

# EXTENSIONS OF REMARKS

## INTRODUCTION OF THE “HOME FORECLOSURE REDUCTION ACT OF 2013”

**HON. JOHN CONYERS, JR.**

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

*Thursday, January 3, 2013*

Mr. CONYERS. Mr. Speaker, the “Home Foreclosure Reduction Act of 2013,” permits a bankruptcy judge to reduce the principal amount of an underwater mortgage to the fair market value of the home, which will encourage homeowners to make their mortgage payments and help stop the endless cycle of foreclosures which further depresses home values. It also authorizes the mortgage’s repayment period to be extended so that monthly mortgage payments are more affordable. In addition, the bill permits exorbitant mortgage interest rates to be reduced to a level that will keep the mortgage affordable over the long-term. And, it authorizes the waiver of prepayment penalties and excessive fees. Further, the bill would allow hidden fees and unauthorized costs to be eliminated.

This bill addresses the fundamental problem with every privately-sponsored and government program that has previously been developed to deal with the home foreclosure crisis. Unlike every other government program, this legislation empowers a homeowner to force the lender to modify the terms of the mortgage by allowing the principal amount of the mortgage to be reduced to the home’s fair market value, which numerous economists and housing experts agree is the most effective way to respond to the foreclosure crisis. And, unlike every other government program, the implementation of this measure will not cost taxpayers a single penny.

This legislation is identical to H.R. 1587, which was introduced in the 112th Congress, and contains similar provisions included in H.R. 1106, which the House passed nearly three years ago. Unfortunately, those provisions were taken out in the Senate and not included in the final version of the bill that was subsequently enacted into law.

### SECTION-BY-SECTION DESCRIPTION OF THE “HOME FORECLOSURE REDUCTION ACT OF 2013”

Section 1. Short Title. Section 1 sets forth the short title of this Act as the “Home Foreclosure Reduction Act of 2013.”

Section 2. Definition. Bankruptcy Code section 101 defines various terms. Section 2 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 may not require the debtor to pay any fees or charges to obtain the modification. Further, the agreement must permit the debtor to continue to make these payments as if he or she had not filed for bankruptcy relief.

Section 3. Eligibility for Relief. Section 3 amends Bankruptcy Code section 109, which specifies the eligibility criteria for filing for bankruptcy relief, in two respects. First, it amends Bankruptcy Code section 109(e), which sets forth secured and unsecured debt limits to establish a debtor’s eligibility for relief under chapter 13. Section 3 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.

Second, section 3 amends Bankruptcy Code section 109(h), which requires a debtor to receive credit counseling within the 180-day period prior to filing for bankruptcy relief, with limited exception. Section 3 amends this provision to allow a chapter 13 debtor to satisfy this requirement within 30 days after filing for bankruptcy relief if he or she 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.

Section 4. 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 4 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 4 specifies that nothing in this provision may be construed to modify, impair, or supersede any other right of the debtor.

Section 5. 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 5 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 amendment; 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 at the date that such 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.

• This “bullet” symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

Fourth, the plan may provide for the payment of interest at a fixed annual rate equal to the 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 6. Combating Excessive Fees.** Section 6 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 either: 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 non-bankruptcy law, reasonable, and provided for in the applicable security agreement. Third, the value of the debtor's principal residence must be 4 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 6 further provides that a chapter 13 plan may waive any prepayment penalty on a claim secured by the debtor's principal residence.

**Section 7. Confirmation of Plan.** Bankruptcy Code section 1325 sets forth the criteria for confirmation of a chapter 13 plan. Section 7 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 7 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 7 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 7 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 8. 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 8 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 9. Standing Trustee Fees.** Section 9(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 9(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 10. Effective Date; Application of Amendments.** Section 10(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 10(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 10(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 11. GAO Study.** Section 11 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 12. 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.

## GUAM WORLD WAR II LOYALTY RECOGNITION ACT

**HON. MADELEINE Z. BORDALLO**

OF GUAM

IN THE HOUSE OF REPRESENTATIVES

*Thursday, January 3, 2013*

Ms. BORDALLO. Mr. Speaker, today I have introduced the Guam World War II Loyalty Recognition Act, a bill that would implement the findings of the Guam War Claims Review Commission. Since being elected to the House of Representatives ten years ago, I have introduced a version of this legislation in each Congress. Over the last several Congresses, H.R. 44 passed the House on five separate occasions.

This bill would implement the recommendations of the Guam War Claims Review Commission, which was appointed by Secretary of the Interior Gale Norton and established by an Act of the 107th Congress (Public Law 107–333). The Review Commission, in a unanimous report to Congress in June 2004, found that there were significant disparities in the treatment of war claims for the people of Guam as compared with war claims for other Americans. The Review Commission also found that the occupation of Guam was especially brutal due to the unfailing loyalty of the people of Guam to the United States of America. The people of Guam were subjected to forced labor, forced marches, internment, beatings, rapes and executions, including public beheadings. The Review Commission recommended that Congress remedy this injustice through the enactment of legislation to authorize payment of claims in amounts specified. Specifically, the bill would authorize discretionary spending to pay claims consistent with the recommendations of the commission.

It is important to note that the Review Commission found that the United States Government seized Japanese assets during the war and that the record shows that settlement of claims was meant to be paid from these forfeitures. Furthermore, the United States signed a Treaty of Peace with Japan on September 8, 1951, which precludes Americans from making claims against Japan for war reparations. The treaty closed any legal mechanism for seeking redress from the Government of Japan, and the United States Government has settled claims for U.S. citizens and other nationals through various claims programs authorized by Congress.

The text that I introduce in this Congress addresses concerns that have been raised about the legislation. First, the text reflects a compromise that was reached with the Senate when they considered the legislation as a pro-

vision of the National Defense Authorization Act for Fiscal Year 2011. That compromise removes payment of claims to heirs of survivors who suffered personal injury during the enemy occupation. The bill continues to provide payment of claims to survivors of the occupation as well as to heirs of citizens of Guam who died during the occupation. The compromise continues to uphold the intent of recognizing the people of Guam for their loyalty to the United States during World War II.

Further, the bill that I introduce today contains an offset for the estimated cost of the bill. I understood the concerns express by some of my colleagues in a July 14, 2011 hearing on this legislation. My colleagues expressed concern that there was no offset to pay for the cost of the bill. Guam war claims has a very simple offset that will pay for the cost of the legislation over time. The bill would be paid by section 30 funding remitted to Guam through the U.S. Department of Interior at any level above section 30 funds that were remitted to Guam in fiscal year 2012. With the impending relocation of Marines from Okinawa to Guam as well as additional Navy and Air Force personnel relocating to Guam it is expected that Guam will receive additional section 30 funds. Claims would then be paid out over time based off the additional amounts that were made available in any given year. Not only does this offset address payment of claims but it only impacts my jurisdiction and is a credible source of funding that will ensure that claims will be paid.

Congressional passage of this bill has a direct impact on the future success of the military buildup. The need for Guam War Claims was brought about because of mishandling of war claims immediately following World War II by the Department of the Navy. The longstanding inequity with how Guam was treated for war reparations lingers today. If we do not bring this matter to a close I believe that support for the military build-up will erode and impact the readiness of our forces and the bilateral relationship with Japan.

Mr. Speaker, resolving this issue is a matter of justice. This carefully crafted compromise legislation addresses the concerns of the Senate and fiscal conservatives in the House of Representatives. This bill represents a unique opportunity to right a wrong because many of the survivors of the occupation are nearing the end of their lives. It is important that the Congress act on the recommendations of the Guam War Claims Review Commission to finally resolve this longstanding injustice for the people of Guam.

## RECOGNIZING THE 100TH ANNIVERSARY OF JOE'S STONE CRAB

**HON. ALCEE L. HASTINGS**

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

*Thursday, January 3, 2013*

Mr. HASTINGS of Florida. Mr. Speaker, I rise today to recognize Joe's Stone Crab on the occasion of its 100th anniversary. Established in 1913 by Hungarian-born Joseph "Joe" Weiss, Joe's Stone Crab has since gone from being a small lunch counter in a quiet, backwater town to a beloved institution in the Miami Beach community.

The story of Joe's Stone Crab is truly an American one. Joe and his wife Jennie were

both Hungarian immigrants living in New York when their son Jesse was born in 1907. At the time, Joe was a waiter and Jennie cooked in small restaurants. Suffering from asthma, Joe's doctors told him that a change of climate was the only remedy.

According to Jesse, his father borrowed fifty dollars on his life insurance policy and left his family in New York to try his luck in Florida. After one night in Miami, Joe took the ferry boat to Miami Beach, where he was able to breathe. He stayed there and started running a lunch stand at Smith's bathing casino in 1913, serving top-notch fish sandwiches and fries. That was the beginning of the restaurant that would later grow to become Joe's.

Joe sent for his wife and son to join him in Florida. In 1918, Joe and Jennie bought a bungalow near the casino on Biscayne Street. They moved into the back, set up seven or eight tables on the front porch, and called it Joe's Restaurant. Jennie waited on tables, Joe cooked, and everything grew from there. For about eight years, Joe's was the only restaurant on the beach, serving snapper, pompano, mackerel, and meat dishes all day long.

Joe's Restaurant was a hit, but stone crabs were still yet to come. At the time, no one knew that the local crustacean was even edible. In 1921, James Allison, Fisher's partner in the Speedway, built an aquarium at the foot of the bay and Fifth Street. He invited a Harvard ichthyologist down to do research, who gave Joe the idea to serve stone crab. After much thought, Joe threw the stone crabs into boiling water and the rest was history. They served them cracked with hash brown potatoes, coleslaw, and mayonnaise, and they became an instant success.

Although his parents started Joe's, Jesse Weiss became its face and brought in the VIPs, from movie stars to journalists to politicians, athletes, and gangsters. He knew everyone, and everyone who came into Joe's wanted to see him. At the age of 75, Miami anchorwoman Ann Bishop spent many hours recording his memories, particularly the love and support of his family in keeping Joe's Stone Crab going through the years.

Anyone who is anyone, from anywhere in the world, would stop in at Joe's if they were in Miami Beach. Notable guests include Al Capone, Will Rogers, Amelia Earhart, the Duke and Duchess of Windsor, Gloria Swanson and Joseph Kennedy, J. Edgar Hoover, Walter Winchell, and Damon Runyon.

Mr. Speaker, Joe's Stone Crab is a monument to the people who built it and those who continue its legacy: Joe and Jennie Weiss, their son Jesse, granddaughter Jo Ann, and the entire Joe's family. I have frequented Joe's on numerous occasions and always enjoyed a marvelous meal. Please join me in congratulating the entire Joe's Stone Crab family on this momentous occasion. I wish them another 100 years of success and, of course, great food and company.