

110TH CONGRESS
2D SESSION

S. 2901

To encourage residential mortgage loan modifications and workout plans,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 23, 2008

Mr. SPECTER introduced the following bill; which was read twice and referred
to the Committee on Banking, Housing, and Urban Affairs

A BILL

To encourage residential mortgage loan modifications and
workout plans, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Encouraging Mortgage
5 Modifications Act of 2008”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) mortgage modifications often afford the best
9 opportunity to avoid foreclosures and provide long

1 term, sustainable solutions for American home-
2 owners;

3 (2) reaching mortgage modification agreements
4 with homeowners has been unacceptably slow and
5 foreclosure rates continue to rise, with the number
6 of homeowners forced into foreclosure double the
7 number who receive modifications or repayment
8 plans;

9 (3) servicers have an obligation to protect the
10 interests of investors when determining whether to
11 offer a modification or repayment plan;

12 (4) the best course of action for the investor
13 pool as a whole may disadvantage the interests of in-
14 dividual classes of investors;

15 (5) servicers have expressed concern that inves-
16 tor classes that are disproportionately disadvantaged
17 by a modification or repayment plan may seek to
18 hold the servicer liable;

19 (6) without liability protection, many servicers
20 will not be willing to take on the risk associated with
21 approving a mortgage modification or repayment
22 plan, and instead, they will eventually pursue fore-
23 closure even though foreclosure costs can equal 50
24 percent or more of mortgage value; and

1 (7) the net present value of a modified mort-
 2 gage loan will almost always exceed the amount re-
 3 couped by allowing the home to go into foreclosure.

4 **SEC. 3. LEGAL SAFE HARBOR FOR ENTERING INTO CER-**
 5 **TAIN LOAN MODIFICATIONS OR WORKOUT**
 6 **PLANS.**

7 Section 6 of the Real Estate Settlement Procedures
 8 Act of 1974 (12 U.S.C. 2605) is amended—

9 (1) by redesignating subsections (i) and (j) as
 10 subsections (j) and (k), respectively; and

11 (2) by inserting after subsection (h) the fol-
 12 lowing:

13 “(i) DUTY OF SERVICERS REGARDING CERTAIN
 14 LOAN MODIFICATIONS OR WORKOUT PLANS.—

15 “(1) IN GENERAL.—Notwithstanding any other
 16 provision of law, absent specific contractual provi-
 17 sions to the contrary, a servicer of pooled qualified
 18 residential mortgages—

19 “(A) owes any duty to determine if the net
 20 present value of the payments on the loan, as
 21 modified, is likely to be greater than the antici-
 22 pated net recovery that would result from fore-
 23 closure to all investors and parties having a di-
 24 rect or indirect interest in the pooled loans or

1 securitization vehicle, but not to any individual
2 party or group of parties; and

3 “(B) acts in the best interests of all such
4 investors and parties, if the servicer agrees to
5 or implements a qualified loan modification or
6 workout plan for a qualified residential mort-
7 gage, or if, and only if, such efforts are unsuc-
8 cessful or infeasible, takes other reasonable loss
9 mitigation actions, including accepting partial
10 payments or short sale of the property; and

11 “(C) if the servicer acts in a manner con-
12 sistent with the duty set forth in subparagraphs
13 (A) and (B), shall not be liable under any law
14 or regulation of the United States, any State or
15 any political subdivision of any State, for enter-
16 ing into a qualified loan modification or work-
17 out plan in any action filed by or on behalf of
18 any person—

19 “(i) based on the person’s ownership
20 of any interest in a residential mortgage, a
21 pool of residential mortgage loans, or a
22 securitization vehicle, that distributes pay-
23 ments out of the principal, interest, or
24 other payment on loans in the pool;

1 “(ii) based on the person’s obligation
2 to make payments determined in reference
3 to any loan or interest referred to in clause
4 (i); or

5 “(iii) based on the person’s obligation
6 to insure any loan or any interest referred
7 to in clause (i).

8 “(2) DEFINITIONS.—As used in this sub-
9 section—

10 “(A) the term ‘qualified loan modification
11 or workout plan’ means a contract, modifica-
12 tion, or plan relating to a qualified residential
13 mortgage loan consummated on or after Janu-
14 ary 1, 2004, with respect to which—

15 “(i) payment default on the loan or
16 loans has occurred, is imminent, or is rea-
17 sonably foreseeable;

18 “(ii) the dwelling securing the loan or
19 loans is the primary residence of the
20 owner;

21 “(iii) the servicer reasonably believes
22 that the anticipated recovery under the
23 loan modification or workout plan will ex-
24 ceed the anticipated recovery through fore-
25 closure, on a net present value basis;

1 “(iv) the effective period runs for at
2 least 5 years from the date of adoption of
3 the plan, or until the borrower sells or refi-
4 nances the property, if that occurs earlier;
5 and

6 “(v) the borrower is not required to
7 pay additional fees to the servicer;

8 “(B) the term ‘qualified residential mort-
9 gage’ means a consumer credit transaction or
10 loan that is secured by the consumer’s principal
11 dwelling;

12 “(C) the term ‘securitization vehicle’
13 means a trust, corporation, partnership, limited
14 liability entity, special purpose entity, or other
15 structure that is the issuer, or is created by the
16 issuer, of mortgage pass-through certificates,
17 participation certificates, mortgage-backed secu-
18 rities, or other similar securities backed by a
19 pool of assets that includes residential mortgage
20 loans; and

21 “(D) the term ‘servicer’—

22 “(i) means the person responsible for
23 servicing of a loan (including the person
24 who makes or holds a loan, if such person
25 also services the loan); and

1 “(ii) includes the entities listed in sub-
2 paragraphs (A) and (B) of subsection
3 (j)(2).

4 “(3) EFFECTIVE PERIOD.—This subsection
5 shall apply only with respect to qualified loan modi-
6 fication or workout plans initiated during the 6-
7 month period beginning on the date of enactment of
8 this subsection.

9 “(4) RULE OF CONSTRUCTION.—Nothing in
10 this subsection may be construed to limit the ability
11 of a servicer to enter into a loan modification or
12 workout plan other than a qualified loan modifica-
13 tion or workout plan covered by this subsection.”.

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