

111th CONGRESS
1st Session
H. R. 1106

To prevent mortgage foreclosures and enhance mortgage credit availability.

IN THE HOUSE OF REPRESENTATIVES

February 23, 2009

Mr. CONYERS (for himself, Mr. FRANK of Massachusetts, Mr. BERMAN, Mr. BLUMENAUER, Mr. COHEN, Mr. DELAHUNT, Ms. EDWARDS of Maryland, Mr. ELLISON, Mr. GONZALEZ, Mr. GUTIERREZ, Ms. JACKSON-LEE of Texas, Mr. JOHNSON of Georgia, Mr. LEWIS of Georgia, Ms. ZOE LOFGREN of California, Mr. MILLER of North Carolina, Mr. NADLER of New York, Ms. LINDA T. SANCHEZ of California, Ms. WASSERMAN SCHULTZ, Ms. WATERS, and Mr. MARSHALL) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committees on the Judiciary and Veterans' Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To prevent mortgage foreclosures and enhance mortgage credit availability.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

- (a) Short Title- This Act may be cited as 'Helping Families Save Their Homes Act of 2009'.
- (b) Table of Contents- The table of contents of this Act is the following:
 - Sec. 1. Short title; table of contents.

TITLE I--PREVENTION OF MORTGAGE FORECLOSURES

Subtitle A--Modification of Residential Mortgages

Sec. 101. Eligibility for relief.

- Sec. 102. Prohibiting claims arising from violations of the Truth in Lending Act.
- Sec. 103. Authority to modify certain mortgages.
- Sec. 104. Combating excessive fees.
- Sec. 105. Confirmation of plan.
- Sec. 106. Discharge.
- Sec. 107. Standing trustee fees.
- Sec. 108. Effective date; application of amendments.

Subtitle B--Related Mortgage Modification Provisions

- Sec. 121. Adjustments as a result of modification in bankruptcy of housing loans guaranteed by the department of veterans affairs.
- Sec. 122. Payment of FHA mortgage insurance benefits.
- Sec. 123. Adjustments as result of modification of rural single family housing loans in bankruptcy.
- Sec. 124. Unenforceability of certain provision as being contrary to public policy.

TITLE II--FORECLOSURE MITIGATION AND CREDIT AVAILABILITY

- Sec. 201. Servicer safe harbor for mortgage loan modifications.
- Sec. 202. Changes to HOPE for Homeowners Program.
- Sec. 203. Requirements for FHA-approved mortgagees.
- Sec. 204. Enhancement of liquidity and stability of insured depository institutions to ensure availability of credit and reduction of foreclosures.

TITLE I--PREVENTION OF MORTGAGE FORECLOSURES

Subtitle A--Modification of Residential Mortgages

SEC. 101. ELIGIBILITY FOR RELIEF.

Section 109 of title 11, United States Code, is amended--

(1) by adding at the end of subsection (e) the following: ` For purposes of this subsection, the computation of debts shall not include the secured or unsecured portions of--

`(1) debts secured by the debtor's principal residence if the value of such residence as of the date of the order for relief under chapter 13 is less than the applicable maximum amount of

noncontingent, liquidated, secured debts specified in this subsection; or

`(2) debts secured or formerly secured by what was the debtor's principal residence that was sold in foreclosure or that the debtor surrendered to the creditor if the value of such real property as of the date of the order for relief under chapter 13 was less than the applicable maximum amount of noncontingent, liquidated, secured debts specified in this subsection.', and

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

`(5) The requirements of paragraph (1) shall not apply in a case under chapter 13 with respect to a debtor who submits to the court a certification that the debtor has received notice that the holder of a claim secured by the debtor's principal residence may commence a foreclosure on the debtor's principal residence.'

SEC. 102. PROHIBITING CLAIMS ARISING FROM VIOLATIONS OF THE TRUTH IN LENDING ACT.

Section 502(b) of title 11, United States Code, is amended--

(1) in paragraph (8) by striking `or' at the end,

(2) in paragraph (9) by striking the period at the end and inserting `; or', and

(3) by adding at the end the following:

`(10) the claim for a loan secured by a security interest in the debtor's principal residence is subject to a remedy for rescission under the Truth in Lending Act notwithstanding the prior entry of a foreclosure judgment, except that nothing in this paragraph shall be construed to modify, impair, or supersede any other right of the debtor.'

SEC. 103. AUTHORITY TO MODIFY CERTAIN MORTGAGES.

Section 1322 of title 11, United States Code, is amended--

(1) in subsection (b)--

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

(B) in paragraph (10) by striking `and' at the end, and

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

`(11) notwithstanding paragraph (2), with respect to a claim for a loan originated before the effective date of this paragraph and secured by a security interest in the debtor's principal residence that is the subject of a notice that a foreclosure may be commenced with respect to such loan, modify the rights of the holder of such claim

(and the rights of the holder of any claim secured by a subordinate security interest in such residence)--

` (A) by providing for payment of the amount of the allowed secured claim as determined under section 506(a)(1);

` (B) if any applicable rate of interest is adjustable under the terms of such loan by prohibiting, reducing, or delaying adjustments to such rate of interest applicable on and after the date of filing of the plan;

` (C) by modifying the terms and conditions of such loan--

` (i) to extend the repayment period for a period that is no longer than the longer of 40 years (reduced by the period for which such loan has been outstanding) or the remaining term of such loan, beginning on the date of the order for relief under this chapter; and

` (ii) to provide for the payment of interest accruing after the date of the order for relief under this chapter at a fixed annual rate equal to the currently applicable average prime offer rate as of the date of the order for relief under this chapter, corresponding to the repayment term determined under the preceding paragraph, as published by the Federal Financial Institutions Examination Council in its table entitled `Average Prime Offer Rates-- Fixed', plus a reasonable premium for risk; and

` (D) by providing for payments of such modified loan directly to the holder of the claim or, at the discretion of the court, through the trustee during the term of the plan; and', and

(2) by adding at the end the following:

` (g) A claim may be reduced under subsection (b)(11)(A) only on the condition that if the debtor sells the principal residence securing such claim, before completing all payments under the plan (or, if applicable, before receiving a discharge under section 1328(b)) and receives net proceeds from the sale of such residence, then the debtor agrees to pay to such holder not later than 15 days after receiving such proceeds--

` (1) if such residence is sold in the 1st year occurring after the effective date of the plan, 80 percent of the amount of the difference between the sales price and the

amount of such claim as originally determined under section 1322(b)(11) (plus costs of sale and improvements), but not to exceed the unpaid amount of the allowed secured claim determined as if such claim had not been reduced under such subsection;

` (2) if such residence is sold in the 2d year occurring after the effective date of the plan, 60 percent of the amount of the difference between the sales price and the amount of such claim as originally determined under section 1322(b)(11) (plus costs of sale and improvements), but not to exceed the unpaid amount of the allowed secured claim determined as if such claim had not been reduced under such subsection;

` (3) if such residence is sold in the 3d year occurring after the effective date of the plan, 40 percent of the amount of the difference between the sales price and the amount of such claim as originally determined under section 1322(b)(11) (plus costs of sale and improvements), but not to exceed the unpaid amount of the allowed secured claim determined as if such claim had not been reduced under such subsection; and

` (4) if such residence is sold in the 4th year occurring after the effective date of the plan, 20 percent of the amount of the difference between the sales price and the amount of such claim as originally determined under section 1322(b)(11) (plus costs of sale and improvements), but not to exceed the unpaid amount of the allowed secured claim determined as if such claim had not been reduced under such subsection.

` (h) With respect to a claim of the kind described in subsection (b)(11), the plan may not contain a modification under the authority of subsection (b)(11)--

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

` (A) the debtor certifies that the debtor attempted, not less than 15 days before the commencement of the case, to contact the holder of such claim (or the entity collecting payments on behalf of such holder) regarding modification of the loan that is the subject of such claim; or

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

` (2) in any other case pending under this chapter, unless the debtor certifies that the debtor attempted to contact the holder of such claim (or the entity collecting payments on behalf of such holder) regarding modification of the loan that is the subject of such claim, before--

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

` (B) modifying a plan under section 1323 or 1329 to contain a modification under the authority of subsection (b)(11).

` (i) In determining the holder's allowed secured claim under section 506(a)(1) for purposes of subsection (b)(11)(A), the value of the debtor's principal residence shall be the fair market value of such residence on the date such value is determined.'

SEC. 104. COMBATING EXCESSIVE FEES.

Section 1322(c) of title 11, United States Code, is amended--

(1) in paragraph (1) by striking `and' at the end,

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

(3) by adding at the end the following:

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

` (A) the holder of the claim for such debt files with the court and serves on the trustee, the debtor, and the debtor's attorney (annually or, in order to permit filing consistent with clause (ii), at such more frequent periodicity as the court determines necessary) notice of such fee, cost, or charge before the earlier of--

` (i) 1 year after such fee, cost, or charge is incurred; or

` (ii) 60 days before the closing of the case; and

` (B) such fee, cost, or charge--

` (i) is lawful under applicable nonbankruptcy law, reasonable, and provided for in the applicable security agreement; and

- (1) by inserting '(other than payments to holders of claims whose rights are modified under section 1322(b)(11))' after 'paid', and
- (2) in paragraph (1) by inserting 'or, to the extent of the unpaid portion of an allowed secured claim, provided for in section 1322(b)(11)' after '1322(b)(5)'.

SEC. 107. STANDING TRUSTEE FEES.

(a) Amendment to Title 28- Section 586(e)(1)(B)(i) of title 28, United States Code, is amended--

(1) by inserting '(I) except as provided in subparagraph (II)' after '(i)',

(2) by striking 'or' at the end and inserting 'and', and

(3) by adding at the end the following:

'(II) 4 percent with respect to payments received under section 1322(b)(11) of title 11 by the individual as a result of the operation of section 1322(b)(11)(D) of title 11, unless the bankruptcy court waives all fees with respect to such payments based on a determination that such individual has income less than 150 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved and payment of such fees would render the debtor's plan infeasible.'

(b) Conforming Provision- The amendments made by this section shall apply to any trustee to whom the provisions of section 302(d)(3) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (Public Law 99-554; 100 Stat. 3121) apply.

SEC. 108. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) Effective Date- Except as provided in subsection (b), this subtitle and the amendments made by this subtitle **shall take effect on the date of the enactment of this Act.**

(b) Application of Amendments-

(1) IN GENERAL- **Except as provided in paragraph (2), the amendments made by this subtitle shall apply with respect to cases commenced under title 11 of the United**

States Code before, on, or after the date of the enactment of this Act.

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

Subtitle B--Related Mortgage Modification Provisions

SEC. 121. ADJUSTMENTS AS A RESULT OF MODIFICATION IN BANKRUPTCY OF HOUSING LOANS GUARANTEED BY THE DEPARTMENT OF VETERANS AFFAIRS.

(a) In General- Subsection (a) of section 3732 of title 38, United States Code is amended--

(1) in subsection (a)--

(A) by redesignating paragraph (2) as subparagraph (A) of paragraph (2), and

(2) by inserting after subparagraph (A) the following new subparagraph:

`(B) In the event that a housing loan guaranteed under this chapter is modified under the authority provided under section 1322(b) of title 11, United States Code, the Secretary may pay the holder of the obligation the unpaid balance of the obligation due as of the date of the filing of the petition under title 11, United States Code, plus accrued interest, but only upon the assignment, transfer, and delivery to the Secretary (in a form and manner satisfactory to the Secretary) of all rights, interest, claims, evidence, and records with respect to the housing loan.'.

(b) Maturity of Housing Loans- Paragraph (1) of section (d) of section 3703 of title 38, United States Code, is amended by inserting `at the time of origination' after `loan'.

(c) Implementation- The Secretary of Veterans Affairs may implement the amendments made by this section through notice, procedure notice, or administrative notice.

SEC. 122. PAYMENT OF FHA MORTGAGE INSURANCE BENEFITS.

(a) In General- Subsection (a) of section 204 of the National Housing Act (12 U.S.C. 1710(a)) is amended--

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

 (E) MODIFICATION OF MORTGAGE IN BANKRUPTCY-

 (i) AUTHORITY- If an order is entered under the authority provided under section 1322(b) of title 11, United States Code, that (a) determines the amount of an allowed secured claim under a mortgage in accordance with section 506(a)(1) of title 11, United States Code, and the amount of such allowed secured claim is less than the amount due under the mortgage as of the date of the filing of the petition under title 11, United States Code, or (b) reduces the interest to be paid under a mortgage in accordance with section 1325 of such title, the Secretary may pay insurance benefits for the mortgage as follows:

 (I) FULL PAYMENT AND ASSIGNMENT- The Secretary may pay the insurance benefits for the mortgage, but only upon the assignment, transfer, and delivery to the Secretary of all rights, interest, claims, evidence, and records with respect to the mortgage specified in clauses (i) through (iv) of paragraph (1)(A). The insurance benefits shall be paid in the amount equal to the original principal obligation of the mortgage (with such additions and deductions as the Secretary determines are appropriate) which was unpaid upon the date of the filing of by the mortgagor of the petition under title 11 of the United States Code. Nothing in this Act may be construed to prevent the Secretary from providing insurance under this title for a mortgage that has previously been assigned to the Secretary under this subclause. The decision of whether to utilize the authority under this subclause for payment and assignment shall be at the election of the mortgagee, subject to such terms and conditions as the Secretary may establish.

 (II) ASSIGNMENT OF UNSECURED CLAIM- The Secretary may make a partial payment of the insurance benefits for any unsecured claim under the mortgage, but only upon the

assignment to the Secretary of any unsecured claim of the mortgagee against the mortgagor or others arising out of such order. Such assignment shall be deemed valid irrespective of whether such claim has been or will be discharged under title 11 of the United States Code. The insurance benefits shall be paid in the amount specified in subclause (I) of this clause, as such amount is reduced by the amount of the allowed secured claim. Such allowed secured claim shall continue to be insured under section 203.

` (III) INTEREST PAYMENTS- The Secretary may make periodic payments, or a one-time payment, of insurance benefits for interest payments that are reduced pursuant to such order, as determined by the Secretary, but only upon assignment to the Secretary of all rights and interest related to such payments.

` (ii) DELIVERY OF EVIDENCE OF ENTRY OF ORDER- Notwithstanding any other provision of this paragraph, no insurance benefits may be paid pursuant to this subparagraph for a mortgage before delivery to the Secretary of evidence of the entry of the order issued pursuant to title 11, United States Code, in a form satisfactory to the Secretary.;

(2) in paragraph (5), in the matter preceding subparagraph (A), by inserting after `section 520, and' the following: `, except as provided in paragraph (1)(E),'; and

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

` (10) LOAN MODIFICATION PROGRAM-

` (A) AUTHORITY- The Secretary may carry out a program solely to encourage loan modifications for eligible delinquent mortgages through the payment of insurance benefits and assignment of the mortgage to the Secretary and the subsequent modification of the terms of the mortgage according to a loan modification approved by the mortgagee.

` (B) PAYMENT OF BENEFITS AND ASSIGNMENT- Under the program under this paragraph, the Secretary may pay insurance benefits for a mortgage, in the amount determined in accordance with paragraph (5)(A), without reduction for any amounts modified, but only upon the assignment, transfer, and delivery to the Secretary of all

rights, interest, claims, evidence, and records with respect to the mortgage specified in clauses (i) through (iv) of paragraph (1)(A).

`(C) DISPOSITION- After modification of a mortgage pursuant to this paragraph, the Secretary may provide insurance under this title for the mortgage. The Secretary may subsequently--

`(i) re-assign the mortgage to the mortgagee under terms and conditions as are agreed to by the mortgagee and the Secretary;

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

`(iii) re-sell the mortgage in accordance with any program that has been established for purchase by the Federal Government of mortgages insured under this title, and the Secretary may coordinate standards for interest rate reductions available for loan modification with interest rates established for such purchase.

`(D) LOAN SERVICING- In carrying out the program under this section, the Secretary may require the existing servicer of a mortgage assigned to the Secretary under the program to continue servicing the mortgage as an agent of the Secretary during the period that the Secretary acquires and holds the mortgage for the purpose of modifying the terms of the mortgage. If the mortgage is resold pursuant to subparagraph (C)(iii), the Secretary may provide for the existing servicer to continue to service the mortgage or may engage another entity to service the mortgage.'

(b) Amendment to Partial Claim Authority- Paragraph (1) of section 230(b) of the National Housing Act (12 U.S.C. 1715u(b)(1)) is amended by striking `12 of the monthly mortgage payments' and inserting `30 percent of the unpaid principal balance of the mortgage'.

(c) Implementation- The Secretary of Housing and Urban Development may implement the amendments made by this section through notice or mortgagee letter.

SEC. 123. ADJUSTMENTS AS RESULT OF MODIFICATION OF RURAL SINGLE FAMILY HOUSING LOANS IN BANKRUPTCY.

(a) Guaranteed Rural Housing Loans- Subsection (h) of section 502 of the Housing Act of 1949 (42 U.S.C. 1472(h)) is amended--

(1) in paragraph (7)--

(A) in subparagraph (A), by inserting before the period at the end the following: `, unless the maturity date of the loan is modified in a bankruptcy proceeding or at the discretion of the Secretary'; and

(B) in subparagraph (B), by inserting before the semicolon the following: `, unless such rate is modified in a bankruptcy proceeding';

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

(3) by inserting after paragraph (12) the following new paragraph:

`(13) PAYMENT OF GUARANTEE- In addition to all other authorities to pay a guarantee claim, the Secretary may also pay the guaranteed portion of any losses incurred by the holder of a note or the servicer resulting from a modification of a note by a bankruptcy proceeding.'.

(b) Insured Rural Housing Loans- Subsection (j) of section 517 of the Housing Act of 1949 (42 U.S.C. 1487(j)) is amended--

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

(2) by inserting after paragraph (1) the following new paragraph:

`(2) to pay for losses incurred by holders or servicers in the event of a modification pursuant to a bankruptcy proceeding;'.

(c) Implementation- The Secretary of Agriculture may implement the amendments made by this section through notice, procedure notice, or administrative notice.

SEC. 124. UNENFORCEABILITY OF CERTAIN PROVISION AS BEING CONTRARY TO PUBLIC POLICY.

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

been incurred under the law in effect at the time such contract was entered into shall be enforceable.

TITLE II--FORECLOSURE MITIGATION AND CREDIT AVAILABILITY

SEC. 201. SERVICER SAFE HARBOR FOR MORTGAGE LOAN MODIFICATIONS.

(a) Safe Harbor-

(1) LOAN MODIFICATIONS AND WORKOUT PLANS-

Notwithstanding any other provision of law, and notwithstanding any investment contract between a servicer and a securitization vehicle or investor, a servicer that acts consistent with the duty set forth in section 129A(a) of Truth in Lending Act (15 U.S.C. 1639a) shall not be liable for entering into a loan modification, workout, or other loss mitigation plan, including, but not limited to, disposition with respect to any such mortgage that meets all of the criteria set forth in paragraph (2)(B) to--

(A) any person, based on that person's ownership of a residential mortgage loan or any interest in a pool of residential mortgage loans or in securities that distribute payments out of the principal, interest and other payments in loans on the pool;

(B) any person who is obligated pursuant to a derivatives instrument to make payments determined in reference to any loan or any interest referred to in subparagraph (A);
or

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

(2) ABILITY TO MODIFY MORTGAGES-

(A) ABILITY- Notwithstanding any other provision of law, and notwithstanding any investment contract between a servicer and a securitization vehicle or investor, a servicer--

(i) shall not be limited in the ability to modify mortgages, the number of mortgages that can be modified, the frequency of loan modifications, or the range of permissible modifications; and

(ii) shall not be obligated to repurchase loans from or otherwise make payments to the securitization vehicle on account of a modification, workout, or other loss mitigation plan for a residential mortgage

or a class of residential mortgages that constitute a part or all of the mortgages in the securitization vehicle,

if any mortgage so modified meets all of the criteria set forth in subparagraph (B).

(B) CRITERIA- The criteria under this subparagraph with respect to a mortgage are as follows:

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

(ii) The property securing such mortgage is occupied by the mortgagor of such mortgage.

(iii) The servicer reasonably and in good faith believes that the anticipated recovery on the principal outstanding obligation of the mortgage under the particular modification or workout plan or other loss mitigation action will exceed, on a net present value basis, the anticipated recovery on the principal outstanding obligation of the mortgage to be realized through foreclosure.

(3) APPLICABILITY- This subsection shall apply only with respect to modifications, workouts, and other loss mitigation plans initiated before January 1, 2012.

(b) Reporting- Each servicer that engages in loan modifications or workout plans subject to the safe harbor in subsection (a) shall report to the Secretary on a regular basis regarding the extent, scope and results of the servicer's modification activities. The Secretary shall prescribe regulations specifying the form, content, and timing of such reports.

(c) Definition of Securitization Vehicles- For purposes of this section, the term `securitization vehicle' means a trust, corporation, partnership, limited liability entity, special purpose entity, or other structure that--

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

(2) holds such mortgages.

SEC. 202. CHANGES TO HOPE FOR HOMEOWNERS PROGRAM.

(a) Program Changes- Section 257 of the National Housing Act (12 U.S.C. 1715z-23) is amended--

(1) in subsection (c)--

(A) in the heading for paragraph (1), by striking `THE BOARD' and inserting `SECRETARY';

(B) in paragraph (1), by striking `Board' inserting `Secretary, after consultation with the Board,'; and

(C) by adding after paragraph (2) the following:

`(3) DUTIES OF BOARD- The Board shall advise the Secretary regarding the establishment and implementation of the HOPE for Homeowners Program.'

(2) by striking `Board' each place such term appears in subsections (e), (h)(1), (h)(3), (j), (l), (n), (s)(3), and (v) and inserting `Secretary';

(3) in subsection (e)--

(A) by striking paragraph (1) and inserting the following:

`(1) BORROWER CERTIFICATION-

`(A) NO INTENTIONAL DEFAULT OR FALSE INFORMATION- The mortgagor shall provide a certification to the Secretary that the mortgagor has not intentionally defaulted on the existing mortgage or mortgages and has not knowingly, or willfully and with actual knowledge, furnished material information known to be false for the purpose of obtaining the eligible mortgage to be insured.

`(B) LIABILITY FOR REPAYMENT- The mortgagor shall agree in writing that the mortgagor shall be liable to repay to the Secretary any direct financial benefit achieved from the reduction of indebtedness on the existing mortgage or mortgages on the residence refinanced under this section derived from misrepresentations made by the mortgagor in the certifications and documentation required under this paragraph, subject to the discretion of the Secretary.';

(B) in paragraph (7), by striking the semicolon and all that follows through `new second lien';

(C) in paragraph (9)--

(i) by striking `by procuring (A) an income tax return transcript of the income tax return of the mortgagor, or (B)' and inserting `in accordance with procedures and standards that the Secretary shall establish, which may include requiring the mortgagee to procure'; and

(ii) by striking `and by any other method, in accordance with procedures and standards that the Board shall establish'; and

(D) by adding after paragraph (11) the following new paragraph:

- ` (12) BAN ON MILLIONAIRES- The mortgagor shall not have a net worth, as of the date the mortgagor first applies for a mortgage to be insured under the Program under this section, that exceeds \$1,000,000.';
- (4) in subsection (h)(2)--
- (A) by striking `The Board shall prohibit the Secretary from paying' and inserting `The Secretary shall not pay'; and
 - (B) by inserting after the period at the end the following:
`In implementing this provision with respect to a failure by a mortgagor to make a first payment, the Secretary shall establish policies and timing of endorsements as consistent as is possible with endorsement policies established with respect to mortgages insured under section 203(b)';
- (5) in subsection (i)--
- (A) by inserting `, after weighing maximization of participation with consideration of collection of premiums,' after `Secretary shall';
 - (B) in paragraph (1), by striking `equal to 3 percent' and inserting `not more than 2 percent'; and
 - (C) in paragraph (2), by striking `equal to 1.5 percent' and inserting `not more than 1 percent';
- (6) in subsection (k)--
- (A) by striking the subsection heading and inserting `Exit Fee';
 - (B) in paragraph (1), in the matter preceding subparagraph (A), by striking `such sale or refinancing' and inserting `the mortgage being insured under this section'; and
 - (C) in paragraph (2), by striking `and the mortgagor' and all that follows through the end and inserting `may, upon any sale or disposition of the property to which the mortgage relates, be entitled to up to 50 percent of appreciation, up to the appraised value of the home at the time when the mortgage being refinanced under this section was originally made. The Secretary may share any amounts received under this paragraph with the holder of the eligible mortgage refinanced under this section.';
- (7) in the heading for subsection (n), by striking `the Board' and inserting `Secretary';
- (8) in subsection (p), by striking `Under the direction of the Board, the' and inserting `The';
- (9) in subsection (s)--

- (A) in the first sentence of paragraph (2), by striking `Board of Directors of' and inserting `Advisory Board for'; and
- (B) in paragraph (3)(A)(ii), by striking `subsection (e)(1) (B) and such other' and inserting `such';
- (10) in subsection (v), by inserting after the period at the end the following: `The Secretary shall conform documents, forms, and procedures for mortgages insured under this section to those in place for mortgages insured under section 203(b) to the maximum extent possible consistent with the requirements of this section.'; and
- (11) by adding at the end the following new subsections:
 - `(x) Payment to Existing Loan Servicer- The Secretary may establish a payment to the servicer of the existing senior mortgage for every loan insured under the HOPE for Homeowners Program in an amount, for each such loan, that does not exceed \$1,000.
 - `(y) Auctions- The Secretary, with the concurrence of the Board, shall, if feasible, establish a structure and organize procedures for an auction to refinance eligible mortgages on a wholesale or bulk basis.'
- (b) Reducing TARP Funds To Offset Costs of Program Changes- Paragraph (3) of section 115(a) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5225) is amended by inserting ` , as such amount is reduced by \$2,316,000,000,' after ` \$700,000,000,000'.

SEC. 203. REQUIREMENTS FOR FHA-APPROVED MORTGAGEES.

- (a) Mortgagee Review Board- Paragraph (2) of section 202(c) of the National Housing Act (12 U.S.C. 1708(c)) is amended--
 - (1) in subparagraph (E), by inserting `and' after the semicolon;
 - (2) in subparagraph (F), by striking ` ; and' and inserting a period; and
 - (3) by striking subparagraph (G).
- (b) Limitations on Participation and Mortgagee Approval and Use of Name- Section 202 of the National Housing Act (12 U.S.C. 1708) is amended--
 - (1) by redesignating subsections (d), (e), and (f) as subsections (e), (f), and (g), respectively;
 - (2) by inserting after subsection (c) the following new subsection:
 - `(d) Limitations on Participation in Origination and Mortgagee Approval-

` (1) REQUIREMENT- Any person or entity that is not approved by the Secretary to serve as a mortgagee, as such term is defined in subsection (c)(7), shall not participate in the origination of an FHA-insured loan except as authorized by the Secretary.

` (2) ELIGIBILITY FOR APPROVAL- In order to be eligible for approval by the Secretary, an applicant mortgagee shall not be, and shall not have any officer, partner, director, principal, or employee of the applicant mortgagee who is--

` (A) currently suspended, debarred, under a limited denial of participation (LDP), or otherwise restricted under part 24 or 25 of title 24 of the Code of Federal Regulations, or any successor regulations to such parts, or under similar provisions of any other Federal agency;

` (B) under indictment for, or has been convicted of, an offense that reflects adversely upon the applicant's integrity, competence or fitness to meet the responsibilities of an approved mortgagee;

` (C) subject to unresolved findings contained in a Department of Housing and Urban Development or other governmental audit, investigation, or review;

` (D) engaged in business practices that do not conform to generally accepted practices of prudent mortgagees or that demonstrate irresponsibility;

` (E) convicted of, or who has pled guilty or nolo contendere to, a felony related to participation in the real estate or mortgage loan industry--

` (i) during the 7-year period preceding the date of the application for licensing and registration; or

` (ii) at any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering;

` (F) in violation of provisions of the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.) or any applicable provision of State law; or

` (G) in violation of any other requirement as established by the Secretary.'; and

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

` (h) Use of Name- The Secretary shall, by regulation, require each mortgagee approved by the Secretary for participation in the FHA mortgage insurance programs of the Secretary--

` (1) to use the business name of the mortgagee that is registered with the Secretary in connection with such approval in all advertisements and promotional materials, as such terms are

defined by the Secretary, relating to the business of such mortgagee in such mortgage insurance programs; and
` (2) to maintain copies of all such advertisements and promotional materials, in such form and for such period as the Secretary requires.'

(c) Change of Status- The National Housing Act is amended by striking section 532 (12 U.S.C. 1735f-10) and inserting the following new section:

` SEC. 532. CHANGE OF MORTGAGEE STATUS.

` (a) Notification- Upon the occurrence of any action described in subsection (b), an approved mortgagee shall immediately submit to the Secretary, in writing, notification of such occurrence.

` (b) Actions- The actions described in this subsection are as follows:

` (1) The debarment, suspension of a Limited Denial of Participation (LDP), or application of other sanctions, fines, or penalties applied to the mortgagee or to any officer, partner, director, principal, manager, supervisor, loan processor, loan underwriter, or loan originator of the mortgagee pursuant to applicable provisions of State or Federal law.

` (2) The revocation of a State-issued mortgage loan originator license issued pursuant to the S.A.F.E. Mortgage Licensing Act of 2008 (12 U.S.C. 5101 et seq.) or any other similar declaration of ineligibility pursuant to State law.'

(d) Civil Money Penalties- Section 536 of the National Housing Act (12 U.S.C. 1735f-14) is amended--

(1) in subsection (b)--

(A) in paragraph (1)--

(i) in the matter preceding subparagraph (A), by inserting `or any of its owners, officers, or directors' after `mortgagee or lender';

(ii) in subparagraph (H), by striking `title I' and all that follows through `Act of 1989)' and inserting `title I or II'; and

(iii) by inserting after subparagraph (J) the following:

` (K) Violation of section 202(d) of this Act (12 U.S.C. 1708(d)).'; and

(B) in paragraph (2)--

(i) in subparagraph (B), by striking `or' at the end;

(ii) in subparagraph (C), by striking the period at the end and inserting `; or'; and

(iii) by adding at the end the following new subparagraph:

- (D) causing or participating in any of the violations set forth in paragraph (1) of this subsection.'; and
 - (2) in subsection (g), by striking 'The term' and all that follows through the end of the sentence and inserting 'For purposes of this section, a person acts knowingly when a person has actual knowledge of acts or should have known of the acts.'
- (e) Expanded Review of FHA Mortgagee Applicants and Newly Approved Mortgagees- Not later than the expiration of the 3-month period beginning upon the date of the enactment of this Act, the Secretary of Housing and Urban Development shall--
 - (1) expand the existing process for reviewing new applicants for approval for participation in the mortgage insurance programs of the Secretary for mortgages on 1- to 4-family residences for the purpose of identifying applicants who represent a high risk to the Mutual Mortgage Insurance Fund; and
 - (2) implement procedures that, for mortgagees approved during the 12-month period ending upon such date of enactment--
 - (A) expand the number of mortgages originated by such mortgagees that are reviewed for compliance with applicable laws, regulations, and policies; and
 - (B) include a process for random reviews of such mortgagees and a process for reviews that is based on volume of mortgages originated by such mortgagees.

SEC. 204. ENHANCEMENT OF LIQUIDITY AND STABILITY OF INSURED DEPOSITORY INSTITUTIONS TO ENSURE AVAILABILITY OF CREDIT AND REDUCTION OF FORECLOSURES.

- (a) Permanent Increase in Deposit Insurance--
 - (1) AMENDMENTS TO FEDERAL DEPOSIT INSURANCE ACT- Effective upon the date of the enactment of this Act, section 11(a) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)) is amended--
 - (A) in paragraph (1)(E), by striking '\$100,000' and inserting '\$250,000';
 - (B) in paragraph (1)(F)(i), by striking '2010' and inserting '2015';
 - (C) in subclause (I) of paragraph (1)(F)(i), by striking '\$100,000' and inserting '\$250,000';
 - (D) in subclause (II) of paragraph (1)(F)(i), by striking 'the calendar year preceding the date this subparagraph

takes effect under the Federal Deposit Insurance Reform Act of 2005' and inserting `calendar year 2008'; and (E) in paragraph (3)(A), by striking `, except that \$250,000 shall be substituted for \$100,000 wherever such term appears in such paragraph'.

(2) AMENDMENT TO FEDERAL CREDIT UNION ACT- Section 207(k) of the Federal Credit Union Act (12 U.S.C. 1787(k)) is amended--

(A) in paragraph (3)--

(i) by striking the opening quotation mark before `\$250,000';

(ii) by striking `, except that \$250,000 shall be substituted for \$100,000 wherever such term appears in such section'; and

(iii) by striking the closing quotation mark after the closing parenthesis; and

(B) in paragraph (5), by striking `\$100,000' and inserting `\$250,000'.

(3) REPEAL OF EESA PROVISION- Section 136 of the Emergency Economic Stabilization Act (12 U.S.C. 5241) is hereby repealed.

(b) Extension of Restoration Plan Period- Section 7(b)(3)(E)(ii) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(3)(E)(ii)) is amended by striking `5-year period' and inserting `8-year period'.

(c) FDIC and NCUA Borrowing Authority-

(1) FDIC- Section 14(a) of the Federal Deposit Insurance Act (12 U.S.C. 1824(a)) is amended by striking `\$30,000,000,000' and inserting `\$100,000,000,000'.

(2) NCUA- Section 203(d)(1) of the Federal Credit Union Act (12 U.S.C. 1783(d)(1)) is amended by striking `\$100,000,000' and inserting `\$6,000,000,000'.

(d) Expanding Systemic Risk Special Assessments- Section 13(c)(4)(G)(ii) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(4)(G)(ii)) is amended to read as follows:

(ii) REPAYMENT OF LOSS-

(I) IN GENERAL- The Corporation shall recover the loss to the Deposit Insurance Fund arising from any action taken or assistance provided with respect to an insured depository institution under clause (i) from 1 or more special assessments on insured depository institutions, depository institution holding companies (with the concurrence of the Secretary of the Treasury with respect to

holding companies), or both, as the Corporation determines to be appropriate.

` (II) TREATMENT OF DEPOSITORY INSTITUTION HOLDING COMPANIES- For purposes of this clause, sections 7(c)(2) and 18(h) shall apply to depository institution holding companies as if they were insured depository institutions.

` (III) REGULATIONS- The Corporation shall prescribe such regulations as it deems necessary to implement this clause. In prescribing such regulations, defining terms, and setting the appropriate assessment rate or rates, the Corporation shall establish rates sufficient to cover the losses incurred as a result of the actions of the Corporation under clause (i) and shall consider: the types of entities that benefit from any action taken or assistance provided under this subparagraph; economic conditions, the effects on the industry, and such other factors as the Corporation deems appropriate and relevant to the action taken or the assistance provided. Any funds so collected that exceed actual losses shall be placed in the Deposit Insurance Fund.'.

(e) Establishment of a National Credit Union Share Insurance Fund Restoration Plan Period- Section 202(c)(2) of the Federal Credit Union Act (12 U.S.C. 1782(c)(2)) is amended by adding at the end the following new subparagraph:

` (D) FUND RESTORATION PLANS-

` (i) IN GENERAL- Whenever--

` (I) the Board projects that the equity ratio of the Fund will, within 6 months of such determination, fall below the minimum amount specified in subparagraph (C) for the designated equity ratio; or

` (II) the equity ratio of the Fund actually falls below the minimum amount specified in subparagraph (C) for the equity ratio without any determination under sub-clause (I) having been made,

the Board shall establish and implement a Share Insurance Fund restoration plan within 90 days that

meets the requirements of clause (ii) and such other conditions as the Board determines to be appropriate.

`(ii) REQUIREMENTS OF RESTORATION PLAN- A Share Insurance Fund restoration plan meets the requirements of this clause if the plan provides that the equity ratio of the Fund will meet or exceed the minimum amount specified in subparagraph (C) for the designated equity ratio before the end of the 5-year period beginning upon the implementation of the plan (or such longer period as the Board may determine to be necessary due to extraordinary circumstances).

`(iii) TRANSPARENCY- Not more than 30 days after the Board establishes and implements a restoration plan under clause (i), the Board shall publish in the Federal Register a detailed analysis of the factors considered and the basis for the actions taken with regard to the plan.'.

END