

Union Calendar No. 7

111TH CONGRESS
1ST SESSION

H. R. 200

[Report No. 111-19]

To amend title 11 of the United States Code with respect to modification of certain mortgages on principal residences, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 2009

Mr. CONYERS (for himself, Ms. LINDA T. SÁNCHEZ of California, Mr. NADLER of New York, Mr. DELAHUNT, Mr. SCOTT of Virginia, and Ms. WATERS) introduced the following bill; which was referred to the Committee on the Judiciary

FEBRUARY 24, 2009

Additional sponsors: Mr. GUTIERREZ, Mr. COHEN, Ms. EDWARDS of Maryland, Mr. GRIJALVA, Mr. JOHNSON of Georgia, Mr. WATT, Mr. KENNEDY, Ms. JACKSON-LEE of Texas, Mr. WU, Mr. BERMAN, Mr. KUCINICH, and Mr. LEWIS of Georgia

FEBRUARY 24, 2009

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

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

[For text of introduced bill, see copy of bill as introduced on January 6, 2009]

A BILL

To amend title 11 of the United States Code with respect to modification of certain mortgages on principal residences, 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 “Helping Families Save*
5 *Their Homes in Bankruptcy Act of 2009”.*

6 **SEC. 2. ELIGIBILITY FOR RELIEF.**

7 *Section 109 of title 11, United States Code, is amend-*
8 *ed—*

9 *(1) by adding at the end of subsection (e) the fol-*
10 *lowing: “For purposes of this subsection, the computa-*
11 *tion of debts shall not include the secured or unse-*
12 *cured portions of—*

13 *“(1) debts secured by the debtor’s principal resi-*
14 *dence if the current value of such residence is less*
15 *than the secured debt limit; or*

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

21 *(2) by adding at the end of subsection (h) the fol-*
22 *lowing:*

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

1 *received notice that the holder of a claim secured by the*
2 *debtor’s principal residence may commence a foreclosure on*
3 *the debtor’s principal residence.”.*

4 **SEC. 3. PROHIBITING CLAIMS ARISING FROM VIOLATIONS**
5 **OF THE TRUTH IN LENDING ACT.**

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

8 *(1) in paragraph (8) by striking “or” at the end,*
9 *(2) in paragraph (9) by striking the period at*
10 *the end and inserting “; or”, and*
11 *(3) by adding at the end the following:*

12 *“(10) the claim for a loan secured by a security*
13 *interest in the debtor’s principal residence is subject*
14 *to a remedy for rescission under the Truth in Lend-*
15 *ing Act notwithstanding the prior entry of a fore-*
16 *closure judgment, except that nothing in this para-*
17 *graph shall be construed to modify, impair, or super-*
18 *seede any other right of the debtor.”.*

19 **SEC. 4. AUTHORITY TO MODIFY CERTAIN MORTGAGES.**

20 *Section 1322 of title 11, United States Code, is amend-*
21 *ed—*

22 *(1) in subsection (b)—*
23 *(A) by redesignating paragraph (11) as*
24 *paragraph (12),*

1 (B) in paragraph (10) by striking “and” at
2 the end, and

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

5 “(11) notwithstanding paragraph (2) and other-
6 wise applicable nonbankruptcy law, with respect to a
7 claim for a loan originated before the effective date of
8 this paragraph and secured by a security interest in
9 the debtor’s principal residence that is the subject of
10 a notice that a foreclosure may be commenced with
11 respect to such loan, modify the rights of the holder
12 of such claim (and the rights of the holder of any
13 claim secured by a subordinate security interest in
14 such residence)—

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

18 “(B) if any applicable rate of interest is ad-
19 justable under the terms of such security interest
20 by prohibiting, reducing, or delaying adjust-
21 ments to such rate of interest applicable on and
22 after the date of filing of the plan;

23 “(C) by modifying the terms and conditions
24 of such loan—

1 “(i) to extend the repayment period for
2 a period that is no longer than the longer
3 of 40 years (reduced by the period for which
4 such loan has been outstanding) or the re-
5 maining term of such loan, beginning on
6 the date of the order for relief under this
7 chapter; and

8 “(ii) to provide for the payment of in-
9 terest accruing after the date of the order for
10 relief under this chapter at a fixed annual
11 rate equal to the currently applicable aver-
12 age prime offer rate as of the date of the
13 order for relief under this chapter, cor-
14 responding to the repayment term deter-
15 mined under the preceding paragraph, as
16 published by the Federal Financial Institu-
17 tions Examination Council in its table enti-
18 tled ‘Average Prime Offer Rates—Fixed’,
19 plus a reasonable premium for risk; and

20 “(D) by providing for payments of such
21 modified loan directly to the holder of the claim;
22 and”, and

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

24 “(g) A claim may be reduced under subsection
25 (b)(11)(A) only on the condition that if the debtor sells the

1 *principal residence securing such claim, before receiving a*
2 *discharge under this chapter and receives net proceeds from*
3 *the sale of such residence, then the debtor agrees to pay to*
4 *such holder—*

5 “(1) *if such residence is sold in the 1st year oc-*
6 *curing after the effective date of the plan, 80 percent*
7 *of the amount of the difference between the sales price*
8 *and the amount of such claim (plus costs of sale and*
9 *improvements), but not to exceed the amount of the*
10 *allowed secured claim determined as if such claim*
11 *had not been reduced under such subsection;*

12 “(2) *if such residence is sold in the 2d year oc-*
13 *curing after the effective date of the plan, 60 percent*
14 *of the amount of the difference between the sales price*
15 *and the amount of such claim (plus costs of sale and*
16 *improvements), but not to exceed the amount of the*
17 *allowed secured claim determined as if such claim*
18 *had not been reduced under such subsection;*

19 “(3) *if such residence is sold in the 3d year oc-*
20 *curing after the effective date of the plan, 40 percent*
21 *of the amount of the difference between the sales price*
22 *and the amount of such claim (plus costs of sale and*
23 *improvements), but not to exceed the amount of the*
24 *allowed secured claim determined as if such claim*
25 *had not been reduced under such subsection; and*

1 “(4) if such residence is sold in the 4th year oc-
2 curring after the effective date of the plan, 20 percent
3 of the amount of the difference between the sales price
4 and the amount of such claim (plus costs of sale and
5 improvements), but not to exceed the amount of the
6 allowed secured claim determined as if such claim
7 had not been reduced under such subsection.

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

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

14 “(A) the debtor certifies that the debtor at-
15 tempted, not less than 15 days before the com-
16 mencement of the case, to contact the holder of
17 such claim (or the entity collecting payments on
18 behalf of such holder) regarding modification of
19 the loan that is the subject of such claim; or

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

23 “(2) in any other case pending under this chap-
24 ter, unless the debtor certifies that the debtor at-
25 tempted to contact the holder of such claim (or the en-

1 *tity collecting payments on behalf of such holder) re-*
2 *garding modification of the loan that is the subject of*
3 *such claim, before—*

4 *“(A) filing a plan under section 1321 that*
5 *contains a modification under the authority of*
6 *subsection (b)(11); or*

7 *“(B) modifying a plan under section 1323*
8 *or 1329 to contain a modification under the au-*
9 *thority of subsection (b)(11).”.*

10 **SEC. 5. COMBATING EXCESSIVE FEES.**

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

13 *(1) in paragraph (1) by striking “and” at the*
14 *end,*

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

17 *(3) by adding at the end the following:*

18 *“(3) the debtor, the debtor’s property, and prop-*
19 *erty of the estate are not liable for a fee, cost, or*
20 *charge that is incurred while the case is pending and*
21 *arises from a debt that is secured by the debtor’s prin-*
22 *cipal residence except to the extent that—*

23 *“(A) the holder of the claim for such debt*
24 *files with the court (annually or, in order to per-*
25 *mit filing consistent with clause (ii), at such*

1 *more frequent periodicity as the court determines*
2 *necessary) notice of such fee, cost, or charge be-*
3 *fore the earlier of—*

4 *“(i) 1 year after such fee, cost, or*
5 *charge is incurred; or*

6 *“(ii) 60 days before the closing of the*
7 *case; and*

8 *“(B) such fee, cost, or charge—*

9 *“(i) is lawful under applicable non-*
10 *bankruptcy law, reasonable, and provided*
11 *for in the applicable security agreement;*
12 *and*

13 *“(ii) is secured by property the value*
14 *of which is greater than the amount of such*
15 *claim, including such fee, cost, or charge;*

16 *“(4) the failure of a party to give notice de-*
17 *scribed in paragraph (3) shall be deemed a waiver of*
18 *any claim for fees, costs, or charges described in para-*
19 *graph (3) for all purposes, and any attempt to collect*
20 *such fees, costs, or charges shall constitute a violation*
21 *of section 524(a)(2) or, if the violation occurs before*
22 *the date of discharge, of section 362(a); and*

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

1 **SEC. 6. CONFIRMATION OF PLAN.**

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

4 *(1) in paragraph (8) by striking “and” at the*
5 *end,*

6 *(2) in paragraph (9) by striking the period at*
7 *the end and inserting a semicolon, and*

8 *(3) by inserting after paragraph (9) the fol-*
9 *lowing:*

10 *“(10) notwithstanding subclause (I) of para-*
11 *graph (5)(B)(i), whenever the plan modifies a claim*
12 *in accordance with section 1322(b)(11), the plan pro-*
13 *vides that the holder of such claim retain the lien*
14 *until the later of—*

15 *“(A) the payment of such holder’s allowed*
16 *secured claim; or*

17 *“(B) discharge under section 1328; and*

18 *“(11) whenever the plan modifies a claim in ac-*
19 *cordance with section 1322(b)(11), the court finds*
20 *that such modification is in good faith and that the*
21 *debtor did not obtain the extension, renewal, or refi-*
22 *nancing of credit that gives rise to a modified claim*
23 *by the debtor’s material misrepresentation, false pre-*
24 *tenses, or actual fraud.”.*

1 **SEC. 7. DISCHARGE.**

2 *Section 1328 of title 11, United States Code, is amend-*
3 *ed—*

4 *(1) in subsection (a)—*

5 *(A) by inserting “(other than payments to*
6 *holders of claims whose rights are modified*
7 *under section 1322(b)(11))” after “paid”, and*

8 *(B) in paragraph (1) by inserting “or, to*
9 *the extent of the unpaid portion of an allowed se-*
10 *cured claim, provided for in section 1322(b)(11)”*
11 *after “1322(b)(5)”, and*

12 *(2) in subsection (c)(1) by inserting “or, to the*
13 *extent of the unpaid portion of an allowed secured*
14 *claim, provided for in section 1322(b)(11)” after*
15 *“1322(b)(5)”.*

16 **SEC. 8. RULE OF CONSTRUCTION.**

17 *Nothing in this Act or the amendments made by this*
18 *Act shall be construed to modify any obligation of the Fed-*
19 *eral Housing Administration, the Veterans Administration,*
20 *or the Department of Agriculture under a contract that*
21 *guarantees or insures the payment of any part of a loan*
22 *secured by a security interest in a principal residence.*

23 **SEC. 9. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

24 *(a) EFFECTIVE DATE.—Except as provided in sub-*
25 *section (b), this Act and the amendments made by this Act*
26 *shall take effect on the date of the enactment of this Act.*

1 **(b) APPLICATION OF AMENDMENTS.**—*The amendments*
2 *made by this Act shall apply with respect to cases com-*
3 *menced under title 11 of the United States Code before, on,*
4 *or after the date of the enactment of this Act.*

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