language that would make the bill stronger and that would help more Americans. I co-sponsored sections of the Manager's Amendment and I urge my colleagues to support the bill.

Specifically, I worked with Chairman CONYERS to ensure that in section 2 of the amendment, section 109(h) of the Bankruptcy Code would be amended to waive the mandatory requirement, under current law, that a debtor receive credit counseling prior to filing for bankruptcy relief. Under the amended language there is now a waiver that will apply where the debtor submits to the court a certification that the debtor has received notice that the holder of a claim secured by the debtor's principal residence may commence a foreclosure proceeding against such residence.

This is important because it affords the debtor the maximum relief without having to undergo a slow credit counseling process. This will help prevent the debtor's credit situation from worsening, potentially spiraling out of control, and result in the eventual loss of his or her home.

Section 4 of the Manager's Amendment relaxes certain Bankruptcy requirements under Chapter 13 so that the debtor can modify the terms of the mortgage secured by his or her primary residence. This is an idea that I have long championed in the TARP legislation—the ability of debtors to modify their existing primary mortgages. Section 4 allows for a modification of the mortgage for a period of up to 40 years. Such modification cannot occur if the debtor fails to certify that it contacted the creditor before filing for bankruptcy. In this way, the language in the Manager's Amendment allows for the creditor to demonstrate that it undertook its ''last clear'' chance to work out the restructuring of the debt with its creditor before filing bankruptcy.

Importantly, the Manager's Amendment amends the bankruptcy code to provide that a debtor, the debtor's property, and property of the bankruptcy estate are not liable for fees and costs incurred while the Chapter 13 case is pending and that arises from a claim for debt secured by the debtor's principal residence.

Lastly, I worked to get language in the Manager's Amendment that would allow the debtors and creditors to negotiate before a declaration of bankruptcy is made. I made sure that the bill addresses present situations at the time of enactment where homeowners are in the process of mortgage foreclosure. This is done with a view toward consistency, predictability, and a hope that things will improve.

Rules Committee

During this time, debtors and average homeowners found themselves in the midst of a home mortgage foreclosure crisis of unprecedented levels. Many of the mortgage foreclosures were the result of subprime lending practices.

I have worked with my colleagues to strengthen the housing market and the economy, expand affordable mortgage loan opportunities for families at risk of foreclosure, and strengthen consumer protections against risky loans in the future. Unfortunately, problems in the subprime mortgage markets have helped push the housing market into its worst slump in 16 years.

Before the Rules Committee, I offered an amendment that would prevent homeowners

and debtors, who were facing mortgage foreclosure as a result of the unscrupulous and unchecked lending of predatory lenders and financial institutions, from having their mortgage foreclosure count against them in the determination of their credit score. It is an equitable result given that the debtors ultimately faced mortgage foreclosure because of the bad practices of the lender.

Simply put, my amendment would prevent homeowners who have declared mortgage foreclosure as a result of subprime mortgage lending and mortgages from having the foreclosure count against the debtor/homeowner in the determination of the debtor/homeowner's credit score.

Specifically, my amendment language was the following:

SEC. 205. FORBEARANCE IN CREATION OF CREDIT SCORE.

(a) IN GENERAL.—Section 609 of the Fair Credit Reporting Act (15 U.S.C. 1681g) is amended by adding at the end the following new subsection:

''(h) FORECLOSURE ON SUBPRIME NOT TAKEN INTO ACCOUNT FOR CREDIT SCORES.—

''(1) IN GENERAL.—A foreclosure on a subprime mortgage of a consumer may not be taken into account by any person in preparing or calculating the credit score (as defined in subsection (f)(2)) for, or with respect to, the consumer.

''(2) SUBPRIME DEFINED.—The term 'subprime mortgage' means any consumer credit transaction secured by the principal dwelling of the consumer that bears or otherwise meets the terms and characteristics for such a transaction that the Board has defined as a subprime mortgage.''.

(b) REGULATIONS.—The Board shall prescribe regulations defining a subprime mortgage for purposes of the amendment made by subsection (a) before the end of the 90–day period beginning on the date of the enactment of this Act.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect at the end of the 30-day period beginning on the date of the enactment of this Act and shall apply without regard to the date of the foreclosure.

The homeowners should not be required to pay for the bad acts of the lenders. It would take years for a homeowner to recover from a mortgage foreclosure. My amendment would have strengthened this already much needed and well thought out bill.

I intend to offer a bill later this Congress to address this issue. I am delighted, however, that the Judiciary Committee has expressed their willingness to incorporate my language in the Conference language for this bill. Without a doubt, this issue is important to me and it is critical to Americans who are facing mortgage foreclosure and bankruptcy.

Other Amendments

There were four amendments that were made in order by the Rules Committee. I will address my support or non-support for each amendment.

CONYERS AMENDMENT

I support the Manager's Amendment offered by Chairman CONYERS. The amendment makes sense and makes clear that H.R. 1106 is intended to help those that cannot afford to repay their mortgage without intervention. Indeed it is strength to the underlying bill by providing finality to the decisions worked out by the bankruptcy courts. These decisions would provide finality between lenders and borrowers. Moreover, the debtors are afforded certain protections by the Second Degree Amendment. The Second Degree Amendment provides that the lender could receive additional funding from the sale of the foreclosed home.

The Manager's Amendment would do the following:

(1) require courts to use FHA appraisal guidelines where the fair market value of a home is in dispute;

(2) deny relief to individuals who can afford to repay their mortgages without judicial mortgage modification; and

(3) extend the negotiation period from 15 to 30 days, requiring the debtor to certify that he or she contacted the lender, provided the lender with income, expense and debt statements, and that there was a process for the borrower and lender to seek to reach agreement on a qualified loan modification.

The Conyers Amendment would require a GAO study regarding the effectiveness of mortgage modifications outside of bankruptcy and judicial modifications, whether there should be a sunset, the impact of the amendment on bankruptcy courts, whether relief should be limited to certain types of homeowners. The GAO must analyze how bankruptcy judges restructure mortgages, including the number of judges disciplined as a result of actions taken to restore mortgages.

The Conyers Amendment would clarify that loan modifications, workout plans or other loss mitigation plans are eligible for the servicer safe harbor. Further, it would require HUD to receive public input before implementing certain FHA approval provisions.

With respect to the HOPE for Homeowners Program: recasts the prohibition against having committed fraud over the last 10 years from a freestanding prohibition to a borrower certification. The Conyers Amendment would amend the National Housing Act to broaden eligibility for Home Equity Conversion Mortgage (HECM) or ''reverse mortgage.''

Provides that the GAO must submit to Congress a review of the effects of the judicial modification program.

Requires the Comptroller of Currency, in coordination with the Director of Thrift Supervision, to submit reports to Congress on the volume of mortgage modifications and issue modification data collection and reporting requirements.

Expresses the Sense of Congress that the Treasury Secretary should use amounts made available under the Act to purchase mortgage revenue bonds for single-family housing.

Expresses the Sense of Congress that financial institutions should not foreclose on any principal homeowner until the loan modification programs included in H.R. 1106 and the President's foreclosure plan are implemented and deemed operational by the Treasury and HUD Secretaries.

Establishes a Justice Department Nationwide Mortgage Fraud Task Force to coordinate anti-mortgage fraud efforts. Would provide that the Treasury Secretary shall provide that the limit on the maximum original principal obligation of a mortgage that may be modified using EESA funds shall not be less than the dollar limit on the maximum original principal obligation of a mortgage that may be purchased by the Federal Home Loan Mortgage Corporation that is in effect at the time the mortgage is modified.

PRICE, TOM AMENDMENT

I oppose the Price Amendment. The Price Amendment provides that if a homeowner who has had a mortgage modified in a bankruptcy proceeding sells the home at a profit, the lender can recapture the amount of principal lost in the modification.

I oppose the Price Amendment for the following reasons.

First, the Price amendment would make homeowners into renters for life. It will lead to poorly maintained homes and lower property values for all of us. It takes away any incentive for homeowners to maintain their homes or insist on competitive sale prices.

Second, the Manager's Amendment already allows lenders to get back a substantial portion of any amount a home appreciates after bankruptcy. But it leaves in place incentives for homeowners to maintain and improve homes.

Third, the Price Amendment is opposed by the Center for Responsible Lending, Consumers Union, Leadership Conference on Civil Rights, National Association of Consumer Advocates, National Association of Consumer Bankruptcy Attorneys, National Community Reinvestment Coalition, National Consumer Law Center, National Legal Aid and Defender Association, National Policy and Advocacy Council on Homelessness, and USPIRG.

For the foregoing reasons, I oppose the Price Amendment and I urge my colleagues to vote ''no'' on this amendment.

PETERS, GARY AMENDMENT

I support this amendment. This amendment is straightforward and is intended to help the borrower by providing a last clear chance to garner much needed information. It is my hope that this information would be used to provide financial assistance and education to the consumer.

In many cases, proper education about the use of credit and mortgages could have made all the difference in the consumers choices. Simply put, if the consumers made wise and informed credit decisions in the first instance, they might not have been in bankruptcy or facing foreclosure. I find this amendment incredibly prudent and helpful to debtors and consumers. I urge my colleagues to support this amendment.

TITUS AMENDMENT

The Titus Amendment would require a servicer that receives an incentive payment under the HOPE for homeowners to notify all mortgagors under mortgages they service who are ''at-risk homeowners'' (as such term is defined by the Secretary), in a form and manner as shall be prescribed by the Secretary, that they may be eligible for the HOPE for Homeowners Program and how to obtain information regarding the program.

The HOPE for Homeowners (H4H) program was created by Congress to help those at risk of default and foreclosure refinance into more affordable, sustainable loans. H4H is an additional mortgage option designed to keep borrowers in their homes.

The program is effective from October 1, 2008 to September 30, 2011.

How the program works

There are four ways that a distressed homeowner could pursue participation in the HOPE for Homeowners program:

1. Homeowners may contact their existing lender and/or a new lender to discuss how to qualify and their eligibility for this program.

2. Servicers working with troubled homeowners may determine that the best solution for avoiding foreclosure is to refinance the homeowner into a HOPE for Homeowners loan.

3. Originating lenders who are looking for ways to refinance potential customers out from under their high-cost loans and/or who are willing to work with servicers to assist distressed homeowners.

4. Counselors who are working with troubled homeowners and their lenders to reach a mutually agreeable solution for avoiding foreclosure.

It is envisioned that the primary way homeowners will initially participate in this program is through the servicing lender on their existing mortgage. Servicers that do not have an underwriting component to their mortgage operations will partner with an FHA-approved lender that does.

Because I am committed to helping Americans obtain homes and remain in their homes, I support the HOPE for Homeowners Program and I support this amendment. I urge my colleagues to support this bill. Indeed, I feel personally vindicated that Congress has set aside a bill to address the issue of mortgage foreclosure, an issue that I have long championed in the 110th Congress.

Housing, Foreclosures, and Texas

Texas ranks 17th in foreclosures. Texas would have faired far worse but for the fact that homeowners enjoy strong constitutional protections under the state's home-equity lending law. These consumer protections include a 3% cap on lender's fees, 80% loan-to-value ratio (compared to many other states that allow borrowers to obtain 125% of their home's value), and mandatory judicial sign-off on any foreclosure proceeding involving a defaulted home-equity loan.

Still, in the last month, in Texas alone there have been 30,720 foreclosures and sadly 15,839 bankruptcies. Much of this has to do with a lack of understanding about finance—especially personal finance.

Last year, American's Personal income decreased $20.7 billion, or 0.2 percent, and disposable personal income (DPI) decreased $11.8 billion, or 0.1 percent, in November, according to the Bureau of Economic Analysis. Personal consumption expenditures (PCE) decreased $56.1 billion, or 0.6 percent. In India, household savings are about 23 percent of their GDP.

Even though the rate of increase has showed some slowing, uncertainties remain. Foreclosures and bankruptcies are high and could still beat last year's numbers.

Home foreclosures are at an all-time high and they will increase as the recession continues. In 2006, there were 1.2 million foreclosures in the United States, representing an increase of 42 percent over the prior year. During 2007 through 2008, mortgage foreclosures were estimated to result in a whopping $400 billion worth of defaults and $100 billion in losses to investors in mortgage securities. This means that one per 62 American households is currently approaching levels not seen since the Depression.

The current economic crisis and the foreclosure blight has affected new home sales and depressed home value generally. New home sales have fallen by about 50 percent.

One in six homeowners owes more on a mortgage than the home is worth raising the possibility of default. Home values have fallen nationwide from an average of 19% from their peak in 2006 and this price plunge has wiped out trillions of dollars in home equity. The tide of foreclosure might become self-perpetuating. The nation could be facing a housing depression—something far worse than a recession.

Obviously, there are substantial societal and economic costs of home foreclosures that adversely impact American families, their neighborhoods, communities and municipalities. A single foreclosure could impose direct costs on local government agencies totaling more than $34,000.

Recently, the Congress set aside $100 billion to address the issue of mortgage foreclosure prevention. I have long championed that money be a set aside to address this very important issue. I believe in homeownership and will do all within my power to ensure that Americans remain in their houses.

Bankruptcy

We have come full circle in our discussion today. The bill before us today is on bankruptcy and mortgage foreclosures.

I have long championed in the first TARP bill that was introduced and signed late last Congress, that language be included to specifically address the issue of mortgage foreclosures. I had asked that $100 billion be set aside to address that issue. Now, my idea has been vindicated as the TARP that was voted upon this week has included language that would give $100 billion to address the issue of mortgage foreclosure. I am continuing to engage in the dialogue with Leadership to provide monies to those in mortgage foreclosure. I have also asked for modification of homeowners' existing loans to avoid mortgage foreclosure.

I believe that the rules governing these loans should be relaxed. These are indeed tough economic times that require tough measures. Again, I feel a sense of vindication on this point, because this bill, H.R. 1106 addresses this point.

Credit Crunch

A record amount of commercial real estate loans coming due in Texas and nationwide the next three years are at risk of not being renewed or refinanced, which could have dire consequences, industry leaders warn. Texas has approximately $27 billion in commercial loans coming up for refinancing through 2011, ranking among the top five states, based on data provided by research firms Foresight Analytics LLC and Trepp LLC. Nationally, Foresight Analytics estimates that $530 billion of commercial debt will mature through 2011. Dallas-Fort Worth has nearly $9 billion in commercial debt maturing in that time frame.

Most of Texas' $27 billion in loans maturing through 2011—$18 billion—is held by financial institutions. Texas also has $9 billion in commercial mortgage-backed securities, the third-largest amount after California and New York, according to Trepp.

Mr. Chairman, my amendment would have helped alleviate these problems. Although my amendment language was not included in the bill, I am confident that it will be included in the Conference language.

All in all, I believe that this bill is important and will do yeoman's work helping America get back on the right track with respect to the economy and the mortgage foreclosure crisis. I wholeheartedly urge my colleagues to support this bill.

Mr. GOODLATTE. Mr. Chairman, I yield myself 3 minutes.

First, I'd like to respond to the gentleman from Vermont who said that Citigroup endorsed this legislation. Well, I must tell you the American Banking Association doesn't support this, nor do the community bankers, the bankers who still have their heads above water all across my congressional district and many other districts across the country that are making mortgage loans day in and day out. They don't support this legislation. But a bank that is receiving already tens of billions of dollars in government assistance supports it. That should convince us that this legislation leads us in the right direction?

Then to the gentleman from Georgia, I would point out that the Congress, a number of years ago, created a special Chapter 12 bankruptcy proceeding for farmers, and that was a temporary change in the law as well, as this one is. The gentleman is correct; it only applies to existing mortgages. But that law, created many, many years ago, still exists because it's been extended and extended, and we are at risk of having the same thing happen here, particularly when the mindset is that we should turn to the advice of banks that are failing to tell us a good way to handle a problem that banks that are succeeding say it is a bad, bad practice.

And I also want to speak against this amendment. Far from making bankruptcy a last resort, this gives homeowners two bites at the apple. Even if they obtain the Obama compliant loan modification from their lenders, i.e., workouts that meet the terms of President Obama's mortgage program, they can still go into bankruptcy. Once there, they can shop for a better deal from the bankruptcy court. Lenders, meanwhile, have to honor the already-cut voluntary deals all the way through bankruptcy.

At the end of the case, the homeowner keeps whichever deal is sweeter. That's not making bankruptcy a last resort. That's guaranteeing abuse of both voluntary modification and bankruptcy. We're going to see a run on the bankruptcy courts if this legislation is adopted.

Meanwhile, what happens to the borrower who rejects an offer meeting President Obama's terms? Nothing. The bankruptcy court can theoretically refuse to confirm a borrower's cramdown plan, but under the terms of the amendment, that will likely happen only when the lender offered a modification without a voluntary cramdown and the borrower has no need for bankruptcy relief anyway.

And what about borrowers who are within 30 days of foreclosure sales? They don't even have to contact their lenders about voluntary modifications. So none of the amendment modifications do not apply.

The new manager's amendment does nothing to change this exception that

swallows the whole bill. As a result, borrowers who may have entered into mortgages that they shouldn't have in the first place, and bankruptcy attorneys can game the system by simply waiting until borrowers are within the 30 days of a foreclosure sale to file for bankruptcy.

I reserve the balance of my time.

Ms. ZOE LOFGREN of California. Mr. Chairman, I would just note that the National Association of Community Development Credit Unions has announced their support of this measure as altered.

I yield 2 minutes to the gentleman from North Carolina (Mr. MILLER), who's worked so hard on this measure, who was the author of the underlying bill in the last Congress.

Mr. MILLER of North Carolina. Mr. Chairman, this has been a pretty remarkable debate. We've heard we're now going down a dangerous road, and we'll begin the modification or altering contracts in court. Mr. Chairman, that is what bankruptcy does. That is the rule of law. We do enforce contracts. Except when people get hopelessly in debt, we allow them to draw a line to pay what they can, and then to get a fresh start in life. That's what bankruptcy does.

In fact, home mortgages is the only kind of debt that can't be modified, and it is not because that was brought down on stone tablets from Mount Sinai. That exception is just a special-interest give which we see around here all the time. In 1978, the mortgage industry got that exception as a special-interest provision.

We've heard that this will result in arbitrary modifications. No. There are more than a million bankruptcy cases a year. We have a pretty good idea what bankruptcy judges are going to do. They're going to do the same thing with this kind of interest that they do with every other, including family farms, and this is exactly like the treatment of family farms.

We've heard it will help speculators. No. Speculators already can be helped. Investors already can modify their mortgage in bankruptcy. It is only people who live in their homes who can't get relief. We've heard it will help people who bought too much house. No. If you can't afford a 100-percent mortgage at higher than the prime rate, it doesn't help you.

The most infuriating argument is that the opposition is really not about helping the banking industry and the securities industry. It's all about helping the little people that's going to increase interest rates on the little people. Mr. Chairman, I have been hearing that the whole time I have been in Congress. It's never been about helping the banks get rich, according to the banks. It's always been about helping the little people. No matter how crooked their business practices may seem on their face, it's always something they need to do to help the little people.

Here's a reality. Two years ago, just a couple years ago, 40 percent of all corporate profits were for the financial services' sector, 40 percent. That's after all of their salaries and their bonuses and their $50 million corporate jets and their golf tournaments and everything else.

The Acting CHAIR. The time of the gentleman has expired.

Ms. ZOE LOFGREN of California. Mr. Chairman, I would yield the gentleman an additional 15 seconds.

Mr. MILLER of North Carolina. This amendment simply gives lenders one last chance to make a voluntary modification. That is undoubtedly better for a borrower to get a voluntary modification rather than having to go through bankruptcy.

I support this amendment.

Mr. GOODLATTE. Mr. Chairman, I yield myself 30 seconds.

First, I say to the gentlewoman from California that the largest credit union association in the world, Credit Union National Association, a member-owned collection of credit unions around the United States, strongly opposes this legislation. When we talk about the ''little people'' and the organizations that reach out and help people day-to-day with loans, they know the impact that this will have.

And secondly, to the gentleman from North Carolina, the fact of the matter is cramdowns were entirely prohibited going back to the 1898 law. So for more than 100 years, when they liberalized in other areas, they simply continued in this area. It's not true that they have only prohibited cramdowns since 1978.

Mr. Chairman, I yield 2 minutes to the gentleman from Iowa (Mr. KING).

Mr. KING of Iowa. I thank the gentleman from Virginia for yielding.

Mr. Chairman, this amendment before us allows for actual fraud, misrepresentation or obtaining a loan or refinancing by false pretenses. It's specific. We passed an amendment in the Judiciary Committee that prohibited such things, but the language has been changed after the fact. The language has been changed now so that it reads that the court does not find that the debtor has been convicted of obtaining—by actual fraud—the extension, renewal or refinancing of credit that gives rise to a modification claim.

In other words, whatever kind of fraud and misrepresentation or false pretenses might be used, it's not going to be considered by a cramdown court unless there is an actual conviction. That's a breathtaking position to take in print here in the United States Congress.

I think this cramdown, when you break the contract, you allow a judge—a judge perhaps yet to be appointed, a judge with a different idea on what a contract is—to break that contract, sever it apart, and readjust the principal and the interest to meet what the judge believes is convenient to the borrower and give them two bites at the apple and let them pick whatever is the best deal for them?

I can tell you what happens, Mr. Chairman, and that is this: The degree of risk must be proportional to the potential for profit. That's the business equation. Lenders will not loan money unless they have a prospective profit on the other side of this.

So that means that they're going to ask for more down money, and they're going to ask for more interest, and there will be fewer people owning homes, not more. There may be some temporary relief over this window over the next couple of years, and maybe this economy comes back around. But the long run is this: We'll have fewer homeowners, not more. The price for that will end up being more public housing, not less, to replace the homeowners that aren't able to own their own home.

This is the public housing promotion bill in the end. That's where it takes us. It was misplaced thinking to pass the Community Reinvestment Act, it's misplaced thinking not to hold Fannie and Freddie, and it's misplaced thinking to push this cramdown.

Ms. ZOE LOFGREN of California. Mr. Chairman, may I inquire as to the time remaining on each side?

The Acting CHAIR. The gentlelady from California has 5¾ minutes, and the gentleman from Virginia has 4½ minutes.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield to the gentleman from Florida (Mr. MEEK) 1 minute.

Mr. MEEK of Florida. Mr. Chairman, I just want to let the Members know on this great piece of legislation and this amendment that we're debating now that we have a mortgage fraud task force to be created in the Department of Justice.

This same language passed this House 350–23 in the last Congress. I think it's important, with this Nationwide task force, we have a number of communities and a number of victims of those individuals that have obtained loans and tried to get even second loans to be able to save their homes, they find themselves falling to these predators that are out there now.

This task force will be a voluntary participation between Federal, State and local law enforcement officials to be able to close down on these individuals. In my State of Florida, we came in first in 2006, 2007, 2008 of having these mortgage fraud individuals carrying out their acts against Floridians. I think it's also important that the increase was 168 percent in Florida. And as we look at making sure that we protect not only the borrower but also making sure that lenders can be trusted in this process, that we do have bad apples amongst the lending community.

I thank you for allowing me this minute.

Mr. GOODLATTE. Mr. Chairman, at this time I am pleased to yield 1½ minutes to the gentleman from Georgia (Mr. PRICE).

Mr. PRICE of Georgia. I thank the gentleman for yielding. I want to thank him for his leadership on this issue.

Mr. Chairman, I rise to just point out a couple fallacies on the arguments on the other side.

I think it's important that everybody appreciate why this law is in place in the first place, why isn't cramdown allowed in a bankruptcy on a primary residence. And the reason, Mr. Chairman, as you well know, is that it's to encourage primary residence ownership. If lenders don't know what amount of principal they are going to be able to get back on any loan, then they will not be encouraged to loan men and women across this Nation money to purchase a primary reason. That's why. It's very simple.

So what this will do is make it so there will be less money available for homeowner purchasers, there will be less money available for individuals to gain their primary residence.

Higher interest rates will certainly occur. The gentleman from Vermont, I chuckled when he said that Citigroup was supporting this. Well, as has been said in the past, Mr. Chairman, ''Surprise, surprise, surprise.'' Citigroup is supporting it because it gets billions of dollars from the Federal Government. What can it do? In this political economy, under this leadership and this administration, in this political economy, politicians are directing who the winners and losers are, who gets money; and consequently, Citigroup can do nothing but support what this majority and this administration wants.

It's a political economy. It's not a market economy. We need to return to a market economy so that the American people can realize their hopes and dreams and make it so that more individuals are able to purchase their primary residence without the imposition of the Federal Government.

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Ms. ZOE LOFGREN of California. Mr. Chairman, I would like to yield 15 seconds to Mr. MARSHALL.

Mr. MARSHALL. To the gentlemen from Georgia and Virginia, again, this only applies to existing debt. Even if the bill is extended, its terms only apply to existing debt now. You would have to change that for it to apply to future loans.

The argument, if it's valid at all—and there is, frankly, scholarship to the contrary—but the argument that the price of a home mortgage has gone up just doesn't hold water.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield 1 minute to a member of the committee, Mr. MAFFEI.

Mr. MAFFEI. I thank the gentlewoman for yielding and for her leadership on this bill.

I, too, had some hesitation about broadening the bankruptcy judges' jurisdiction on this. But what I did was I listened to the other side and I worked with the gentlewoman from California and the distinguished chairman from Michigan, and we were able to get a lot of changes in this bill—and particularly in this manager's amendment—that would make sure that the lender and the borrower would get together, that there would be a safe haven to protect banks and make sure that they could, in fact, renegotiate these loans, and to keep anyone from using this for anything but an absolute last resort. However, as a last resort, it's a necessary, because if we don't have this, then whatever the borrower does, they may not have recourse.

In my district, this is not the biggest problem, foreclosures are not the biggest thing. But yet, even if one family comes to me and says, we're desperate, we have to declare bankruptcy, and if we had a second home, it would be covered, if we had a yacht, it would be covered, but our first home would not be covered, that's a very difficult thing to explain. So I support the manager's amendment.

Ms. ZOE LOFGREN of California. Let me mention one point that has been discussed, which is the potential that enacting this legislation would somehow impact future interest rates for principal mortgages.

I would like to mention that Mark Zandi, who was Senator John McCain's economic adviser during his campaign for President, said this: ''Given that the total cost of foreclosure to lenders is much greater than that associated with Chapter 13 bankruptcy, there is no reason to believe that the cost of mortgage credit across all mortgage loan products should rise.''

I think that this is a bogus argument. And I think that if we don't act to provide fairness to this system, we will be letting down our constituents, and once again, the little guy will lose.

Mr. Chairman, I reserve the balance of my time.

Mr. GOODLATTE. Mr. Chairman, I yield myself 1 minute.

Some of the other issues raised in this manager's amendment that need to be pointed out are that the amendment provides an alternative to cramdown of principal, but astoundingly the alternative is free money. If the judge does not want to give a cramdown, he can just rewrite the mortgage as a no-interest loan over the full term of a new 30-year deal. Now, just like there's no such thing as a free lunch, there's no such thing as free money for banks or credit unions to lend to the people who come to them.

So while the gentleman—in fact, several have made the point that this only applies to existing mortgages. The fact of the matter is the money to pay for the modifications that are made here has got to come from someplace. And while I remain concerned that all you would have to do in the future would be to advance the enactment date—everything else in the law would be the same—so you could continue this policy and make it permanent, even if you didn't, money from future borrowers is what's going to be used to fund these changes in current mortgages. It's wrong.

Ms. ZOE LOFGREN of California. Mr. Chairman, may I inquire as to how much time remains on each side.

The Acting CHAIR. The gentlelady from California has 3 minutes remaining and the gentleman from Virginia has 2 minutes remaining.

Ms. ZOE LOFGREN of California. I would like to yield 1 minute to the gentleman from Georgia (Mr. MARSHALL) at this point.

Mr. MARSHALL. In reply to my friend from Virginia, in his observation that, in fact, there are going to be losses and those losses that might be incurred as a result of foreclosures for less than the amount of the loan, all the expenses that are involved in attempting a foreclosure, the expenses associated with maintaining vacant properties—which are huge, by the way—all of those losses could wind up causing credit to increase in the future. Obviously, I described those losses the way I did because, frankly, having a bankruptcy write down is similar to the other kinds of losses that are associated with a foreclosure setting, a setting in which there is a distressed property. And in most instances, the result for the creditor in a bankruptcy process is less expensive than in other processes available to creditors in circumstances like these.

Bottom line, if we can limit these vacancies, we limit the falling home values, which helps the portfolios of most of the lenders that I know.

Mr. GOODLATTE. Mr. Chairman, I yield myself the remaining time.

Mr. Chairman, the bottom line, in response to the gentleman from Georgia's argument, is that his case is the strongest one for leaving the bankruptcy laws the way they are because the incentives already exist for them to avoid the cost that he described. So somebody who is struggling right now with their mortgage payments, the incentive exists for them to work with the financial institution and for the financial institution to work with them so they don't face the uncertainties that occur in bankruptcy court.

So, the bottom line is that what this is going to do is it's going to pass along to future people who want to buy homes, whether the law is extended in the future or not, the cost that will be borne by credit unions and community banks and others who are making these mortgages today—they have to cover costs that are unanticipated when they made the mortgages—they're going to have to pass them along in the future. To the extent that they can voluntarily work that out with the existing homeowner, that is the best solution. But that occurs right now and that incentive exists right now under the law. To change the law in the manner that's provided for here, even with the changes in this amendment, simply does not work. And it does not give the assurance to those who said that there needs to be a second chance, a second opportunity to negotiate between the lender and the homeowner voluntarily

because, as I pointed out earlier, any clever bankruptcy attorney will advise his client to simply wait until they're within 30 days of foreclosure, then they don't have to engage in that, they can go straight to the bankruptcy court, bypass exactly what he was calling for happening, and go to the court and see what they can accomplish there under this very, very harmful law from the standpoint of the health of currently healthy banking institutions.

So I urge my colleagues to oppose this amendment and to oppose the underlying bill. This is not the way to keep a healthy system by allowing people to continue to borrow and buy homes.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield 30 seconds to the gentleman from Georgia, who, I would like to point out, was actually, in his prior life before Congress, an expert in this area of the law.

Mr. MARSHALL. Again, to my friend from Virginia, the bankruptcy process is set up so that the creditor receives, essentially in fair value, the treatment that the creditor otherwise would have received.

And the reality is, in most instances—almost all instances—debtors who default on their mortgages have already got huge problems with other creditors and other debt, and lenders typically know that it's just throwing good money after bad to spend an awful lot of time on workouts. And that's why we've seen the programs that we've put in place thus far in an attempt to stem the foreclosures and the vacancies that are hurting all of us, those programs aren't working, and it's in large part because these debtors need relief from bankruptcy. Outside bankruptcy, for the most part it is just not going to work.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield myself the remaining time.

Nearly six million households are facing the possibility of foreclosure in our country. And as a result, responsible families who did everything right, who have a traditional mortgage, are facing foreclosure or their neighborhoods are struggling. It's estimated that each foreclosed home reduces the price of the surrounding property—people who did nothing wrong—by 9 percent, or sometimes more. That's when the meth dealers move that is the ''sometimes more.''

This bill takes a number of steps. We've talked about bankruptcy, but that's just a small part of it. It provides a safe harbor for servicers to modify loans. It increases the FDIC insured rate for banks. It makes improvements to the HOPE for Homeowners Program. But it also narrowly affects the exemption for primary residences under Chapter 13.

As has been pointed out, speculators can go into Chapter 13 and get complete relief; it's only the individual homeowner who is not able to get that relief. That's just not fair. There's no way you can possibly defend how that is fair, that the big guys and the speculators get their way, but the individual struggling homeowner does not.

We have worked very hard in these last few weeks to narrow this provision, to listen to every objection that was honestly made, that was credible, and to accommodate it. This amendment is a consensus measure that makes the bill better. I urge its passage.

Mr. CONYERS. Mr. Chair, Title I of H.R. 1106, the Helping Families Save Their Homes Act of 2009, is based in part on H.R. 200, legislation approved by the Judiciary Committee last month to give families whose home mortgage is in distress a better opportunity to come to terms with their lender on workable payment terms—more realistically based on current market interest rates and current home market values.

Because the provisions in title I of this bill differ in a number of respects from H.R. 200 as reported, and differ further with the adoption of the manager's amendment, I am inserting in the RECORD a section-by-section analysis of this bill, as a further supplement to the legislative history in the floor debate today and last week, and in the hearings and committee report for H.R. 200.

H.R. 1106, THE ''HELPING FAMILIES SAVE THEIR HOMES ACT OF 2009,'' SECTION-BY-SECTION EXPLANATION (AS AMENDED BY THE REVISED MANAGER'S AMENDMENT)

Section 1. Short Title; Table of Contents. Subsection (a) sets forth the short title of this Act as the ''Helping Families Save Their Homes Act of 2009.'' Subsection (b) consists of the table of contents.

TITLE I—PREVENTION OF MORTGAGE FORECLOSURES

Subtitle A—Modification of residential mortgages

Section 100. Bankruptcy Code section 101 defines various terms. Section 100 amends this provision to add a definition of ''qualified loan modification,'' which is defined as a loan modification agreement made in accordance with the guidelines of the Obama Administration's Homeowner Affordability and Stability Plan, as implemented on March 4, 2009 with respect to a loan secured by a senior security interest in the debtor's principal residence. To qualify as such, the agreement must reduce the debtor's mortgage payment (including principal and interest) and payments for various other specified expenses (i.e., real estate taxes, hazard insurance, mortgage insurance premium, homeowners' association dues, ground rent, and special assessments) to a percentage of the debtor's income in accordance with such guidelines. The payment may not include any period of negative amortization and it must fully amortize the outstanding mortgage principal. In addition, the agreement must not require the debtor to pay any fees or charges to obtain the modification. And, the agreement must permit the debtor to continue to make these payments notwithstanding the debtor having filed a bankruptcy case as if he or she had not filed for such relief.

Section 101. Eligibility for Relief. Bankruptcy Code section 109(e) sets forth secured and unsecured debt limits to establish a debtor's eligibility for relief under chapter 13. Section 101 of the Act amends this provision to provide that the computation of debts does not include the secured or unsecured portions of debts secured by the debtor's principal residence, under certain circumstances. The exception applies if the value of the debtor's principal residence as of the date of the order for relief under chapter 13 is less than the applicable maximum amount of the secured debt limit specified in section 109(e). Alternatively, the exception applies if the debtor's principal residence was sold in foreclosure or the debtor surrendered such residence to the creditor and the value of such residence as of the date of the order for relief under chapter 13 is less than the secured debt limit specified in section 109(e). This amendment is not intended to create personal liability on a debt if there would not otherwise be personal liability on such debt.

In addition, section 101 amends Bankruptcy Code section 109(h) to waive the mandatory requirement that a debtor receive credit counseling prior to filing for bankruptcy relief, under certain circumstances. The waiver applies in a chapter 13 case where the debtor submits to the court a certification that the debtor has received notice that the holder of a claim secured by the debtor's principal residence may commence (or has commenced) a foreclosure proceeding against such residence.

Section 102. Prohibiting Claims Arising from Violations of the Truth in Lending Act. Under the Truth in Lending Act, a mortgagor has a right of rescission with respect to a mortgage secured by his or her residence, under certain circumstances. Bankruptcy Code section 502(b) enumerates various claims of creditors that are not entitled to payment in a bankruptcy case, subject to certain exceptions. Section 102 amends Bankruptcy Code section 502(b) to provide that a claim for a loan secured by a security interest in the debtor's principal residence is not entitled to payment in a bankruptcy case to the extent that such claim is subject to a remedy for rescission under the Truth in Lending Act, notwithstanding the prior entry of a foreclosure judgment. In addition, section 102 specifies that nothing in this provision may be construed to modify, impair, or supersede any other right of the debtor.

Section 103. Authority to Modify Certain Mortgages. Under Bankruptcy Code section 1322(b)(2), a chapter 13 plan may not modify the terms of a mortgage secured solely by real property that is the debtor's principal residence. Section 103 amends Bankruptcy Code section 1322(b) to create a limited exception to this prohibition. The exception only applies to a mortgage that: (1) originated before the effective date of this provision; and (2) is the subject of a notice that a foreclosure may be (or has been) commenced with respect to such mortgage.

In addition, the debtor must certify pursuant to new section 1322(h) that he or she contacted—not less than 30 days before filing for bankruptcy relief—the mortgagee (or the entity collecting payments on behalf of such mortgagee) regarding modification of the mortgage. The debtor must also certify that he or she provided the mortgagee (or the entity collecting payments on behalf of such mortgagee) a written statement of the debtor's current income, expenses, and debt in a format that substantially conforms with the schedules required under Bankruptcy Code section 521 or with such other form as promulgated by the Judicial Conference of the United States. Further, the certification must include a statement that the debtor considered any qualified loan modification offered to the debtor by the mortgagee (or the entity collecting payments on behalf of such holder). This requirement does not apply if the foreclosure sale is scheduled to occur within 30 days of the date on which the debtor files for bankruptcy relief. If the chapter 13 case is pending at the time new section 1322(h) becomes effective, then the

debtor must certify that he or she attempted to contact the mortgagee (or the entity collecting payments on behalf of such mortgagee) regarding modification of the mortgage before either: (1) filing a plan under Bankruptcy Code section 1321 that contains a modification pursuant to new section 1322(b)(11); or (2) modifying a plan under Bankruptcy Code section 1323 or section 1329 to contain a modification pursuant to new section 1322(b)(11).

Under new section 1322(b)(11), the debtor may propose a plan modifying the rights of the mortgagee (and the rights of the holder of any claim secured by a subordinate security interest in such residence) in several respects. It is important to note that the intent of new section 1322(b)(11) is permissive. Accordingly, a chapter 13 may propose a plan that proposes any or all types of modification authorized under section 1322(b)(11).

First, the plan may provide for payment of the amount of the allowed secured claim as determined under section 506(a)(1). In making such determination, the court, pursuant to new section 1322(i), must use the fair market value of the property as of when the value is determined. If the issue of value is contested, the court must determine such value in accordance with the appraisal rules used by the Federal Housing Administration.

Second, the plan may prohibit, reduce, or delay any adjustable interest rate applicable on and after the date of the filing of the plan.

Third, it may extend the repayment period of the mortgage for a period that is not longer than the longer of 40 years (reduced by the period for which the mortgage has been outstanding) or the remaining term of the mortgage beginning on the date of the order for relief under chapter 13.

Fourth, the plan may provide for the payment of interest at a fixed annual rate equal to the currently applicable average prime offer rate as of the date of the order for relief under chapter 13, as determined pursuant to certain specified criteria. The rate must correspond to the repayment term determined under new section 1322(b)(11)(C)(i) as published by the Federal Financial Institutions Examination Council in its table entitled, ''Average Prime Offer Rates—Fixed.'' In addition, the rate must include a reasonable premium for risk.

Fifth, the plan, pursuant to new section 1322(b)(11)(D), may provide for payments of such modified mortgage directly to the holder of the claim or, at the discretion of the court, through the chapter 13 trustee during the term of the plan. The reference in new section 1322(b)(11)(D) to ''holder of the claim'' is intended to include a servicer of such mortgage for such holder. It is anticipated that the court, in exercising its discretion with respect to allowing the debtor to make payments directly to the mortgagee or by requiring payments to be made through the chapter 13 trustee, will take into consideration the debtor's ability to pay the trustee's fees on payments disbursed through the trustee.

New section 1322(g) provides that a claim may be reduced under new section 1322(b)(11)(A) only on the condition that the debtor agrees to pay the mortgagee a stated portion of the net proceeds of sale should the home be sold before the completion of all payments under the chapter 13 plan or before the debtor receives a discharge under section 1328(b). The debtor must pay these proceeds to the mortgagee within 15 days of when the debtor receives the net sales proceeds. If the residence is sold in the first year following the effective date of the chapter 13 plan, the mortgagee is to receive 90 percent of the difference between the sales price and the amount of the claim as originally determined under section 1322(b)(11) (plus costs of sale and improvements), but not to exceed the unpaid amount of the allowed secured claim determined as if such claim had not been reduced under new section 1322(b)(11)(A). If the residence is sold in the second year following the effective date of the chapter 13 plan, then the applicable percentage is 70 percent. If the residence is sold in the third year following the effective date of the chapter 13 plan, then the applicable percentage is 50 percent. If the residence is sold in the fourth year following the effective date of the chapter 13 plan, then the applicable percentage is 30 percent. If the residence is sold in the fifth year following the effective date of the chapter 13 plan, then the applicable percentage is ten percent. It is the intent of this provision that if the unsecured portion of the mortgagee's claim is partially paid under this provision it should be reconsidered under 502(j) and reduced accordingly.

Section 104. Combating Excessive Fees. Section 104 amends Bankruptcy Code section 1322(c) to provide that the debtor, the debtor's property, and property of the bankruptcy estate are not liable for a fee, cost, or charge that is incurred while the chapter 13 case is pending and that arises from a claim for debt secured by the debtor's principal residence, unless the holder of the claim complies with certain requirements. It is the intent of this provision that its reference to a fee, cost, or charge includes an increase in any applicable rate of interest for such claim. It also applies to a change in escrow account payments.

To ensure such fee, cost, or charge is allowed, the claimant must comply with certain requirements. First, the claimant must file with the court and serve on the chapter 13 trustee, the debtor, and the debtor's attorney an annual notice of such fee, cost, or charge (or on a more frequent basis as the court determines) before the earlier of one year of when such fee, cost, or charge was incurred or 60 days before the case is closed.

Second, the fee, cost, or charge must be lawful under applicable nonbankruptcy law, reasonable, and provided for in the applicable security agreement.

Third, the value of the debtor's principal residence must be greater than the amount of such claim, including such fee, cost or charge.

If the holder fails to give the required notice, such failure is deemed to be a waiver of any claim for such fees, costs, or charges for all purposes. Any attempt to collect such fees, costs, or charges constitutes a violation of the Bankruptcy Code's discharge injunction under section 524(a)(2) and the automatic stay under section 362(a), whichever is applicable.

Section 104 further provides that a chapter 13 plan may waive any prepayment penalty on a claim secured by the debtor's principal residence.

Section 105. Confirmation of Plan. Bankruptcy Code section 1325 sets forth the criteria for confirmation of a chapter 13 plan. Section 105 amends section 1325(a)(5) (which specifies the mandatory treatment that an allowed secured claim provided for under the plan must receive) to provide an exception for a claim modified under new section 1322(b)(11). The amendment also clarifies that payments under a plan that includes a modification of a claim under new section 1322(b)(11) must be in equal monthly amounts pursuant to section 1325(a)(5)(B)(iii)(I).

In addition, section 105 specifies certain protections for a creditor whose rights are modified under new section 1322(b)(11). As a condition of confirmation, new section 1325(a)(10) requires a plan to provide that the creditor must retain its lien until the later of when: (1) the holder's allowed secured claim (as modified) is paid; (2) the debtor completes all payments under the chapter 13 plan; or (3) if applicable, the debtor receives a discharge under section 1328(b).

Section 105 also provides standards for confirming a chapter 13 plan that modifies a claim pursuant to new section 1322(b)(11). First, the debtor cannot have been convicted of obtaining by actual fraud the extension, renewal, or refinancing of credit that gives rise to such modified claim. Second, the modification must be in good faith. Lack of good faith exists if the debtor has no need for relief under this provision because the debtor can pay all of his or her debts and any future payment increases on such debts without difficulty for the foreseeable future, including the positive amortization of mortgage debt. In determining whether a modification under section 1322(b)(11) that reduces the principal amount of the loan is made in good faith, the court must consider whether the holder of the claim (or the entity collecting payments on behalf of such holder) has offered the debtor a qualified loan modification that would enable the debtor to pay such debts and such loan without reducing the principal amount of the mortgage.

Section 105 further amends section 1325 to add a new provision. New section 1325(d) authorizes the court, on request of the debtor or the mortgage holder, to confirm a plan proposing to reduce the interest rate lower than that specified in new section 1322(b)(11)(C)(ii), provided: (1) the modification does not reduce the mortgage principal; (2) the total mortgage payment is reduced through interest rate reduction to the percentage of the debtor's income that is the standard for a modification in accordance with the Obama Administration's Homeowner Affordability and Stability Plan, as implemented on March 4, 2009; (3) the court determines that the debtor can afford such modification in light of the debtor's financial situation, after allowance of expense amounts that would be permitted for a debtor subject to section 1325(b)(3), regardless of whether the debtor is otherwise subject to such paragraph, and taking into account additional debts and fees that are to be paid in chapter 13 and thereafter; and (4) the debtor is able to prevent foreclosure and pay a fully amortizing 30-year loan at such reduced interest rate without such reduction in principal. If the mortgage holder accepts a debtor's proposed modification under this provision, the plan's treatment is deemed to satisfy the requirements of section 1325(a)(5)(A) and the proposal should not be rejected by the court.

Section 106. Discharge. Bankruptcy Code section 1328 sets forth the requirements by which a chapter 13 debtor may obtain a discharge and the scope of such discharge. Section 106 amends section 1328(a) to clarify that the unpaid portion of an allowed secured claim modified under new section 1322(b)(11) is not discharged. This provision is not intended to create a claim for a deficiency where such a claim would not otherwise exist.

Section 107. Standing Trustee Fees. Section 108(a) amends 28 U.S.C. §586(e)(1)(B)(i) to provide that a chapter 13 trustee may receive a commission set by the Attorney General of no more than four percent on payments made under a chapter 13 plan and disbursed by the chapter 13 trustee to a creditor whose claim was modified under Bankruptcy Code section 1322(b)(11), unless the bankruptcy court waives such fees based on a determination that the debtor has income less

than 150 percent of the official poverty line applicable to the size of the debtor's family and payment of such fees would render the debtor's plan infeasible.

With respect to districts not under the United States trustee system, section 108(b) makes a conforming revision to section 302(d)(3) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986.

Section 108. Effective Date; Application of Amendments. Section 108(a) provides that this measure and the amendments made by it, except as provided in subsection (b), take effect on the Act's date of enactment.

Section 108(b)(1) provides, except as provided in paragraph (2), that the amendments made by this measure apply to cases commenced under title 11 of the United States Code before, on, or after the Act's date of enactment.

Section 108(b)(2) specifies that paragraph (1) does not apply with respect to cases that are closed under the Bankruptcy Code as of the date of the enactment of this Act.

Section 109. GAO Study. Section 109 requires the Government Accountability Office to complete a study and to submit a report to the House and Senate Judiciary Committees within two years from the enactment of this Act a report. The report must contain the results of the study of: (1) the number of debtors who filed cases under chapter 13, during the one-year period beginning on the date of the enactment of this Act for the purpose of restructuring their principal residence mortgages; (2) the number of mortgages restructured under this Act that subsequently resulted in default and foreclosure; (3) a comparison between the effectiveness of mortgages restructured under programs outside of bankruptcy, such as Hope Now and Hope for Homeowners, and mortgages restructured under this Act; (4) the number of appeals in cases where mortgages were restructured under this Act; (5) the number of such appeals where the bankruptcy court's decision was overturned; and (6) the number of bankruptcy judges disciplined as a result of actions taken to restructure mortgages under this Act. In addition, the report must include a recommendation as to whether such amendments should be amended to include a sunset clause.

Section 110. Report to Congress. Not later than 18 months after the date of enactment of this Act, the Government Accountability Office, in consultation with the Federal Housing Administration, must submit to Congress a report containing: (1) a comprehensive review of the effects of the Act's amendments on bankruptcy courts; (2) a survey of whether the types of homeowners eligible for the program should be limited; and (3) a recommendation on whether such amendments should remain in effect.

TITLE III—MORTGAGE FRAUD

Section 301. Short Title. Section 301 sets forth the short title of title III as the Nationwide Mortgage Fraud Task Force Act of 2009.

Section 302. Nationwide Mortgage Fraud Task Force. Subsection (a) establishes a nationwide mortgage fraud task force within the Justice Department to address mortgage fraud in the United States. Subsection (b) mandates that the Attorney General must provide the task force with appropriate staff, administrative support, and other resources necessary so that the task force can carry out its duties. Subsection (c) requires the Attorney General to appoint one staff member to be the executive director of the task force who, in turn, will ensure that the task force carries out its duties. Subsection (d) requires the task force to establish, oversee, and direct branches in each of the ten states determined by the Attorney General to have the highest concentration of mortgage fraud. Subsection (e) requires the task force to coordinate with federal, state and local law enforcement to establish mortgage fraud initiatives; provide training; and collect and disseminate data. Subsection (f), among other matters, authorizes the task force to establish a toll-free hotline for reporting mortgage fraud; provide the public with access to information and resources with respect to mortgage fraud; establish a data base; and make legislative proposals. Subsection (g), for purposes of this provision, defines mortgage fraud as a material misstatement, misrepresentation or omission relating to the property or potential mortgage relied on by an underwriter or lender to fund, purchase, or insure a loan.

TITLE IV—FORECLOSURE MORATORIUM PROVISIONS

Section 401. Sense of the Congress on Foreclosures. Subsection (a) expresses a sense of the Congress that mortgage holders, institutions, and mortgage servicers should not initiate a foreclosure proceeding or sale until the foreclosure mitigation provisions, such as Hope for Homeowners Program and the President's Homeowner Affordability and Stability Plan, have been implemented and determined to be operational by the Secretary of the Treasury and the Secretary of Housing and Urban Development. Subsection (b) states that the foreclosure moratorium should apply only for first mortgages secured by the owner's principal dwelling. Subsection (c) provides that if a mortgage holder, institution, or mortgage servicer (to which subsection (a) applies) reaches a loan modification agreement with a homeowner under the auspices of the Federal Housing Administration before any plan referred to in such subsection takes effect, subsection (a) shall cease to apply to such institution as of the effective date of the loan modification agreement. Subsection (d) states that any homeowner for whose benefit any foreclosure proceeding or sale is barred under subsection (a) from being instituted, continued or consummated with respect to any homeowner mortgage should not destroy, damage, or impair such property, allow it to deteriorate, or commit waste on the property. Subsection (e) provides that any homeowner for whose benefit any foreclosure proceeding is barred under subsection (a) from being instituted, continued, or consummated with respect to any homeowner mortgage should respond to reasonable inquiries from a creditor or servicer during the period during which such foreclosure proceeding or sale is barred.

Mrs. MALONEY. Mr. Chair, I rise today in strong support of H.R. 1106, the "Helping Families Save Their Homes Act." This legislation is needed now more than ever, and I want to commend Chairman FRANK, Chairman CONYERS, and the Leadership for working together to bring this bill to the Floor.

It is important to remember that behind the economic and housing statistics are real people—the hard-working Americans and their families who are facing difficulties paying their bills every day. H.R. 1106 contains several key provisions to ensure that homeowners will have more options available to them to stay in their homes.

The bill before us would make necessary improvements to the Hope for Homeowners program including reducing current fees that have discouraged lenders from voluntarily participating and offering a $1,000 incentive payment to servicers for each successful refinance of existing loans. H.R. 1106 will ensure that predatory lenders, who bear some of the responsibility for today's housing situation, will not be approved as lenders under FHA programs. The legislation also provides a safe harbor from liability to mortgage servicers who engage in certain loan modifications, and it makes permanent an increase, from $100,000 to $250,000, in the amount of bank or credit union deposits insured by Federal banks and credit union regulators. H.R. 1106 establishes a 5-year restoration plan for the National Credit Union Administration (NCUA) which is currently required to restore the equity ratio of the Share Insurance Fund within one year.

I think most of us agree that bankruptcy should be the option of last resort. However, for those homeowners facing bankruptcy, H.R. 1106 will allow bankruptcy judges to reduce the principal, extend the repayment period, or authorize the reduction of an exorbitant interest rate to a level that helps make a mortgage more affordable. I am glad that we have been able to make changes to this legislation that will enable homeowners to stay in their homes, while at the same time providing greater certainty to lenders and to the secondary market.

I am hopeful that this bill will help to stem the tide of foreclosures and ensure that our neighborhoods do not experience a cascade of increased vacant lots and decreased property values.

The President has proposed a plan to help make it easier for homeowners, including those who are still in repayment but at risk for default, to refinance their mortgages at around the current market rate, or modify their loans. H.R. 1106 is an important step in moving forward with that plan. We must act now. The American people deserve no less than our full commitment to helping them through these troubled times.

I urge my colleagues to support this legislation.

Ms. ZOE LOFGREN of California. Mr. Chairman, I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment, as modified, offered by the gentlewoman from California (Ms. ZOE LOFGREN).

The question was taken; and the Acting Chair announced that the ayes appeared to have it.

Mr. GOODLATTE. Mr. Chairman, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentlewoman from California will be postponed.

AMENDMENT NO. 2 OFFERED BY MR. PRICE OF GEORGIA

The Acting CHAIR. It is now in order to consider amendment No. 2 printed in House Report 111–21.

Mr. PRICE of Georgia. Mr. Chairman, I have an amendment made in order by the rule.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 2 offered by Mr. PRICE of Georgia:

Beginning on page 7, strike line 5 and all that follows through line 16 on page 8, insert the following (and make such technical and conforming changes as may be appropriate):

days after receiving such proceeds, if such residence is sold after the effective date of the plan, the amount of the difference between the sales price and the amount of such claim as originally determined under subsection (b)(11) (plus costs of sale and improvements), but not to exceed the unpaid amount of the allowed secured claim determined as if such claim had not been reduced under such subsection.

The Acting CHAIR. Pursuant to House Resolution 190, the gentleman from Georgia (Mr. PRICE) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Georgia.

Mr. PRICE of Georgia. Mr. Chairman, at a time when the government is going to unprecedented lengths to stabilize the banking system, this legislation is short-sighted, untimely, unfair, and counterproductive.

Now, while some might see cramdown as a quick fix, in reality the legislation will have a costly impact on generations to come. Ranking Member SMITH of the Judiciary Committee sent a thoughtful letter to the administration raising concerns about the bill, saying that it would lead to, one, significant taxpayer liability for Federal mortgage guarantees by redistributing wealth from responsible taxpayers to irresponsible borrowers and lenders; two, the hoarding by banks of hundreds of billions of dollars in capital, undermining the efforts that have been undertaken by the government since September to stabilize the financial market; and three, additional constriction in the home lending market. This bill punishes those who have lived within their means and acted prudently by forcing them to subsidize those who made irresponsible choices.

One of the many problems with this bill is that it doesn't have any safeguards to prevent the very people who profited from risky behavior and irresponsible choices from further benefiting at taxpayer expense. The text of the underlying legislation will allow for a partial payback of the cramdown amount if the house is sold within 4 years of the modification. The manager's amendment barely changes the language already in the bill by extending by 1 year and 10 percent the possible partial recapture.

If a mortgagee sells his or her home 6 years after going through a cramdown at a profit, he or she can pocket all of the difference. Mr. Chairman, no one should be able to profit off of a bankruptcy proceeding. Bankruptcy should not be an opportunity to game the system. Hence my amendment.

The amendment would prevent this from happening by simply saying that if a homeowner who has had a mortgage modified in a bankruptcy proceeding sells the home at a profit, the lender—the individuals originally at risk for the money—may recapture the amount of principal lost in the modification or cramdown.

By putting lenders in a position of hedging against cramdown losses, this legislation will raise interest rates for the very individual whose tax dollars are paying all of these government bailouts. Some suggest that the cramdown may raise interest rates as much as 2 percentage points. The 92 percent of homeowners who are working to pay off their mortgages should not be forced to subsidize the mistakes of irresponsible borrowing or lending. By restoring the lender the money that is owed them, we will mitigate the amount to which the industry will need to raise interest rates on responsible homeowners.

This bill is yet another ''Joe the plumber'' moment here in this Congress, providing for the redistribution of wealth from responsible, accountable taxpayers to borrowers and lenders who will not be held accountable.

□ 1300

President Obama has spoken repeatedly of the importance of fairness and personal responsibility. This amendment is an important step in that direction.

I urge my colleagues to adopt the amendment, a responsible and simple amendment, and reserve the balance of my time.

Ms. ZOE LOFGREN of California. Mr. Chairman, I must oppose this amendment, and I yield myself such time as I may consume.

The issue it addresses is already addressed in the bill and, again, in the manager's amendment. This would take the issue another step further, and I will say it's a step too far.

This would have the effect of making it practically impossible for a family to move to pursue another job. Families would not only keep their homes, they would be trapped there.

The bill also leaves no room for a homeowner to reap a windfall, either calculated or happenstance, so this amendment is unrequired.

I would note that the Price amendment would turn homeowners really into renters for life. It would remove any incentive for a homeowner who needed to sell a house to seek top value in the sale of that house or even to keep up appearances on that house.

It's a mistake, and it's not what the American Dream is all about.

I reserve the balance of my time.

Mr. PRICE of Georgia. May I inquire as to the time remaining?

The Acting CHAIR. The gentleman from Georgia has 2 minutes and the gentlelady from California has 4 minutes.

Mr. PRICE of Georgia. I am pleased to yield to my friend from Virginia (Mr. GOODLATTE) 1 minute.

Mr. GOODLATTE. I thank the gentleman for yielding me the time, and I am pleased to support his amendment, which addresses a serious problem that's in the underlying bill that is not corrected by the manager's amendment, and that is that the cramdown bill will reduce the incentive for many solvent borrowers to keep making payments on their mortgages.

While there are 3 million borrowers who are 60 days or more delinquent on their mortgages, 52 million borrowers remain current in their payments. The cramdown bill gives struggling, but still solvent, borrowers a powerful incentive to stop paying off their mortgages, trigger foreclosure notices and go into bankruptcy to cramdown their mortgage principal and restructure or eliminate all of their other debts.

We will have an outright catastrophe on our hands if most borrowers get the idea that they can successfully game the bankruptcy system in this way. The gentleman's amendment would correct this problem and make sure that we don't have a run on the bankruptcy courts of great magnitude by creating what is currently in the bill now, an incentive to file bankruptcy if the value of your mortgage is greater than the value of your home.

THE FOUR WORST THINGS ABOUT THE MORTGAGE CRAMDOWN BILL (H.R. 200)

No. 1: Back to the Financial Meltdown—The cramdown bill seriously threatens to send us through a time warp straight back to the September financial meltdown. Write-downs of mortgages in bankruptcy will inexorably force downgrades of mortgage-backed securities based on those mortgages. The downgrades will in turn force banks and insurance companies on the hook for the securities to boost their capital reserves. (For example, if a AAA-rated security is downgraded to a BB rating, a bank or insurance company will have to hold 10-times the capital reserves.) The resulting hoarding of capital could total hundreds of billions of dollars, freeze lending, kill many already wounded banks, and send us straight back to the brink we faced in September 2008. This could precipitate another bank bailout to the tune of hundreds of billions of dollars, and it will undermine everything we yet have done to stem the financial crisis.

No. 2: Moral Hazard—The cramdown bill will reduce the incentive for many solvent borrowers to keep making payments on their mortgages. While 3 million borrowers are 60 days or more delinquent on their mortgages, 52 million borrowers remain current in their payments. The cramdown bill gives struggling but still solvent borrowers a powerful incentive to stop paying off their mortgages, trigger foreclosure notices, and go into bankruptcy to cram down their mortgage principal and restructure or eliminate all of their other debts. We will have an outright catastrophe on our hands if most borrowers get the idea that they can successfully game the bankruptcy system in this way.

No. 3: Higher Interest Rates and Down Payment Requirements—Including for the Innocent and the Risky Borrowers Most in Need—The cramdown bill is not the last step. It is the key step in the Democratic Congress' walk-up to its long-sought repeal of the primary residence mortgage exception from the Bankruptcy Code. Once the primary residence exception is gone, lenders' greatly increased risk will surely lead to higher interest rates, higher down payment requirements, and other, tighter terms of principal residence mortgages. This will especially hurt already risky, lower-income borrowers, anyone who needs to refinance out of a challenging mortgage, and everyone who responsibly waited on the home-buying sidelines until the housing bubble burst. In fact, once the first, very big step is taken through the cramdown bill, lenders would be foolish not to begin pricing in their likely increased risk right away. So what's the result of the cramdown bill? Nothing more than swapping the victims.

No. 4: We Still Have Better Options We Can Try—Backers of the cramdown bill say we've tried everything else to stem the foreclosure crisis, and nothing else has worked. That's nonsense. The most recent voluntary programs are working better, and top-flight academics have proposed a terrific solution to get at the mortgages we still haven't been able to reach—mortgages served by third-party servicers that don't own the loans. These servicers lack sufficient incentive to seek loan modifications rather than to foreclose. What is more, if they do modify loans, they can be sued by mortgage-backed securities investors. Still on the table is a proposal to fix this problem by giving third-party servicers a small, per-loan incentive out of TARP funds, and cutting off litigation risk by overriding problem contract clauses and affording a litigation safe-harbor. This proposal appears to be the best possible solution for the critical mass of the remaining problem loans. It will cost little more than $10 billion in TARP funds. Why on earth would we risk the parade of horribles and hundreds of billions of dollars of downside risk threatened by the cramdown bill, when we still haven't tried other, better options.

Ms. ZOE LOFGREN of California. I would yield to the gentleman from Georgia (Mr. MARSHALL) 1 minute.

Mr. MARSHALL. Mr. Chairman, in response to the motion, I understand that the gentleman from Georgia is opposed to the bill. In effect, the gentleman's amendment, proposed amendment, would simply gut the bill. People would not take advantage of this relief.

I am not somebody who is interested in taking taxpayer dollars and injecting the taxpayer dollars into a bad deal, either to help out the lender or help out the borrower. I am somebody who is interested, for the sake of our lenders, and all of our homeowners, in seeing the number of vacancies diminish, not increase, in finding some sort of bottom to home values. Now, this bill does that.

It also, and I was largely the author of this, it also provides that there is a claw-back provision where equity is concerned. The borrower has incentives to take care of the property to improve the property because, gradually, the borrower acquires equity in the property. But initially the borrower does not have equity in the property following cramdown.

What this bill provides is that if a borrower defaults hard on the heels of cramdown, 100 percent of the value, upside value, goes to the lender.

The Acting CHAIR. The time of the gentleman has expired.

Ms. ZOE LOFGREN of California. I would yield the gentleman an additional 15 seconds.

Mr. MARSHALL. One hundred percent of the upside goes to the lender, and then gradually the borrower, by performing appropriately, obtains equity in the property.

It's a reasonable balance here. The balance could have been struck some other way. In effect, the lender continues to have an interest and the balance is appropriate—does not go so far as the gentleman's suggestion goes, because the gentleman's suggestion would essentially kill the bill and continue these vacancies that are hurting all of us.

Mr. PRICE of Georgia. I will continue to reserve.

Ms. ZOE LOFGREN of California. I believe I have the right to close, do I not? Does the gentleman have additional speakers?

Mr. PRICE of Georgia. I don't; do you?

Ms. ZOE LOFGREN of California. No, we don't.

Mr. PRICE of Georgia. Mr. Chairman, this is a very simple amendment. What it says is that if a bank loans an individual $150,000 to purchase a home, and that is subject to a bankruptcy provision and a cramdown, and a judge says that principal will only be $100,000, and that individual who owns the home then sells it at a future date, more than 5 years, for somewhere between $100,000 and $150,000, then that amount of money goes to the lender, the individuals that were individually at risk for the money, loaned the money. If it was over $150,000, then the old homeowner is able to pocket that profit appropriately.

It's a very simple provision. It's a provision, an amendment of fairness, of simplicity. It doesn't gut the bill. In fact, what it does is actually makes the system fair and responsible and rewards responsible activity.

I urge my colleagues to support a commonsense, responsible amendment and yield back the balance of my time.

Ms. ZOE LOFGREN of California. Mr. Chairman, this amendment would enrich lenders and really gut the bill, damage communities and damage home values. In the bill there is a responsible provision for lenders who have had their mortgages adjusted in chapter 13 to recover on a graduated basis, should property values appreciate at sale. What this amendment would do would be to turn homeowners into renters for life.

I will just point out something else. In bankruptcy law, if you are a speculator, you go in and you buy three condominiums on spec, and you hope you are going to make a fortune on it. But, instead, the market turns. You go into chapter 13, you can get the principal written down, you can get the interest written down but the homeowner in a condo cannot.

I would point out that if condo values rise, the speculator under the Price amendment gets all the value, the lender gets none. Only the homeowner would be made a renter for life. Now, how is that fair in America, a country that's looking for fairness?

I would like to note that currently, if a lender forecloses on a home, it receives none of the home's appreciation. So what is in the manager's amendment, the balanced amendment—I want to credit Mr. MARSHALL for his excellent work in putting this in—is a vast improvement over current bankruptcy law as it relates to homeowners.

Now, why is this important? Lenders benefit by getting part of their appreciated value and by savings on foreclosure costs. Homeowners share in the value of their home's increasing value, and that's the American Dream.

I would note also that it provides incentives for homeowners who have gone through the tragic circumstance of losing so much and reorganizing in chapter 13 and the stigma that that entails. It provides them incentive to continue to keep up their properties, to paint their houses and to keep up appearances because they have a stake in the future as well, it's not just some remote bank.

Finally, communities benefit because homeowners have this incentive to maintain their properties. So it's important that this measure proceed. As I mentioned earlier, the Price amendment would basically gut this bill and that would be a mistake.

With 6 million homeowners facing foreclosure, that is a disaster not just for those 6 million but for their neighbors. I have seen areas in our country where half the houses are in foreclosure, and I will tell you, it's a nightmare for everyone in that community. The meth dealers move in, the property values decline.

Reject the Price amendment.

Mr. SHERMAN. Mr. Chair, the Price amendment to H.R. 1106 fails to deal appropriately with post-bankruptcy improvements made by the homeowner.

The Acting CHAIR. All time for debate has expired.

The question is on the amendment offered by the gentleman from Georgia (Mr. PRICE).

The question was taken; and the Acting Chair announced that the noes appeared to have it.

Mr. PRICE of Georgia. Mr. Chairman, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Georgia will be postponed.

AMENDMENT NO. 3 OFFERED BY MR. PETERS

The Acting CHAIR. It is now in order to consider amendment No. 3 printed in House Report 111–21.

Mr. PETERS. I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 3 offered by Mr. PETERS:

Beginning on page 3, strike line 21 and all that follows through line 2 on page 4, insert the following:

''(5) Notwithstanding the 180-day period specified in paragraph (1), with respect to a debtor in a case under chapter 13 who submits to the court a certification that the debtor has received notice that the holder of a claim secured by the debtor's principal residence may commence a foreclosure on the debtor's principal residence, the requirements of paragraph (1) shall be considered to be satisfied if the debtor satisfies such requirements not later than the expiration of the 30-day period beginning on the date of the filing of the petition.''.

The Acting CHAIR. Pursuant to House Resolution 190, the gentleman from Michigan (Mr. PETERS) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Michigan.

Mr. PETERS. Mr. Chairman, I would like to yield myself such time as I may consume.

Today we are considering some important legislation that is going to provide borrowers, lenders and the government with a number of very important tools to address the housing and foreclosure crisis in this country. Much of the focus of this debate has been on the bankruptcy reform portion, which is also the focus of the amendment on the floor right now.

Under current law, those filing for bankruptcy must receive counseling services from an improved credit counseling agency during the 180-day period before the bankruptcy filing. H.R. 1106 eliminates the counseling requirement for those who have already received a foreclosure notice because of a concern that the requirement would be a procedural burden for those who file for bankruptcy quickly in order to save their homes.

The Peters' amendment would preserve the requirement for credit counseling but would allow those who have received a foreclosure notice to file for bankruptcy so long as they obtained the required credit counseling within 30 days after the bankruptcy filing.

This will ensure that everyone who enters the bankruptcy process will continue to receive this very important service, but it also makes clear that no one will lose their home because they could not get access to counseling on time.

Credit counseling is an incredibly important service. In some cases the independent credit counselors can review a debtor's finances and recommend options other than bankruptcy that may be appropriate. It should always be our goal to keep people out of bankruptcy whenever possible.

In every case, however, credit counselors can provide important tools for budgeting that will help the debtor adjust to living under the kinds of financial restrictions that bankruptcy requires.

Mr. Chairman, I urge my colleagues to support this amendment, and I reserve the balance of my time.

Mr. GOODLATTE. Mr. Chairman, I rise to claim the time in opposition to the amendment, even though I am not opposed to the amendment.

The Acting CHAIR. Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. GOODLATTE. Mr. Chairman, I yield myself such time as I may consume.

The amendment seeks partially to reinstate a credit counseling requirement for chapter 13 bankruptcy petitioners that H.R. 1106 will strip entirely away. There is no good reason to wipe out the credit counseling requirement for debtors facing foreclosure.

Bankruptcy credit counseling benefits consumers by providing the financial education needed to emerge successfully from bankruptcy. Homeowners facing foreclosure are ideal candidates for credit counseling. This is not always because they can avoid bankruptcy.

It is often so that they can get help to increase their prospects of being successful after bankruptcy. The vast majority of Americans who receive credit counseling believe strongly that it benefits them.

Finally, credit counseling offers one last real opportunity for a homeowner to reach out to a lender and determine whether a loan modification is possible. A majority claims that many borrowers were hoodwinked into obtaining their loans. That's largely why the majority wants homeowners to be able to take their loans into bankruptcy.

But if credit counseling might show homeowners a better option than bankruptcy, why not let them try counseling. The amendment we are considering does not go far enough. It does not fully restore the requirement for counseling that is in current law.

The Rules Committee should have made Mr. FORBES' credit counseling amendment in order. That amendment would fully restore the counseling requirement and ensure that borrowers receive counseling before they file for bankruptcy.

However, because the amendment before us does restore at least a limited requirement for counseling, I support it.

I reserve the balance of my time.

Mr. PETERS. I would like to yield to the gentlewoman from California (Ms. ZOE LOFGREN) for 1 minute.

Ms. ZOE LOFGREN of California. Mr. Chairman, I rise to support this amendment offered by my colleague from Michigan (Mr. PETERS).

It was a pleasure to work with him to reach agreement on his amendment, and I appreciate his commitment to ensuring that Americans have credit counseling under the Bankruptcy Code, especially in these difficult economic times.

His amendment, Mr. PETERS' amendment, ensures that homeowners will be able to meet their obligations, to obtain credit counseling without risking foreclosure. It strikes the right balance, and it shows real foresight, judgment and skill on Mr. PETERS' part, and I appreciate supporting his amendment, and I appreciate his presence here in our body.

Mr. GOODLATTE. Mr. Chairman, may I ask how much time is remaining on each side?

The Acting CHAIR. There are 3½ minutes for the gentleman from Virginia and 2 minutes for the gentleman from Michigan.

□ 1315

Mr. GOODLATTE. Mr. Chairman, I yield such time as he may consume to the gentleman from Texas (Mr. GOHMERT).

Mr. GOHMERT. Mr. Chairman, the crisis that we're in right now had a number of factors that helped create it. One, we had investment bankers on Wall Street that got a little too greedy. Congress forced banks to make some loans that they shouldn't have made.

But throughout all this process, community banks, generally speaking, by and large, have done a great job of staying stable even through the toughest of times. But we keep rewarding greed and improper conduct and then keep hurting the people who have done the most good.

Now, I understand the hearts of those on the other side that are pushing this, and I understand that my colleagues feel like it's going to help. But the fact is you talk to the community banks who have really been hurt, starting with Paulson's screaming that we'll take care of dollar for dollar of every dime in money market accounts but banks are only covered to $100,000. People withdrew their money from the banks. They still survived and they're doing well.

But you've got to look at what banks are required to do. They're required to be solvent. And that means on the asset side, they have to show a net plus. And if we pass this, then that net plus will be an uncertainty. They will not know what they have because we'll have a bankruptcy judge who can come in and just at his whim change the principal on a mortgage. And I see my colleague shaking her head. A bankruptcy judge will be able to lower the principal. That's what this is about, and that is going to be creating such uncertainty in the banks.

And here at a time when we have just in 2 months added what will ultimately be more taxes to the next generation and the generation after that than they could possibly pay, now if this passes, those banks will have to be so sure that people will not file bankruptcy, they're going to need to have a good credit history for 10, 15 years, 20 years. So not only are we adding all this tax burden to them, we're also telling

them, and, by the way, you're not going to be able to get a home loan for years to come until you have such a great track record that a bank can be certain you won't file bankruptcy because otherwise their bank financial statement will be uncertain.

We've done enough damage to the next generations. It's time to stop hurting the next generations. Let's take care of this with our generation. Let's not reward problem activity. Let's let the community banks survive this process without hurting them any worse.

Mr. PETERS. Mr. Chairman, I do not have any further requests for time, and I reserve the balance of my time.

Mr. GOODLATTE. Mr. Chairman, may I ask how much time is remaining?

The Acting CHAIR. The gentleman from Virginia has 30 seconds remaining.

Mr. GOODLATTE. Mr. Chairman, let me take the 30 seconds to say that while I think this is a good amendment and I support it, it doesn't go as far as it should have. We should have had the opportunity to vote today and debate today the amendment offered by Congressman FORBES from Virginia. But nonetheless, that not being the case, I support this amendment.

But I still strongly oppose this underlying legislation, which is going to cause hardships for future homeowners who are going to wind up paying higher mortgage rates and larger down payments for the problems that exist today. That's wrong. We should not pass that and spread that risk to those people, and we should not jeopardize legitimate credit unions and community banks that have been doing so much to help extend credit in this country.

Mr. PETERS. Mr. Chairman, my amendment is a commonsense compromise that ensures that everyone who enters into the bankruptcy process will continue to get important credit counseling services, while at the same time giving those who do not have the time to complete the counseling and are in danger of losing their home the opportunity to do so after they have filed for bankruptcy. The amendment is supported by the Financial Counseling Research Roundtable, which is comprised of the Nation's leading nonprofit organizations providing Americans with bankruptcy, housing, consumer credit, and financial counseling.

I'd also like to take this opportunity to thank Chairman CONYERS for working with me on this amendment and for his leadership in helping to put together this package.

Mr. Chairman, I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Michigan (Mr. PETERS).

The question was taken; and the Acting Chair announced that the ayes appeared to have it.

Mr. GOODLATTE. Mr. Chairman, I demand a recorded vote.

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Michigan will be postponed.

AMENDMENT NO. 4 OFFERED BY MS. TITUS

The Acting CHAIR. It is now in order to consider amendment No. 4 printed in House Report 111–21.

Ms. TITUS. Mr. Chair, I have an amendment at the desk.

The Acting CHAIR. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 4 offered by Ms. TITUS:

Page 34, strike line 13, and insert the following:

''(x) PAYMENT TO EXISTING LOAN SERVICERS.—

''(1) PAYMENT.—The''.

Page 34, after line 17, insert the following:

''(2) NOTIFICATION REQUIREMENT.—The Secretary shall require each servicer that receives a payment under this paragraph to notify all mortgagors under mortgages serviced by such servicer who are at-risk homeowners (as such term is defined by the Secretary), in a form and manner as shall be prescribed by the Secretary, that they may be eligible for the HOPE for Homeowners Program under this section and how to obtain information regarding the program.''.

The Acting CHAIR. Pursuant to House Resolution 190, the gentlewoman from Nevada (Ms. TITUS) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentlewoman from Nevada.

Ms. TITUS. Mr. Chairman, I rise today with an amendment to H.R. 1106, the Helping Families Save Their Homes Act.

As you know, the foreclosure crisis is wreaking havoc across the entire Nation, but my district in Southern Nevada is particularly hard hit. Nevada has the highest foreclosure rate in the country. Home prices have dropped significantly. Thousands of families are upside-down on their mortgages, and foreclosures are extending into the prime market. In fact, there was a report that was issued today by the First American CoreLogic group that stated there were 58.2 percent of Las Vegas houses upside-down and another 3.5 percent that are fast approaching that for a total of 61.7 percent of all outstanding mortgages. Compounding the problem even further, the unemployment rate in Nevada is over 9 percent, well above the national average. Families who are responsible and bought a home within their means are now facing foreclosure due to loss of a job or reduction of hours at work.

Foreclosure prevention, I believe, is a critical part of any strategy to get us back on track. I strongly believe that aggressive outreach to borrowers can help prevent unnecessary foreclosures, and that is exactly what my amendment seeks to address.

The amendment is simple and straightforward. In short, it would require that servicers who participate in the HOPE for Homeowners Program and receive government incentives paid for by taxpayer dollars notify at-risk homeowners that they may be eligible for the program and tell them how to obtain information regarding the program. It also requires that the HUD Secretary define who are at-risk homeowners and prescribe a form and manner of notifying them of their potential eligibility for assistance.

By requiring HUD to define what is meant by ''at risk'' and to prescribe the method of notification of eligible homeowners, my amendment attempts to limit the administrative burden on the servicers. At the same time, it ensures that homeowners who are in danger of losing their homes and may be eligible for help will receive as much information as possible about the HOPE for Homeowners Program. Many people in trouble do not even know what help is available to them, and this amendment will help resolve that problem so they can find out about HOPE for Homeowners in a timely fashion before it's too late. I cannot tell you how many calls I have received from constituents in my district office who are facing foreclosure and don't know where to turn. This amendment will provide them with the information and help they need under this very important legislation.

Mr. Chairman, I have discussed this issue with Chairman FRANK of the Financial Services Committee and understand that he has some reservations regarding the scope of the amendment. He intended to be here but was delayed by a press conference. Although I intend to withdraw the amendment, I think it's important that we have the discussion on this issue today, and I appreciate your indulgence. I also look forward to working with Chairman FRANK as we move forward to improve notification requirements and address the foreclosure crisis in our country.

Mr. Chairman, I reserve the balance of my time.

Mrs. CAPITO. Mr. Chairman, I rise to claim the time in opposition; although I'm not opposed to the gentlewoman's amendment.

The Acting CHAIR. Without objection, the gentlewoman is recognized for 5 minutes.

There was no objection.

Mrs. CAPITO. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I am not in opposition to the gentlewoman's amendment, but I do want to talk about my opposition to the underlying package before the House today.

Our Nation is facing significant challenges, especially in the mortgage market. We once had a flowing market providing the funds critical to the origination of mortgages to our home buyers.

One of the proposals before us today is to allow judges to alter the terms of a mortgage product in bankruptcy. I really understand the desire to help families avoid foreclosure and agree that we should do everything we can to help them. However, this solution to helping should not adversely affect the

overwhelming majority of the population that are tightening their family budgets to continue paying their mortgages on time. Passage of this legislation in its current form could send mortgage rate fees higher for our regular homeowners as creditors pass on the risk of bankruptcy procedures. This is a question of fairness, in my mind. We must be certain that in the pursuit of helping those who deserve help and need help that we do not unduly burden those who have worked hard to keep their heads above water.

I also have concerns about the state of the HOPE for Homeowners Program. During a recent hearing in our Financial Services Committee, one of the witnesses from the Department of Housing and Urban Development agreed with me when I posited the question: Should we just scrap this and start over? Realizing that as of today, HOPE for Homeowners, which has been in effect for several months now, has only helped 50 homeowners in their current situation. I offered an amendment, and I feel that we should give the FHA new authority to reshape this program where it can really work quickly and is targeted to the population who desperately need this help. I offered an amendment to the Rules Committee to achieve this goal, but I was prevented from offering it on the floor and am, therefore, prevented from discussing it on the floor in a fuller manner. So later today I will be introducing that proposal as stand-alone legislation, the REFI for Homeowners Act.

There are some provisions in this bill that I do support, like the safe harbor provisions that will encourage more modifications, the increasing of deposit insurance for FDIC and NCUA, and the ultimate goal of this bill, which is to help homeowners. However, the cramdown of mortgages and the continuation of the HOPE for Homeowners Program that is not working is not in the best interest of our taxpayers. I think we can do better than what this bill offers.

Mr. Chair, I reserve the balance of my time.

Ms. TITUS. Mr. Chairman, I yield such time as he may consume to Chairman FRANK.

Mr. FRANK of Massachusetts. I thank the gentlewoman for yielding.

Mr. Chair, I think her amendment is a very important one. I would ask her if we could withhold further action to do a little work on it because the notion that we should put a requirement on these servicers to get funding is a valid one. There are some interconnections here, and I think we could actually make it apply to more people. But, also, if a servicer is only doing two or three of these, the requirement that they notify everybody might become a deterrent to doing some. So I would like to sharpen it and broaden it at the same time. And if the gentlewoman would agree, we could work on this, and I think by the time this gets through the Senate, never known for breakneck speed, we would have a version that would improve it. So I would suggest that to the gentlewoman.

Mrs. CAPITO. Mr. Chairman, I yield 45 seconds to the gentleman from Texas (Mr. CULBERSON).

Mr. CULBERSON. Mr. Chair, we fiscal conservatives are in the minority, unfortunately, and have been working hard to lay out alternatives to stimulate the economy with immediate tax cuts, with spending cuts.

The new majority in Congress, with this new President, has spent more money in less time than any Congress in history. In fact, that's all borrowed money. About $1.3 trillion in borrowed money has already been spent by this Congress.

I would like to ask the Congresswoman from Nevada (Ms. TITUS), who ran on a record of being fiscally responsible, Ms. TITUS, how is it fiscally responsible that you voted for $1.2 trillion in new spending, borrowed money, which is going to be paid for by our children and grandchildren? How is that fiscally responsible?

□ 1330

Ms. ZOE LOFGREN of California. Mr. Chairman, that is not a germane point. I would raise a point of order.

The Acting CHAIR. The gentleman's time has expired.

Ms. TITUS. Mr. Chairman, I would just like to comment on Chairman FRANK's offer to help work on this amendment in terms of both its scope and depth. I appreciate that offer of assistance. I think we can improve the amendment. I think it is very important that we have an aggressive borrower outreach program so people who are in trouble can find out about the help that is available to them and find that out before it is too late.

Mr. Chairman, I would ask unanimous consent that the amendment be withdrawn.

The Acting CHAIR. Without objection, the amendment is withdrawn.

There was no objection.

Mrs. CAPITO. Mr. Chairman, I have time remaining; is that correct?

I reserve the right to object.

The Acting CHAIR. The gentlewoman could have reserved the right to object before the amendment was withdrawn, but the amendment has been withdrawn.

Mr. FRANK of Massachusetts. Mr. Chairman, it was not our intention to shut off the gentlewoman from West Virginia. Is it in order to ask unanimous consent that she be allowed the remaining time as if it had not been withdrawn?

The Acting CHAIR. Yes, it is.

Mr. FRANK of Massachusetts. Then I would make a unanimous consent request that the gentlewoman from West Virginia be able to conclude her remarks as if the amendment had not been withdrawn.

The Acting CHAIR. Without objection, the gentlewoman from West Virginia reclaims the balance of her time.

There was no objection.

Mrs. CAPITO. I thank the chairman for the unanimous consent request.

I yield the time I have remaining to the gentleman from Indiana (Mr. BURTON).

Mr. BURTON of Indiana. You know, one of the things that concerns me is that we have spent trillions of dollars in the last few weeks, trillions. The people of this country were very concerned about the money they had in the banks so the Federal Deposit Insurance Corporation raised the amount of money from $100,000 to $250,000 so people will feel secure, they will know their money is safe in the banks. Yet today, the head of the FDIC, Sheila Bair, said the fund could become insolvent this year.

That is the craziest thing this woman could possibly say. If she wants to avoid a run on the banks and scaring the American people to death, she shouldn't be making these kinds of comments. To say that the FDIC is not going to insure the deposits of the people of this country is insane, especially at a time when everybody in this country is scared to death.

Ms. ZOE LOFGREN of California. Mr. Chairman, I move that the Committee do now rise.

The motion was agreed to.

Accordingly, the Committee rose; and the Speaker pro tempore (Ms. TITUS) having assumed the chair, Mr. SALAZAR, Acting Chair of the Committee of the Whole House on the state of the Union, reported that that Committee, having had under consideration the bill (H.R. 1106) to prevent mortgage foreclosures and enhance mortgage credit availability, had come to no resolution thereon.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 1 o'clock and 34 minutes p.m.), the House stood in recess subject to the call of the Chair.

□ 1641

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. SERRANO) at 4 o'clock and 41 minutes p.m.

HELPING FAMILIES SAVE THEIR HOMES ACT OF 2009

The SPEAKER pro tempore. Pursuant to House Resolution 190 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the further consideration of the bill, H.R. 1106.

□ 1641

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole