

111TH CONGRESS  
2D SESSION

# H. R. 6431

To amend title 11 of the United States Code to modify the application of chapter 13 with respect to principal residences that are the subject of foreclosure.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 18, 2010

Mr. McDERMOTT introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 11 of the United States Code to modify the application of chapter 13 with respect to principal residences that are the subject of foreclosure.

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 “Protecting Home-  
5 owners and Foreclosure Stabilization Act of 2010”.

6 **SEC. 2. PRESERVATION OF STAY OF FORECLOSURE OF**  
7 **PRINCIPAL RESIDENCE.**

8 Section 362(d) of title 11, the United States Code,  
9 is amended in paragraph (1) by inserting “(excluding a

1 stay of the foreclosure of the principal residence of the  
2 debtor)” after “stay” the first place it appears.

3 **SEC. 3. AUTHORITY TO MODIFY CERTAIN MORTGAGES.**

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

6 (1) in subsection (b)—

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

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

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

13 “(11) notwithstanding paragraph (2) and other-  
14 wise applicable nonbankruptcy law, with respect to a  
15 claim for a loan originated before the effective date  
16 of this paragraph and secured by a security interest  
17 in the debtor’s principal residence that is the subject  
18 of a notice that a foreclosure may be commenced  
19 with respect to such loan, modify the rights of the  
20 holder of such claim (and the rights of the holder of  
21 any claim secured by a subordinate security interest  
22 in such residence)—

23 “(A) if any applicable rate of interest is  
24 adjustable under the terms of such security in-  
25 terest by prohibiting, reducing, or delaying ad-

1           justments to such rate of interest applicable on  
2           and after the date of filing of the plan;

3           “(B) by modifying the terms and condi-  
4           tions of such loan to provide for the payment  
5           of interest accruing after the date of the order  
6           for relief under this chapter at a fixed annual  
7           rate equal to the currently applicable average  
8           prime offer rate as of the date of the order for  
9           relief under this chapter, corresponding to the  
10          repayment term determined under the pre-  
11          ceding paragraph, as published by the Federal  
12          Financial Institutions Examination Council in  
13          its table entitled ‘Average Prime Offer Rates—  
14          Fixed’, plus a reasonable premium for risk; and

15          “(C) by providing for payments of such  
16          modified loan directly to the holder of such  
17          claim; and”, and

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

19          “(g) A claim may be reduced under subsection  
20          (b)(11)(A) only on the condition that if the debtor sells  
21          the principal residence securing such claim, before receiv-  
22          ing a discharge under this chapter and receives net pro-  
23          ceeds from the sale of such residence, then the debtor  
24          agrees to pay to such holder if such residence is sold in  
25          the 10-year period beginning on the effective date of the

1 plan, 30 percent of the capital gains, if any, as defined  
 2 in section 1001 of the Internal Revenue Code of 1986.”.

3 **SEC. 4. EXTENDED PERIOD FOR FILING CERTAIN CHAPTER**  
 4 **13 PLANS.**

5 If the debtor’s plan modifies the rights of a holder  
 6 of a claim under section 1322(b)(11), then for purposes  
 7 of rule 3015(b) of the Federal Rules of Bankruptcy Proce-  
 8 dure a reference to “14 days” shall be deemed to be a  
 9 reference to “30 days”.

10 **SEC. 5. EXEMPTION FROM COUNSELING REQUIREMENT.**

11 Section 109(h) of title 11, the United States Code,  
 12 is amended—

13 (1) in paragraph (1) by striking “(2) and (3)”

14 and inserting “(2), (3), (4), and (5)”; and

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

16 “(5) The requirements of paragraph (1) shall not  
 17 apply with respect to a debtor whose principal residence  
 18 is the subject of a notice of foreclosure (or similar notice  
 19 under State law).”.

20 **SEC. 6. REQUIREMENT TO REQUEST MODIFICATION.**

21 Section 521(a) of title 11, the United States Code,  
 22 is amended—

23 (1) in paragraph (6) by striking “and” at the  
 24 end,

1           (2) in paragraph (7) by striking the period at  
2           the end, and

3           (3) and inserting after paragraph (7) the fol-  
4           lowing:

5           “(8) in a voluntary case under chapter 13 in  
6           which there is a debt secured by a lien on the prin-  
7           cipal residence of the debtor, certify under penalty  
8           of perjury that before the filing of the petition debt-  
9           or requested that the holder of the claim for such  
10          debt modify such debt.”.

11 **SEC. 7. RULE OF CONSTRUCTION.**

12          Nothing in this Act or the amendments made by this  
13          Act shall be construed to modify any obligation of the Fed-  
14          eral Housing Administration, the Veterans Administra-  
15          tion, or the Department of Agriculture under a contract  
16          that guarantees or insures the payment of any part of a  
17          loan secured by a security interest in a principal residence.

18 **SEC. 8. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

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

22          (b) APPLICATION OF AMENDMENTS.—

23                (1) IN GENERAL.—Except as provided in para-  
24                graph (2), the amendments made by this Act shall  
25                apply with respect to cases commenced under title

1       11 of the United States Code before, on, or after the  
2       date of the enactment of this Act.

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

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