

AMENDMENT TO TITLE VII OF H.R. 4173
OFFERED BY MR. TIERNEY OF MASSACHUSETTS

(Page and line numbers refer to amendment as posted on
Rules Committee website)

Page 198, after line 15, insert the following:

1 **Subtitle K—Preserving Homes and**
2 **Communities**

3 **SEC. 9911. LOAN MODIFICATION REQUIREMENTS.**

4 (a) **DEFINITIONS.**—In this section—

5 (1) the term “covered mortgagee” means—

6 (A) a mortgagee under a federally related
7 mortgage loan; and

8 (B) the agent of a mortgagee under a fed-
9 erally related mortgage loan;

10 (2) the term “covered mortgagor” means an in-
11 dividual who is a mortgagor under a federally re-
12 lated mortgage loan—

13 (A) made by a covered mortgagee;

14 (B) secured by the principal residence of
15 the mortgagor; and

16 (C) on which the mortgagor cannot make
17 payments due to financial hardship, as deter-
18 mined by the Secretary;

1 (3) the term “federally related mortgage loan”
2 has the same meaning as in section 3 of the Real
3 Estate Settlement Procedures Act of 1974 (12
4 U.S.C. 2602);

5 (4) the term “home loan modification protocol”
6 means a home loan modification protocol that is de-
7 veloped under a home loan modification program put
8 into effect by the Secretary of the Treasury or the
9 Secretary;

10 (5) the term “qualified loan modification”
11 means a modification to the terms of a mortgage
12 agreement between a covered mortgagee and a cov-
13 ered mortgagor that is made pursuant to a deter-
14 mination by the covered mortgagee using a home
15 loan modification protocol that a modification would
16 produce a greater net present value than foreclosure
17 to—

18 (A) the covered mortgagee; or

19 (B) in the aggregate, all persons that hold
20 an interest in the mortgage agreement; and

21 (6) the term “Secretary” means the Secretary
22 of Housing and Urban Development.

23 (b) LOAN MODIFICATION REQUIRED.—

24 (1) IN GENERAL.—A covered mortgagee may
25 not initiate or continue a foreclosure proceeding

1 against a covered mortgagor that is otherwise au-
2 thorized under State law unless—

3 (A) the covered mortgagee has determined
4 whether the covered mortgagor is eligible for a
5 qualified loan modification;

6 (B) in the case of a covered mortgagor
7 who the covered mortgagee determines is eligi-
8 ble for a qualified loan modification, the covered
9 mortgagee has offered a qualified loan modifica-
10 tion to the covered mortgagor; and

11 (C) in the case of a covered mortgagor who
12 the covered mortgagee determines is not eligible
13 for a qualified loan modification, the covered
14 mortgagee has made available to the covered
15 mortgagor the note, deed of trust, or any other
16 document necessary to establish the right of the
17 mortgagee to foreclose on the mortgage.

18 (2) NO WAIVER OF RIGHTS.—A covered mort-
19 gagee may not require a covered mortgagor to waive
20 any right of the covered mortgagor as a condition of
21 making a qualified loan modification.

22 (3) SALE OF REAL PROPERTY SECURING MORT-
23 GAGE.—

24 (A) SALE.—A covered mortgagee may not
25 sell the real property securing the mortgage of

1 a covered mortgagor unless the covered mort-
2 gagee submits to the appropriate State entity in
3 the State in which the real property is located,
4 a certification that the covered mortgagee has
5 made a determination under paragraph (1)(A).

6 (B) ACTION BY PURCHASER.—A person
7 that purchases from a covered mortgagee the
8 real property securing the mortgage of a cov-
9 ered mortgagor may not recover possession of
10 the real property unless the covered mortgagee
11 submits to the appropriate State entity in the
12 State in which the real property is located, a
13 certification that the covered mortgagee has
14 made a determination under paragraph (1)(A).

15 (C) CERTIFICATION STANDARDS.—The
16 Secretary shall establish minimum standards
17 for the certification required under this para-
18 graph.

19 (4) DEFENSE TO FORECLOSURE.—Failure to
20 comply with this subsection shall be a defense to
21 foreclosure.

22 (5) RULE OF CONSTRUCTION.—Nothing in this
23 subsection may be construed to prevent a covered
24 mortgagee from offering or making a loan modifica-
25 tion with a lower payment, lower interest rate, or

1 principal reduction beyond that required by a modi-
2 fication made using a home loan modification pro-
3 tocol with respect to a covered mortgagor.

4 (c) FEES PROHIBITED.—

5 (1) LOAN MODIFICATION FEES PROHIBITED.—

6 A covered mortgagee may not charge a fee to a cov-
7 ered mortgagor for carrying out the requirements
8 under subsection (b).

9 (2) FORECLOSURE-RELATED FEES.—

10 (A) IN GENERAL.—Except as provided in
11 subparagraph (B), a mortgagee may not charge
12 a foreclosure-related fee to a mortgagor be-
13 fore—

14 (i) the mortgagee has made a deter-
15 mination under subsection (b)(1); and

16 (ii) the mortgage has entered the fore-
17 closure process.

18 (B) DELINQUENCY FEES.—A mortgagee
19 may charge a delinquency fee for late payment
20 by the mortgagor.

21 (3) FEES NOT IN CONTRACT.—A mortgagee
22 may charge to a mortgagor only such fees as have
23 been specified in advance by the mortgage agree-
24 ment.

1 (4) FEES FOR EXPENSES INCURRED.—A mort-
2 gagee may charge a fee to a mortgagor only for
3 services actually performed by the mortgagee or a
4 third party in relation to the mortgage agreement.
5 For purposes of this paragraph, the term “third
6 party” does not include an affiliate or subsidiary of
7 the mortgagee.

8 (5) PENALTY.—The Secretary shall collect from
9 any mortgagee that charges a fee in violation of this
10 subsection an amount equal to \$6,000 for each such
11 fee.

12 (d) REGULATIONS.—Not later than 3 months after
13 the date of enactment of this Act, the Secretary shall issue
14 by notice any requirements to carry out this section. The
15 Secretary shall subsequently issue, after notice and com-
16 ment, final regulations to carry out this section.

17 **SEC. 9916. EXEMPTION FOR COMMUNITY BANKS.**

18 (a) EXEMPTION.—None of the provisions of this sub-
19 title shall apply with respect to a mortgage held by a com-
20 munity bank unless the mortgage is a sub-prime mortgage
21 or otherwise offends fair practices.

22 (b) COMMUNITY BANK DEFINED.—For the purposes
23 of this section, the term “community bank” means any
24 insured depository institution (as defined in section 3 of

1 the Federal Deposit Insurance Act) which has total assets
2 of less than \$10,000,000,000.

3 **Subtitle L—Modification of**
4 **Residential Mortgages**

5 **SEC. 9921. DEFINITION.**

6 Section 101 of title 11, United States Code, is
7 amended by inserting after paragraph (43) the following
8 (and make such technical and conforming changes as may
9 be appropriate):

10 “(43A) The term ‘qualified loan modification’
11 means a loan modification agreement made in ac-
12 cordance with the guidelines of the Obama Adminis-
13 tration’s Homeowner Affordability and Stability
14 Plan as implemented March 4, 2009, that—

15 “(A) reduces the debtor’s payment (includ-
16 ing principal and interest, and payments for
17 real estate taxes, hazard insurance, mortgage
18 insurance premium, homeowners’ association
19 dues, ground rent, and special assessments) on
20 a loan secured by a senior security interest in
21 the principal residence of the debtor, to a per-
22 centage of the debtor’s income in accordance
23 with such guidelines, without any period of neg-
24 ative amortization or under which the aggregate
25 amount of the regular periodic payments would

1 not fully amortize the outstanding principal
2 amount of such loan;

3 “(B) requires no fees or charges to be paid
4 by the debtor in order to obtain such modifica-
5 tion; and

6 “(C) permits the debtor to continue to
7 make payments under the modification agree-
8 ment notwithstanding the filing of a case under
9 this title, as if such case had not been filed.”.

10 **SEC. 9922. ELIGIBILITY FOR RELIEF.**

11 Section 109 of title 11, United States Code, is
12 amended—

13 (1) by adding at the end of subsection (e) the
14 following: “For purposes of this subsection, the com-
15 putation of debts shall not include the secured or
16 unsecured portions of—

17 “(1) debts secured by the debtor’s principal res-
18 idence if the value of such residence as of the date
19 of the order for relief under chapter 13 is less than
20 the applicable maximum amount of noncontingent,
21 liquidated, secured debts specified in this subsection;
22 or

23 “(2) debts secured or formerly secured by what
24 was the debtor’s principal residence that was sold in
25 foreclosure or that the debtor surrendered to the

1 creditor if the value of such real property as of the
2 date of the order for relief under chapter 13 was less
3 than the applicable maximum amount of noncontin-
4 gent, liquidated, secured debts specified in this sub-
5 section.”, and

6 (2) by adding at the end of subsection (h) the
7 following:

8 “(5) Notwithstanding the 180-day period speci-
9 fied in paragraph (1), with respect to a debtor in a
10 case under chapter 13 who submits to the court a
11 certification that the debtor has received notice that
12 the holder of a claim secured by the debtor’s prin-
13 cipal residence may commence a foreclosure on the
14 debtor’s principal residence, the requirements of
15 paragraph (1) shall be considered to be satisfied if
16 the debtor satisfies such requirements not later than
17 the expiration of the 30-day period beginning on the
18 date of the filing of the petition.”.

19 **SEC. 9923. PROHIBITING CLAIMS ARISING FROM VIOLA-**
20 **TIONS OF THE TRUTH IN LENDING ACT.**

21 Section 502(b) of title 11, United States Code, is
22 amended—

23 (1) in paragraph (8) by striking “or” at the
24 end,

1 (2) in paragraph (9) by striking the period at
2 the end and inserting “; or”, and

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

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

11 **SEC. 9924. AUTHORITY TO MODIFY CERTAIN MORTGAGES.**

12 Section 1322 of title 11, United States Code, is
13 amended—

14 (1) in subsection (b)—

15 (A) by redesignating paragraph (11) as
16 paragraph (12),

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

19 (C) by inserting after paragraph (10) the
20 following:

21 “(11) notwithstanding paragraph (2), with re-
22 spect to a claim for a loan originated before the ef-
23 fective date of this paragraph and secured by a secu-
24 rity interest in the debtor’s principal residence that
25 is the subject of a notice that a foreclosure may be

1 commenced with respect to such loan, modify the
2 rights of the holder of such claim (and the rights of
3 the holder of any claim secured by a subordinate se-
4 curity interest in such residence)—

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

8 “(B) if any applicable rate of interest is
9 adjustable under the terms of such loan by pro-
10 hibiting, reducing, or delaying adjustments to
11 such rate of interest applicable on and after the
12 date of filing of the plan;

13 “(C) by modifying the terms and condi-
14 tions of such loan—

15 “(i) to extend the repayment period
16 for a period that is no longer than the
17 longer of 40 years (reduced by the period
18 for which such loan has been outstanding)
19 or the remaining term of such loan, begin-
20 ning on the date of the order for relief
21 under this chapter; and

22 “(ii) to provide for the payment of in-
23 terest accruing after the date of the order
24 for relief under this chapter at a fixed an-
25 nual rate equal to the currently applicable

1 average prime offer rate as of the date of
2 the order for relief under this chapter, cor-
3 responding to the repayment term deter-
4 mined under the preceding paragraph, as
5 published by the Federal Financial Institu-
6 tions Examination Council in its table enti-
7 tled 'Average Prime Offer Rates—Fixed',
8 plus a reasonable premium for risk; and

9 “(D) by providing for payments of such
10 modified loan directly to the holder of the claim
11 or, at the discretion of the court, through the
12 trustee during the term of the plan; and”, and
13 (2) by adding at the end the following:

14 “(g) A claim may be reduced under subsection
15 (b)(11)(A) only on the condition that if the debtor sells
16 the principal residence securing such claim, before com-
17 pleting all payments under the plan (or, if applicable, be-
18 fore receiving a discharge under section 1328(b)) and re-
19 ceives net proceeds from the sale of such residence, then
20 the debtor agrees to pay to such holder not later than 15
21 days after receiving such proceeds—

22 “(1) if such residence is sold in the 1st year oc-
23 ccurring after the effective date of the plan, 90 per-
24 cent of the amount of the difference between the
25 sales price and the amount of such claim as origi-

1 nally determined under subsection (b)(11) (plus
2 costs of sale and improvements), but not to exceed
3 the unpaid amount of the allowed secured claim de-
4 termined as if such claim had not been reduced
5 under such subsection;

6 “(2) if such residence is sold in the 2d year oc-
7 ccurring after the effective date of the plan, 70 per-
8 cent of the amount of the difference between the
9 sales price and the amount of such claim as origi-
10 nally determined under subsection (b)(11) (plus
11 costs of sale and improvements), but not to exceed
12 the unpaid amount of the allowed secured claim de-
13 termined as if such claim had not been reduced
14 under such subsection;

15 “(3) if such residence is sold in the 3d year oc-
16 ccurring after the effective date of the plan, 50 per-
17 cent of the amount of the difference between the
18 sales price and the amount of such claim as origi-
19 nally determined under subsection (b)(11) (plus
20 costs of sale and improvements), but not to exceed
21 the unpaid amount of the allowed secured claim de-
22 termined as if such claim had not been reduced
23 under such subsection;

24 “(4) if such residence is sold in the 4th year oc-
25 ccurring after the effective date of the plan, 30 per-

1 cent of the amount of the difference between the
2 sales price and the amount of such claim as origi-
3 nally determined under subsection (b)(11) (plus
4 costs of sale and improvements), but not to exceed
5 the unpaid amount of the allowed secured claim de-
6 termined as if such claim had not been reduced
7 under such subsection; and

8 “(5) if such residence is sold in the 5th year oc-
9 ccurring after the effective date of the plan, 10 per-
10 cent of the amount of the difference between the
11 sales price and the amount of such claim as origi-
12 nally determined under subsection (b)(11) (plus
13 costs of sale and improvements), but not to exceed
14 the unpaid amount of the allowed secured claim de-
15 termined as if such claim had not been reduced
16 under such subsection.

17 “(h) With respect to a claim of the kind described
18 in subsection (b)(11), the plan may not contain a modi-
19 fication under the authority of subsection (b)(11)—

20 “(1) in a case commenced under this chapter
21 after the expiration of the 30-day period beginning
22 on the effective date of this subsection, unless—

23 “(A) the debtor certifies that the debtor—

24 “(i) not less than 30 days before the
25 commencement of the case, contacted the

1 holder of such claim (or the entity col-
2 lecting payments on behalf of such holder)
3 regarding modification of the loan that is
4 the subject of such claim;

5 “(ii) provided the holder of the claim
6 (or the entity collecting payments on be-
7 half of such holder) a written statement of
8 the debtor’s current income, expenses, and
9 debt substantially conforming with the
10 schedules required under section 521(a) or
11 such other form as is promulgated by the
12 Judicial Conference of the United States
13 for such purpose; and

14 “(iii) considered any qualified loan
15 modification offered to the debtor by the
16 holder of the claim (or the entity collecting
17 payments on behalf of such holder); or

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

21 “(2) in any other case pending under this chap-
22 ter, unless the debtor certifies that the debtor at-
23 tempted to contact the holder of such claim (or the
24 entity collecting payments on behalf of such holder)

1 regarding modification of the loan that is the subject
2 of such claim, before—

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

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

9 “(i) In determining the holder’s allowed secured claim
10 under section 506(a)(1) for purposes of subsection
11 (b)(11)(A), the value of the debtor’s principal residence
12 shall be the fair market value of such residence on the
13 date such value is determined and, if the issue of value
14 is contested, the court shall determine such value in ac-
15 cordance with the appraisal rules used by the Federal
16 Housing Administration.”

17 **SEC. 9925. COMBATING EXCESSIVE FEES.**

18 Section 1322(c) of title 11, United States Code, is
19 amended—

20 (1) in paragraph (1) by striking “and” at the
21 end,

22 (2) in paragraph (2) by striking the period at
23 the end and inserting a semicolon, and

24 (3) by adding at the end the following:

1 “(3) the debtor, the debtor’s property, and
2 property of the estate are not liable for a fee, cost,
3 or charge that is incurred while the case is pending
4 and arises from a debt that is secured by the debt-
5 or’s principal residence except to the extent that—

6 “(A) the holder of the claim for such debt
7 files with the court and serves on the trustee,
8 the debtor, and the debtor’s attorney (annually
9 or, in order to permit filing consistent with
10 clause (ii), at such more frequent periodicity as
11 the court determines necessary) notice of such
12 fee, cost, or charge before the earlier of—

13 “(i) 1 year after such fee, cost, or
14 charge is incurred; or

15 “(ii) 60 days before the closing of the
16 case; and

17 “(B) such fee, cost, or charge—

18 “(i) is lawful under applicable non-
19 bankruptcy law, reasonable, and provided
20 for in the applicable security agreement;
21 and

22 “(ii) is secured by property the value
23 of which is greater than the amount of
24 such claim, including such fee, cost, or
25 charge;

1 “(4) the failure of a party to give notice de-
2 scribed in paragraph (3) shall be deemed a waiver
3 of any claim for fees, costs, or charges described in
4 paragraph (3) for all purposes, and any attempt to
5 collect such fees, costs, or charges shall constitute a
6 violation of section 524(a)(2) or, if the violation oc-
7 curs before the date of discharge, of section 362(a);
8 and

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

12 **SEC. 9926. CONFIRMATION OF PLAN.**

13 (a) Section 1325(a) of title 11, United States Code,
14 is amended—

15 (1) in the matter preceding paragraph (1)
16 strike “subsection (b)” and insert “subsections (b)
17 and (d)”.

18 (2) in paragraph (5)—

19 (A) by inserting “except as otherwise pro-
20 vided in section 1322(b)(11),” after “(5)”, and

21 (B) in subparagraph (B)(iii)(I) by insert-
22 ing “(including payments of a claim modified
23 under section 1322(b)(11))” after “payments”
24 the 1st place it appears,

1 (3) in paragraph (8) by striking “and” at the
2 end,

3 (4) in paragraph (9) by striking the period at
4 the end and inserting a semicolon, and

5 (5) by inserting after paragraph (9) the fol-
6 lowing:

7 “(10) notwithstanding subelause (I) of para-
8 graph (5)(B)(i), whenever the plan modifies a claim
9 in accordance with section 1322(b)(11), the holder
10 of a claim whose rights are modified pursuant to
11 section 1322(b)(11) shall retain the lien until the
12 later of—

13 “(A) the payment of such holder’s allowed
14 secured claim; or

15 “(B) completion of all payments under the
16 plan (or, if applicable, receipt of a discharge
17 under section 1328(b)); 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 (Lack of good
21 faith exists if the debtor has no need for relief under
22 this paragraph because the debtor can pay all of his
23 or her debts and any future payment increases on
24 such debts without difficulty for the foreseeable fu-
25 ture, including the positive amortization of mortgage

1 debt. In determining whether a reduction of the
2 principal amount of the loan resulting from a modi-
3 fication made under the authority of section
4 1322(b)(11) is made in good faith, the court shall
5 consider whether the holder of such claim (or the en-
6 tity collecting payments on behalf of such holder)
7 has offered to the debtor a qualified loan modifica-
8 tion that would enable the debtor to pay such debts
9 and such loan without reducing such principal
10 amount.) and does not find that the debtor has been
11 convicted of obtaining by actual fraud the extension,
12 renewal, or refinancing of credit that gives rise to a
13 modified claim.”.

14 (b) Section 1325 of title 11, United States Code, is
15 amended by adding at the end the following (and make
16 such technical and conforming changes as may be appro-
17 priate):

18 “(d) Notwithstanding section 1322(b)(11)(C)(ii), the
19 court, on request of the debtor or the holder of a claim
20 secured by a senior security interest in the debtor’s prin-
21 cipal residence, may confirm a plan proposing a reduction
22 in the interest rate on the loan secured by such security
23 interest and that does not reduce the principal, provided
24 the total monthly mortgage payment is reduced to a per-
25 centage of the debtor’s income in accordance with the

1 guidelines of the Obama Administration's Homeowner Af-
2 fordability and Stability Plan as implemented March 4,
3 2009, if, taking into account the debtor's financial situa-
4 tion, after allowance of expenses that would be permitted
5 for a debtor under this chapter subject to paragraph (3)
6 of subsection (b), regardless of whether the debtor is oth-
7 erwise subject to such paragraph, and taking into account
8 additional debts and fees that are to be paid in this chap-
9 ter and thereafter, the debtor would be able to prevent
10 foreclosure and pay a fully amortizing 30-year loan at
11 such reduced interest rate without such reduction in prin-
12 cipal."

13 **SEC. 9927. DISCHARGE.**

14 Section 1328(a) of title 11, United States Code, is
15 amended—

16 (1) by inserting "(other than payments to hold-
17 ers of claims whose rights are modified under sec-
18 tion 1322(b)(11))" after "paid", and

19 (2) in paragraph (1) by inserting "or, to the ex-
20 tent of the unpaid portion of an allowed secured
21 claim, provided for in section 1322(b)(11)" after
22 "1322(b)(5)".

1 **SEC. 9928. STANDING TRUSTEE FEES.**

2 (a) AMENDMENT TO TITLE 28.—Section
3 586(e)(1)(B)(i) of title 28, United States Code, is amend-
4 ed—

5 (1) by inserting “(I) except as provided in sub-
6 paragraph (II)” after “(i)”,

7 (2) by striking “or” at the end and inserting
8 “and”, and

9 (3) by adding at the end the following:

10 “(II) 4 percent with respect to pay-
11 ments received under section 1322(b)(11)
12 of title 11 by the individual as a result of
13 the operation of section 1322(b)(11)(D) of
14 title 11, unless the bankruptcy court
15 waives all fees with respect to such pay-
16 ments based on a determination that such
17 individual has income less than 150 per-
18 cent of the income official poverty line (as
19 defined by the Office of Management and
20 Budget, and revised annually in accord-
21 ance with section 673(2) of the Omnibus
22 Budget Reconciliation Act of 1981) appli-
23 cable to a family of the size involved and
24 payment of such fees would render the
25 debtor’s plan infeasible.”.

1 (b) CONFORMING PROVISION.—The amendments
2 made by this section shall apply to any trustee to whom
3 the provisions of section 302(d)(3) of the Bankruptcy
4 Judges, United States Trustees, and Family Farmer
5 Bankruptcy Act of 1986 (Public Law 99–554; 100 Stat.
6 3121) apply.

7 **SEC. 9929. EFFECTIVE DATE; APPLICATION OF AMEND-**
8 **MENTS.**

9 (a) EFFECTIVE DATE.—Except as provided in sub-
10 section (b), this subtitle and the amendments made by this
11 subtitle shall take effect on the date of the enactment of
12 this Act.

13 (b) APPLICATION OF AMENDMENTS.—

14 (1) IN GENERAL.—Except as provided in para-
15 graph (2), the amendments made by this subtitle
16 shall apply with respect to cases commenced under
17 title 11 of the United States Code before, on, or
18 after the date of the enactment of this Act.

19 (2) LIMITATION.—Paragraph (1) shall not
20 apply with respect to cases closed under title 11 of
21 the United States Code as of the date of the enact-
22 ment of this Act that are neither pending on appeal
23 in, nor appealable to, any court of the United
24 States.

1 **SEC. 9930. GAO STUDY.**

2 The Comptroller General shall carry out a study, and
3 submit to the Committee on the Judiciary of the House
4 of Representatives and the Committee on the Judiciary
5 of the Senate, not later than 2 years after the date of
6 the enactment of this Act a report containing—

7 (1) the results of such study of—

8 (A) the number of debtors who filed, dur-
9 ing the 1-year period beginning on the date of
10 the enactment of this Act, cases under chapter
11 13 of title 11 of the United States Code for the
12 purpose of restructuring their principal resi-
13 dence mortgages,

14 (B) the number of mortgages restructured
15 under the amendments made by this subtitle
16 that subsequently resulted in default and fore-
17 closure,

18 (C) a comparison between the effectiveness
19 of mortgages restructured under programs out-
20 side of bankruptcy, such as Hope Now and
21 Help for Homeowners, and mortgages restruc-
22 tured under the amendments made by this sub-
23 title,

24 (D) the number of cases presented to the
25 bankruptcy courts where mortgages were re-

1 structured under the amendments made by this
2 subtitle that were appealed,

3 (E) the number of cases presented to the
4 bankruptcy courts where mortgages were re-
5 structured under the amendments made by the
6 subtitle that were overturned on appeal, and

7 (F) the number of bankruptcy judges dis-
8 ciplined as a result of actions taken to restruc-
9 ture mortgages under the amendments made by
10 this subtitle, and

11 (2) a recommendation as to whether such
12 amendments should be amended to include a sunset
13 clause.

14 **SEC. 9931. REPORT TO CONGRESS.**

15 Not later than 18 months after the date of the enact-
16 ment of this Act, the Comptroller General, in consultation
17 with the Federal Housing Administration, shall submit to
18 the Congress, a report containing—

19 (1) a comprehensive review of the effects of the
20 amendments made by this subtitle on bankruptcy
21 court,

22 (2) a survey of whether the program should
23 limit the types of homeowners eligible for the pro-
24 gram, and

1 (3) a recommendation on whether such amend-
2 ments should remain in effect.

3 **SEC. 9932. ADJUSTMENTS AS A RESULT OF MODIFICATION**
4 **IN BANKRUPTCY OF HOUSING LOANS GUAR-**
5 **ANTEED BY THE DEPARTMENT OF VETERANS**
6 **AFFAIRS.**

7 (a) **IN GENERAL.**—Section 3732 of title 38, United
8 States Code, is amended—

9 (1) in subsection (a)—

10 (A) by redesignating paragraph (2) as sub-
11 paragraph (A) of paragraph (2), and

12 (2) by inserting after subparagraph (A) the fol-
13 lowing new subparagraph:

14 “(B) In the event that a housing loan
15 guaranteed under this chapter is modified
16 under the authority provided under section
17 1322(b) of title 11, United States Code, the
18 Secretary may pay the holder of the obligation
19 the unpaid balance of the obligation due as of
20 the date of the filing of the petition under title
21 11, United States Code, plus accrued interest,
22 but only upon the assignment, transfer, and de-
23 livery to the Secretary (in a form and manner
24 satisfactory to the Secretary) of all rights, in-

1 interest, claims, evidence, and records with re-
2 spect to the housing loan.”.

3 (b) MATURITY OF HOUSING LOANS.—Paragraph (1)
4 of section (d) of section 3703 of title 38, United States
5 Code, is amended by inserting “at the time of origination”
6 after “loan”.

7 (c) IMPLEMENTATION.—The Secretary of Veterans
8 Affairs may implement the amendments made by this sec-
9 tion through notice, procedure notice, or administrative
10 notice.

11 **SEC. 9933. PAYMENT OF FHA MORTGAGE INSURANCE BENE-**
12 **FITS.**

13 (a) IN GENERAL.—Subsection (a) of section 204 of
14 the National Housing Act (12 U.S.C. 1710(a)) is amend-
15 ed—

16 (1) in paragraph (1), by adding at the end the
17 following new subparagraph:

18 “(E) MODIFICATION OF MORTGAGE IN
19 BANKRUPTCY.—

20 “(i) AUTHORITY.—If an order is en-
21 tered under the authority provided under
22 section 1322(b) of title 11, United States
23 Code, that (a) determines the amount of
24 an allowed secured claim under a mortgage
25 in accordance with section 506(a)(1) of

1 title 11, United States Code, and the
2 amount of such allowed secured claim is
3 less than the amount due under the mort-
4 gage as of the date of the filing of the peti-
5 tion under title 11, United States Code, or
6 (b) reduces the interest to be paid under a
7 mortgage in accordance with section 1325
8 of such title, the Secretary may pay insur-
9 ance benefits for the mortgage as follows:

10 “(I) FULL PAYMENT AND AS-
11 SIGNMENT.—The Secretary may pay
12 the insurance benefits for the mort-
13 gage, but only upon the assignment,
14 transfer, and delivery to the Secretary
15 of all rights, interest, claims, evidence,
16 and records with respect to the mort-
17 gage specified in clauses (i) through
18 (iv) of paragraph (1)(A). The insur-
19 ance benefits shall be paid in the
20 amount equal to the original principal
21 obligation of the mortgage (with such
22 additions and deductions as the Sec-
23 retary determines are appropriate)
24 which was unpaid upon the date of
25 the filing of by the mortgagor of the

1 petition under title 11 of the United
2 States Code. Nothing in this Act may
3 be construed to prevent the Secretary
4 from providing insurance under this
5 title for a mortgage that has pre-
6 viously been assigned to the Secretary
7 under this subclause. The decision of
8 whether to utilize the authority under
9 this subclause for payment and as-
10 signment shall be at the election of
11 the mortgagee, subject to such terms
12 and conditions as the Secretary may
13 establish.

14 “(II) ASSIGNMENT OF UNSE-
15 CURED CLAIM.—The Secretary may
16 make a partial payment of the insur-
17 ance benefits for any unsecured claim
18 under the mortgage, but only upon
19 the assignment to the Secretary of
20 any unsecured claim of the mortgagee
21 against the mortgagor or others aris-
22 ing out of such order. Such assign-
23 ment shall be deemed valid irrespec-
24 tive of whether such claim has been or
25 will be discharged under title 11 of

1 the United States Code. The insur-
2 ance benefits shall be paid in the
3 amount specified in subclause (I) of
4 this clause, as such amount is reduced
5 by the amount of the allowed secured
6 claim. Such allowed secured claim
7 shall continue to be insured under sec-
8 tion 203.

9 “(III) INTEREST PAYMENTS.—

10 The Secretary may make periodic pay-
11 ments, or a one-time payment, of in-
12 surance benefits for interest payments
13 that are reduced pursuant to such
14 order, as determined by the Secretary,
15 but only upon assignment to the Sec-
16 retary of all rights and interest re-
17 lated to such payments.

18 “(ii) DELIVERY OF EVIDENCE OF
19 ENTRY OF ORDER.—Notwithstanding any
20 other provision of this paragraph, no insur-
21 ance benefits may be paid pursuant to this
22 subparagraph for a mortgage before deliv-
23 ery to the Secretary of evidence of the
24 entry of the order issued pursuant to title

1 11, United States Code, in a form satisfac-
2 tory to the Secretary.”;

3 (2) in paragraph (5), in the matter preceding
4 subparagraph (A), by inserting after “section 520,
5 and” the following: “, except as provided in para-
6 graph (1)(E),”; and

7 (3) by adding at the end the following new
8 paragraph:

9 “(10) LOAN MODIFICATION PROGRAM.—

10 “(A) AUTHORITY.—The Secretary may
11 carry out a program solely to encourage loan
12 modifications for eligible delinquent mortgages
13 through the payment of insurance benefits and
14 assignment of the mortgage to the Secretary
15 and the subsequent modification of the terms of
16 the mortgage according to a loan modification
17 approved by the mortgagee.

18 “(B) PAYMENT OF BENEFITS AND ASSIGN-
19 MENT.—Under the program under this para-
20 graph, the Secretary may pay insurance bene-
21 fits for a mortgage, in the amount determined
22 in accordance with paragraph (5)(A), without
23 reduction for any amounts modified, but only
24 upon the assignment, transfer, and delivery to
25 the Secretary of all rights, interest, claims, evi-

1 dence, and records with respect to the mortgage
2 specified in clauses (i) through (iv) of para-
3 graph (1)(A).

4 “(C) DISPOSITION.—After modification of
5 a mortgage pursuant to this paragraph, the
6 Secretary may provide insurance under this
7 title for the mortgage. The Secretary may sub-
8 sequently—

9 “(i) re-assign the mortgage to the
10 mortgagee under terms and conditions as
11 are agreed to by the mortgagee and the
12 Secretary;

13 “(ii) act as a Government National
14 Mortgage Association issuer, or contract
15 with an entity for such purpose, in order
16 to pool the mortgage into a Government
17 National Mortgage Association security; or

18 “(iii) re-sell the mortgage in accord-
19 ance with any program that has been es-
20 tablished for purchase by the Federal Gov-
21 ernment of mortgages insured under this
22 title, and the Secretary may coordinate
23 standards for interest rate reductions
24 available for loan modification with inter-
25 est rates established for such purchase.

1 “(D) LOAN SERVICING.—In carrying out
2 the program under this section, the Secretary
3 may require the existing servicer of a mortgage
4 assigned to the Secretary under the program to
5 continue servicing the mortgage as an agent of
6 the Secretary during the period that the Sec-
7 retary acquires and holds the mortgage for the
8 purpose of modifying the terms of the mort-
9 gage. If the mortgage is resold pursuant to sub-
10 paragraph (C)(iii), the Secretary may provide
11 for the existing servicer to continue to service
12 the mortgage or may engage another entity to
13 service the mortgage.”.

14 (b) AMENDMENT TO PARTIAL CLAIM AUTHORITY.—
15 Paragraph (1) of section 230(b) of the National Housing
16 Act (12 U.S.C. 1715u(b)(1)) is amended by striking “12
17 of the monthly mortgage payments” and inserting “30
18 percent of the unpaid principal balance of the mortgage”.

19 (c) IMPLEMENTATION.—The Secretary of Housing
20 and Urban Development may implement the amendments
21 made by this section through notice or mortgagee letter.

1 **SEC. 9934. ADJUSTMENTS AS RESULT OF MODIFICATION OF**
2 **RURAL SINGLE FAMILY HOUSING LOANS IN**
3 **BANKRUPTCY.**

4 (a) **GUARANTEED RURAL HOUSING LOANS.**—Sub-
5 section (h) of section 502 of the Housing Act of 1949 (42
6 U.S.C. 1472(h)) is amended—

7 (1) in paragraph (7)—

8 (A) in subparagraph (A), by inserting be-
9 fore the period at the end the following: “, un-
10 less the maturity date of the loan is modified in
11 a bankruptcy proceeding or at the discretion of
12 the Secretary”; and

13 (B) in subparagraph (B), by inserting be-
14 fore the semicolon the following: “, unless such
15 rate is modified in a bankruptcy proceeding”;

16 (2) by redesignating paragraphs (13) and (14)
17 as paragraphs (14) and (15), respectively; and

18 (3) by inserting after paragraph (12) the fol-
19 lowing new paragraph:

20 “(13) **PAYMENT OF GUARANTEE.**—In addition
21 to all other authorities to pay a guarantee claim, the
22 Secretary may also pay the guaranteed portion of
23 any losses incurred by the holder of a note or the
24 servicer resulting from a modification of a note by
25 a bankruptcy proceeding.”

1 (b) INSURED RURAL HOUSING LOANS.—Subsection
2 (j) of section 517 of the Housing Act of 1949 (42 U.S.C.
3 1487(j)) is amended—

4 (1) by redesignating paragraphs (2) through
5 (7) as paragraphs (3) through (8), respectively; and

6 (2) by inserting after paragraph (1) the fol-
7 lowing new paragraph:

8 “(2) to pay for losses incurred by holders or
9 servicers in the event of a modification pursuant to
10 a bankruptcy proceeding;”.

11 (c) IMPLEMENTATION.—The Secretary of Agriculture
12 may implement the amendments made by this section
13 through notice, procedure notice, or administrative notice.

14 **SEC. 9935. UNENFORCEABILITY OF CERTAIN PROVISION AS**
15 **BEING CONTRARY TO PUBLIC POLICY.**

16 No provision in any investment contract between a
17 servicer and a securitization vehicle or investor in effect
18 as of the date of enactment of this Act that requires excess
19 bankruptcy losses that exceed a certain dollar amount on
20 residential mortgages to be borne by classes of certificates
21 on a pro rata basis that refers to types of bankruptcy
22 losses that could not have been incurred under the law
23 in effect at the time such contract was entered into shall
24 be enforceable, as such provision shall be contrary to pub-
25 lic policy. Notwithstanding this section, such reference to

1 types of bankruptcy losses that could have been incurred
2 under the law in effect at the time such contract was en-
3 tered into shall be enforceable.

4 **SEC. 9936. MORTGAGE MODIFICATION DATA COLLECTING**
5 **AND REPORTING.**

6 (a) REPORTING REQUIREMENTS.—Not later than
7 120 days after the date of the enactment of this Act, and
8 quarterly thereafter, the Comptroller of the Currency, in
9 coordination with the Director of the Office of Thrift Su-
10 pervision, shall submit a report to the Committee on
11 Banking, Housing, and Urban Affairs of the Senate, the
12 Committee on Financial Services of the House of Rep-
13 resentatives, and the Joint Economic Committee on the
14 volume of mortgage modifications reported to the Office
15 of the Comptroller of the Currency and the Office of
16 Thrift Supervision, under the mortgage metrics program
17 of each such Office, during the previous quarter, including
18 the following:

19 (1) A copy of the data collection instrument
20 currently used by the Office of the Comptroller of
21 the Currency and the Office of Thrift Supervision to
22 collect data on loan modifications.

23 (2) The total number of mortgage modifications
24 resulting in each of the following:

1 (A) Additions of delinquent payments and
2 fees to loan balances.

3 (B) Interest rate reductions and freezes.

4 (C) Term extensions.

5 (D) Reductions of principal.

6 (E) Deferrals of principal.

7 (F) Combinations of modifications de-
8 scribed in subparagraph (A), (B), (C), (D), or
9 (E).

10 (3) The total number of mortgage modifications
11 in which the total monthly principal and interest
12 payment resulted in the following:

13 (A) An increase.

14 (B) Remained the same.

15 (C) Decreased less than 10 percent.

16 (D) Decreased between 10 percent and 20
17 percent.

18 (E) Decreased 20 percent or more.

19 (4) The total number of loans that have been
20 modified and then entered into default, where the
21 loan modification resulted in—

22 (A) higher monthly payments by the home-
23 owner;

24 (B) equivalent monthly payments by the
25 homeowner;

1 (C) lower monthly payments by the home-
2 owner of up to 10 percent;

3 (D) lower monthly payments by the home-
4 owner of between 10 percent to 20 percent; or

5 (E) lower monthly payments by the home-
6 owner of more than 20 percent.

7 (b) DATA COLLECTION.—

8 (1) REQUIRED.—

9 (A) IN GENERAL.—Not later than 60 days
10 after the date of the enactment of this Act, the
11 Comptroller of the Currency and the Director
12 of the Office of Thrift Supervision, shall issue
13 mortgage modification data collection and re-
14 porting requirements to institutions covered
15 under the reporting requirement of the mort-
16 gage metrics program of the Comptroller or the
17 Director.

18 (B) INCLUSIVENESS OF COLLECTIONS.—

19 The requirements under subparagraph (A) shall
20 provide for the collection of all mortgage modi-
21 fication data needed by the Comptroller of the
22 Currency and the Director of the Office of
23 Thrift Supervision to fulfill the reporting re-
24 quirements under subsection (a).

1 (2) REPORT.—The Comptroller of the Currency
2 shall report all requirements established under para-
3 graph (1) to each committee receiving the report re-
4 quired under subsection (a).

5 **SEC. 9937. EXEMPTION FOR COMMUNITY BANKS.**

6 (a) EXEMPTION.—None of the provisions of this sub-
7 title, or the amendments made by this subtitle, shall apply
8 with respect to a mortgage held by a community bank un-
9 less the mortgage is a sub-prime mortgage or otherwise
10 offends fair practices.

11 (b) COMMUNITY BANK DEFINED.—For the purposes
12 of this section, the term “community bank” means any
13 insured depository institution (as defined in section 3 of
14 the Federal Deposit Insurance Act) which has total assets
15 of less than \$10,000,000,000.

