

111TH CONGRESS  
1ST SESSION

# H. R. 703

To promote bank liquidity and lending through deposit insurance, the HOPE for Homeowners Program, and other enhancements.

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IN THE HOUSE OF REPRESENTATIVES

JANUARY 27, 2009

Mr. FRANK of Massachusetts introduced the following bill; which was referred to the Committee on Financial Services

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## A BILL

To promote bank liquidity and lending through deposit insurance, the HOPE for Homeowners Program, and other enhancements.

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. PERMANENT INCREASE IN DEPOSIT INSUR-**  
4 **ANCE.**

5 (a) AMENDMENTS TO FEDERAL DEPOSIT INSURANCE  
6 ACT.—Section 11(a)(1) of the Federal Deposit Insurance  
7 Act (12 U.S.C. 1821(a)) is amended—

8 (1) in paragraph (1)(E), by striking  
9 “\$100,000” and inserting “\$250,000”;

1           (2) in paragraph (1)(F)(i), by striking “2010”  
2           and inserting “2015”;

3           (3) in subclause (I) of paragraph (1)(F)(i), by  
4           striking “\$100,000” and inserting “\$250,000”;

5           (4) in subclause (II) of paragraph (1)(F)(i), by  
6           striking “the calendar year preceding the date this  
7           subparagraph takes effect under the Federal Deposit  
8           Insurance Reform Act of 2005” and inserting “cal-  
9           endar year 2008”; and

10          (5) in paragraph (3)(A)(iii), by striking “, ex-  
11          cept that \$250,000 shall be substituted for \$100,000  
12          wherever such term appears in such paragraph”.

13          (b) REPEAL OF EESA PROVISION.—Section 136 of  
14          the Emergency Economic Stabilization Act (Public Law  
15          110–343; 122 Stat. 3765) is hereby repealed.

16          (c) AMENDMENT TO FEDERAL CREDIT UNION  
17          ACT.—Section 207(k) of the Federal Credit Union Act  
18          (12 U.S.C. 1787(k)) is amended—

19                 (1) in paragraph (3)—

20                         (A) by striking the opening quotation mark  
21                         before “\$250,000”;

22                         (B) by striking “, except that \$250,000  
23                         shall be substituted for \$100,000 wherever such  
24                         term appears in such section”; and

1 (C) by striking the closing quotation mark  
2 after the closing parenthesis; and  
3 (2) in paragraph (5), by striking “\$100,000”  
4 and inserting “\$250,000”.

5 **SEC. 2. EXTENSION OF RESTORATION PLAN PERIOD.**

6 Section 7(b)(3)(E)(ii) of the Federal Deposit Insur-  
7 ance Act (12 U.S.C. 1817(b)(3)(E)(ii)) is amended by  
8 striking “5-year period” and inserting “8-year period”.

9 **SEC. 3. FDIC BORROWING AUTHORITY.**

10 Section 14(a) of the Federal Deposit Insurance Act  
11 (12 U.S.C. 1824(a)) is amended—

12 (1) by striking “\$30,000,000,000” and insert-  
13 ing “\$100,000,000,000”; and

14 (2) by inserting prior to the last sentence, the  
15 following new sentence: “The Corporation may re-  
16 quest in writing to borrow, and the Secretary may  
17 authorize and approve the borrowing of, additional  
18 amounts above \$100,000,000,000 to the extent that  
19 the Board of Directors and the Secretary determine  
20 such borrowing to be necessary.”.

21 **SEC. 4. FDIC SYSTEMIC RISK SPECIAL ASSESSMENTS.**

22 Section 13(c)(4)(G)(ii) of the Federal Deposit Insur-  
23 ance Act (12 U.S.C. 1823(c)(4)(G)(ii)) is amended to read  
24 as follows:

25 “(ii) REPAYMENT OF LOSS.—

1                   “(I) IN GENERAL.—The Corpora-  
2                   tion shall recover the loss to the De-  
3                   posit Insurance Fund arising from  
4                   any action taken or assistance pro-  
5                   vided with respect to an insured de-  
6                   pository institution under clause (i)  
7                   from 1 or more special assessments on  
8                   insured depository institutions, depository  
9                   institution holding companies  
10                  (with the concurrence of the Secretary  
11                  of the Treasury with respect to hold-  
12                  ing companies), or both, as the Cor-  
13                  poration determines to be appropriate.

14                  “(II) TREATMENT OF DEPOSI-  
15                  TORY INSTITUTION HOLDING COMPA-  
16                  NIES.—For purposes of this clause,  
17                  sections 7(c)(2) and 18(h) shall apply  
18                  to depository institution holding com-  
19                  panies as if they were insured depository  
20                  institutions.

21                  “(III) REGULATIONS.—The Cor-  
22                  poration shall prescribe such regula-  
23                  tions as it deems necessary to imple-  
24                  ment this clause. In prescribing such  
25                  regulations, defining terms, and set-

1                   ting the appropriate assessment rate  
2                   or rates, the Corporation shall con-  
3                   sider: the types of entities that benefit  
4                   from any action taken or assistance  
5                   provided under this subparagraph;  
6                   economic conditions; the effects on the  
7                   industry; and such other factors as  
8                   the Corporation deems appropriate.”.

9 **SEC. 5. CHANGES TO HOPE FOR HOMEOWNERS PROGRAM.**

10           Section 257 of the National Housing Act (12 U.S.C.  
11 1715z-23) is amended—

12                   (1) in subsection (e)—

13                           (A) in paragraph (1), by striking subpara-  
14                           graph (B);

15                           (B) in paragraph (2)(B), by striking “90  
16                           percent” and inserting “93 percent”;

17                           (C) by striking paragraph (7); and

18                           (D) by redesignating paragraphs (8), (9),  
19                           (10), and (11) as paragraphs (7), (8), (9), and  
20                           (10), respectively;

21                   (2) in subsection (h)(2), by striking “, or in any  
22                   case in which a mortgagor fails to make the first  
23                   payment on a refinanced eligible mortgage”;

24                   (3) by striking subsection (i) and inserting the  
25                   following new subsection:

1 “(i) ANNUAL PREMIUMS.—

2 “(1) IN GENERAL.—For each refinanced eligible  
3 mortgage insured under this section, the Secretary  
4 shall establish and collect an annual premium in an  
5 amount equal to not less than 0.55 percent of the  
6 amount of the remaining insured principal balance  
7 of the mortgage and not more than 0.75 percent of  
8 such remaining insured principal balance, as deter-  
9 mined according to a schedule established by the  
10 Board that assigns such annual premiums based  
11 upon the credit risk of the mortgage.

12 “(2) REDUCTION OR TERMINATION DURING  
13 MORTGAGE TERM.—Notwithstanding paragraph (1),  
14 the Secretary may provide that the annual premiums  
15 charged for refinanced eligible mortgages insured  
16 under this section are reduced over the term of the  
17 mortgage or that the collection of such premiums is  
18 discontinued at some time during the term of the  
19 mortgage, in a manner that is consistent with poli-  
20 cies for such reduction or discontinuation of annual  
21 premiums charged for mortgages in accordance with  
22 section 203(c).”;

23 (4) in subsection (k)—

24 (A) by striking the subsection heading and  
25 inserting “Exit Fee”;

1 (B) in paragraph (1), in the matter pre-  
2 ceding subparagraph (A), by striking “such sale  
3 or refinancing” and inserting “the mortgage  
4 being insured under this section”; and

5 (C) by striking paragraph (2);

6 (5) in subsection (s)(3)(A)(ii), by striking “sub-  
7 section (e)(1)(B) and such other” and inserting  
8 “such”;

9 (6) in subsection (v), by inserting after the pe-  
10 riod at the end the following: “The Board shall con-  
11 form documents, forms, and procedures for mort-  
12 gages insured under this section to those in place for  
13 mortgages insured under section 203(b) to the max-  
14 imum extent possible consistent with the require-  
15 ments of this section.”;

16 (7) in subsection (w)(1)(C), by striking  
17 “(e)(4)(A)” and inserting “(e)(3)(A)”; and

18 (8) by adding at the end the following new sub-  
19 section:

20 “(x) PAYMENT TO EXISTING LOAN SERVICER.—The  
21 Board may establish a payment to the servicer of the exist-  
22 ing senior mortgage for every loan insured under the  
23 HOPE for Homeowners Program.”.

24 **SEC. 6. SERVICER SAFE HARBOR.**

25 (a) SAFE HARBOR.—

1           (1) LOAN MODIFICATIONS AND WORKOUT  
2 PLANS.—Notwithstanding any other provision of  
3 law, and notwithstanding any investment contract  
4 between a servicer and a securitization vehicle or in-  
5 vestor, a servicer that acts consistent with the duty  
6 set forth in section 129A(a) of Truth in Lending Act  
7 (15 U.S.C. 1639a) shall not be liable for entering  
8 into a loan modification or workout plan with re-  
9 spect to any such mortgage that meets all of the cri-  
10 teria set forth in paragraph (2)(B) to—

11                   (A) any person, based on that person’s  
12 ownership of a residential mortgage loan or any  
13 interest in a pool of residential mortgage loans  
14 or in securities that distribute payments out of  
15 the principal, interest and other payments in  
16 loans on the pool;

17                   (B) any person who is obligated to make  
18 payments determined in reference to any loan  
19 or any interest referred to in subparagraph (A);  
20 or

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

1 (2) ABILITY TO MODIFY MORTGAGES.—

2 (A) ABILITY.—Notwithstanding any other  
3 provision of law, and notwithstanding any in-  
4 vestment contract between a servicer and a  
5 securitization vehicle or investor, a servicer—

6 (i) shall not be limited in the ability  
7 to modify mortgages, the number of mort-  
8 gages that can be modified, the frequency  
9 of loan modifications, or the range of per-  
10 missible modifications; and

11 (ii) shall not be obligated to repur-  
12 chase loans from or otherwise make pay-  
13 ments to the securitization vehicle on ac-  
14 count of a modification, workout, or other  
15 loss mitigation plan for a residential mort-  
16 gage or a class of residential mortgages  
17 that constitute a part or all of the mort-  
18 gages in the securitization vehicle,

19 if any mortgage so modified meets all of the cri-  
20 teria set forth in subparagraph (B).

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

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

4 (ii) The property securing such mort-  
5 gage is occupied by the mortgagor of such  
6 mortgage.

7 (iii) The servicer reasonably and in  
8 good faith believes that the anticipated re-  
9 covery on the principal outstanding obliga-  
10 tion of the mortgage under the particular  
11 modification or workout plan or other loss  
12 mitigation action will exceed, on a net  
13 present value basis, the anticipated recov-  
14 ery on the principal outstanding obligation  
15 of the mortgage to be realized through  
16 foreclosure.

17 (3) APPLICABILITY.—This subsection shall  
18 apply only with respect to modifications, workouts,  
19 and other loss mitigation plans initiated before Jan-  
20 uary 1, 2012.

21 (b) REPORTING.—Each servicer that engages in loan  
22 modifications or workout plans subject to the safe harbor  
23 in subsection (a) shall report to the Secretary on a regular  
24 basis regarding the extent, scope and results of the  
25 servicer’s modification activities. The Secretary shall pre-

1 scribe regulations specifying the form, content, and timing  
2 of such reports.

3 (c) DEFINITION OF SECURITIZATION VEHICLES.—

4 For purposes of this section, the term “securitization vehi-  
5 cle” means a trust, corporation, partnership, limited liabil-  
6 ity entity, special purpose entity, or other structure that—

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

12 (2) holds such mortgages.

13 **SEC. 7. AVAILABILITY OF TARP FUNDS TO SMALLER COM-**  
14 **MUNITY INSTITUTIONS.**

15 (a) PROMPT ACTION.—The Secretary shall promptly  
16 take all necessary actions to provide assistance under title  
17 I of the Emergency Economic Stabilization Act of 2008  
18 to smaller community financial institutions, including such  
19 institutions that are privately held.

20 (b) COMPARABLE TERMS.—An institution that re-  
21 ceives assistance after the date of the enactment of the  
22 this Act, shall do so on terms comparable to the terms  
23 applicable to institutions that received assistance prior to  
24 the date of the enactment of this Act if the institution—

1           (1) has submitted an application on which no  
2           action has been taken, such as institutions that are  
3           C corporations (including privately held institutions)  
4           and community development financial institutions;  
5           or

6           (2) is of a type for which the Secretary has not  
7           yet established an application deadline or for which  
8           any such deadline has not yet occurred as of the  
9           date of the enactment of this Act, such as institu-  
10          tions that are non-stock corporations, S-corpora-  
11          tions, mutually owned insured depository institutions  
12          (as defined in section 3 of the Federal Deposit In-  
13          surance Act).

14          (c) DEFINITIONS.—For purposes of this section, the  
15          terms “S Corporation” and “C Corporation” shall have  
16          the same meaning given to those terms in section 1361(a)  
17          of the Internal Revenue Code of 1986.

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