

AMENDMENT NO. _____ Calendar No. _____

Purpose: To prevent mortgage foreclosures and preserve home values.

IN THE SENATE OF THE UNITED STATES—111th Cong., 1st Sess.

S. 896

To prevent mortgage foreclosures and enhance mortgage credit availability.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. DURBIN (for himself, Mr. DODD, Mr. SCHUMER, Mr. WHITEHOUSE, and Mr. HARKIN)

Viz:

1 At the end of the bill, add the following:

2 **TITLE V—PREVENTION OF**
3 **MORTGAGE FORECLOSURES**
4 **Subtitle A—Modification of**
5 **Residential Mortgages**

6 **SEC. 501. DEFINITIONS.**

7 Section 101 of title 11, United States Code, is
8 amended by inserting after paragraph (43) the following:

1 “(43A)(A) The term ‘qualified loan modifica-
2 tion offer’ means a loan modification agreement that
3 is consistent with the terms described in subpara-
4 graph (B) and that is offered—

5 “(i) in accordance with the guidelines of
6 the Homeowner Affordability and Stability
7 Plan, to a debtor who qualifies for such plan;

8 “(ii) in accordance with the qualified loan
9 guidelines described in subparagraph (C)(i) for
10 loans insured or guaranteed by the Federal
11 Housing Administration of the Department of
12 Housing and Urban Development, the Depart-
13 ment of Veterans Affairs, or the Department of
14 Agriculture, to a debtor for whom a loan is in-
15 sured or guaranteed under programs of such
16 Government entities; or

17 “(iii) in accordance with qualified loan
18 guidelines described in subparagraph (C)(ii) to
19 a debtor who does not qualify for the Home-
20 owner Affordability and Stability Plan, for a
21 loan for which the servicer is not a participant
22 in such plan, and for whom a loan is not in-
23 sured or guaranteed under programs of the
24 Government entities described in subparagraph
25 (A)(ii).

1 “(B) For purposes of this paragraph, a ‘quali-
2 fied loan modification offer’—

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

6 “(ii) 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 “(iii) is offered in good faith to the debtor
11 in writing, not later than 45 days after the date
12 on which the debtor provided to the servicer of
13 such loan, in good faith, all required informa-
14 tion, as defined in subparagraph (G), in order
15 to be considered for a qualified loan modifica-
16 tion offer or a qualified loan refinancing offer;

17 “(iv) is presented to the debtor as a firm
18 written offer in a form that can be accepted by
19 the debtor by signing the offer and returning it
20 to the servicer of such loan;

21 “(v) is offered with respect to a loan for
22 which no foreclosure sale is scheduled, or shall
23 be scheduled, during the time the request for
24 modification is being considered or is scheduled
25 during the 30-day period beginning on the expi-

1 ration of the time period specified in clause
2 (iii); and

3 “(vi) is not revoked by the servicer of such
4 loan for reasons within the control of the debtor
5 before the confirmation of the plan filed under
6 section 1321 or the modification of a plan
7 under section 1323 or 1329.

8 “(C) For purposes of this paragraph, the term
9 ‘qualified loan guidelines’ describes a loan modifica-
10 tion agreement that—

11 “(i) in the case of a loan that is insured
12 or guaranteed by the Federal Housing Adminis-
13 tration, the Department of Veterans Affairs, or
14 the Department of Agriculture and that is se-
15 cured by the senior security interest in the prin-
16 cipal residence of the debtor, modifies the debt-
17 or’s monthly housing payment for at least a pe-
18 riod of 5 years—

19 “(I) to 31 percent or less of the debt-
20 or’s monthly gross income at the time of
21 the modification, without any period of
22 negative amortization; or

23 “(II) before expiration of the 90-day
24 period beginning on the effective date of
25 this paragraph, to the lowest percentage of

1 the debtor's monthly gross income allowed
2 under the applicable program guidelines in
3 effect before the effective date of this para-
4 graph, without any period of negative am-
5 ortization, if such lowest percentage is
6 greater than 31 percent of the debtor's
7 monthly gross income at the time of the
8 modification, without any period of nega-
9 tive amortization;

10 “(ii) in the case of a loan for a debtor who
11 does not qualify for the Homeowner Afford-
12 ability and Stability Plan, or of a loan for which
13 the servicer is not a participant in such plan
14 and for whom a loan is not insured or guaran-
15 teed under programs of the Government entities
16 described in subparagraph (A)(ii)—

17 “(I) modifies the debtor's monthly
18 housing payment for at least a period of 5
19 years to 31 percent or less of the debtor's
20 monthly gross income at the time of the
21 modification, without any period of nega-
22 tive amortization; and

23 “(II) provides that, after the initial
24 period of 5 years, the interest rate on the
25 modified loan may increase by not more

1 than 1 percentage point per year until the
2 interest rate reaches (but does not exceed)
3 the prevailing market interest rate on the
4 date on which the modification is finalized,
5 as published by the Federal Home Loan
6 Mortgage Corporation, at which time such
7 maximum interest rate shall be fixed for
8 the remaining loan term.

9 “(D) For purposes of this paragraph—

10 “(i) the term ‘debtor’s monthly gross in-
11 come’ means the total income amount before
12 any payroll deductions, and includes wages and
13 salaries, overtime pay, commissions, fees, tips,
14 bonuses, housing allowances, other compensa-
15 tion for personal services, Social Security pay-
16 ments, including Social Security received by
17 adults on behalf of minors or by minors in-
18 tended for their own support, and monthly in-
19 come from annuities, insurance policies, retire-
20 ment funds, pensions, disability or death bene-
21 fits, unemployment benefits, rental income, and
22 other income. For income from the operation of
23 a business, profession, or farm, monthly gross
24 income shall be the sum of the debtor’s gross

1 receipts exclusive of ordinary and necessary
2 business expenses; and

3 “(ii) the term ‘debtor’s monthly housing
4 payment’ includes fixed principal and interest,
5 and payments for real estate taxes, hazard in-
6 surance, mortgage insurance premium, home-
7 owners’ association dues, ground rent, special
8 assessments, and all other amounts collected by
9 the servicer as part of that payment.

10 “(E) The term ‘Homeowner Affordability and
11 Stability Plan’ means the loan modification plan an-
12 nounced and implemented by the Secretary of the
13 Treasury on March 4, 2009, and any successor
14 thereto.

15 “(F) For purposes of this paragraph, the term
16 ‘servicer’ means the person responsible for any of
17 master servicing, servicing, or subservicing of a debt
18 secured by the debtor’s principal residence (includ-
19 ing the person who makes or holds a loan if such
20 person also master services, services, or subservices
21 the loan).

22 “(G) For purposes of this paragraph, the term
23 ‘required information’ means all information re-
24 quired to be provided to the servicer under the
25 Homeowner Affordability and Stability Plan, or ac-

1 cording to a similar standardized list, as issued by
2 the Secretary of the Treasury or the Secretary of
3 the Department of Housing and Urban Develop-
4 ment, to allow the servicer to determine the debtor's
5 eligibility for a qualified loan modification offer or a
6 qualified loan refinancing offer made by the holder
7 of the loan. If the servicer fails to notify the debtor
8 within 30 days of the date of submission of informa-
9 tion by the debtor that the information is incomplete
10 and specify what further information must be sub-
11 mitted, it shall be conclusively presumed that the in-
12 formation submitted by the debtor satisfies such re-
13 quirement. For purposes of this subparagraph, re-
14 quired information provided to the servicer by the
15 debtor shall be deemed accurate and complete as of
16 the time it was delivered to the servicer. Material
17 differences not based on a change in the debtor's cir-
18 cumstances between the required information pro-
19 vided under the Homeowner Affordability and Sta-
20 bility Plan or a similar standardized list, as issued
21 by the Secretary of the Treasury or the Secretary of
22 the Department of Housing and Urban Develop-
23 ment, and information provided by the debtor in the
24 schedules required under section 521(a), shall give
25 rise to a rebuttable presumption that the debtor is

1 not eligible for a modification under section
2 1322(b)(11), if such material differences in the re-
3 quired information render the debtor ineligible for a
4 qualified loan modification offer or a qualified loan
5 refinancing offer. The debtor may rebut the pre-
6 sumption by showing that the debtor offered the re-
7 quired information in good faith.

8 “(43B) The term ‘qualified loan refinancing
9 offer’ means a loan offered in accordance with the
10 HOPE for Homeowners program, as authorized by
11 section 257 of the National Housing Act (12 U.S.C.
12 1715z-23) that—

13 “(A) refinances a loan secured by the sen-
14 ior security interest in the principal residence of
15 the debtor, and which is eligible to be refi-
16 nanced under the HOPE for Homeowners pro-
17 gram;

18 “(B) permits the debtor to continue to
19 make payments under the loan, notwithstanding
20 the filing of a case under this title, as if such
21 case had not been filed; and

22 “(C) with respect to which the debtor has
23 received a written notice that the debtor’s appli-
24 cation for such loan was approved by a person
25 or entity authorized by the Secretary of the De-

1 partment of Housing and Urban Development
2 to serve as a mortgagee, and such loan approval
3 was not revoked by such person or entity before
4 the date of the confirmation of the plan filed
5 under section 1321 or the modification of a
6 plan under section 1323 or 1329.”.

7 **SEC. 502. ELIGIBILITY FOR RELIEF.**

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

10 (1) in subsection (e)—

11 (A) by inserting “(1)” after “(e)”; and

12 (B) by adding at the end the following:

13 “(2) For purposes of this subsection, the computation
14 of debts shall not include the secured or unsecured por-
15 tions of—

16 “(A) debts secured by the debtor’s principal
17 residence, if the value of such residence as of the
18 date of the order for relief under chapter 13 is less
19 than the applicable maximum amount of noncontin-
20 gent, liquidated, secured debts specified in this sub-
21 section; or

22 “(B) debts secured or formerly secured by what
23 was the debtor’s principal residence that was sold in
24 foreclosure or that the debtor surrendered to the
25 creditor, if the value of such real property as of the

1 date of the order for relief under chapter 13 was less
2 than the applicable maximum amount of noncontin-
3 gent, liquidated, secured debts specified in this sub-
4 section.”;

5 (2) in subsection (h)(1), by striking “and (3)”
6 and inserting “, (3), and (5)”;

7 (3) in subsection (h), by adding at the end the
8 following:

9 “(5) With respect to a debtor in a case under
10 chapter 13 who is at least 60 days delinquent with
11 respect to the claim secured by the debtor’s principal
12 residence and submits to the court a certification
13 that the debtor has received written notice that the
14 holder of a claim secured by the debtor’s principal
15 residence may commence a foreclosure on the debt-
16 or’s principal residence, the requirements of para-
17 graph (1) shall be considered to be satisfied if the
18 debtor satisfies such requirements not later than the
19 expiration of the 45-day period beginning on the
20 date of the filing of the petition.”.

21 **SEC. 503. AUTHORITY TO MODIFY CERTAIN MORTGAGES.**

22 Section 1322 of title 11, United States Code, is
23 amended—

24 (1) in subsection (b)—

1 (A) by redesignating paragraph (11) as
2 paragraph (12);

3 (B) in paragraph (10), by striking “and”
4 at the end; and

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

7 “(11) notwithstanding paragraph (2), modify
8 the rights of the holder of a claim for a loan origi-
9 nated before January 1, 2009, with an unpaid prin-
10 cipal balance that is not greater than the maximum
11 loan amount provided for in the guidelines of the
12 Homeowner Affordability and Stability Plan, that is
13 at least 60 days delinquent and secured by a secu-
14 rity interest in the debtor’s principal residence and,
15 in the case of a claim secured by the senior security
16 interest in such residence that is the subject of a
17 written notice that a foreclosure may be commenced
18 with respect to such loan—

19 “(A) by providing for payment of the
20 amount of the allowed secured claim, as deter-
21 mined under section 506(a)(1);

22 “(B) by modifying the terms and condi-
23 tions of such loan—

24 “(i) to extend the repayment period
25 for a period that is not longer than the

1 longer of 40 years (reduced by the period
2 for which such loan has been outstanding)
3 or the remaining term of such loan, begin-
4 ning on the date of the order for relief
5 under this chapter; and

6 “(ii) to provide for the payment of in-
7 terest accruing after the date of the order
8 for relief under this chapter at a fixed an-
9 nual rate equal to the currently applicable
10 average prime offer rate, as of the date of
11 the order for relief under this chapter, cor-
12 responding to the repayment term deter-
13 mined under the preceding paragraph, as
14 published by the Federal Financial Institu-
15 tions Examination Council in its table enti-
16 tled ‘Average Prime Offer Rates—Fixed’
17 (or any successor thereto), rounded to the
18 nearest 0.125 percent, plus a reasonable
19 premium for risk; and

20 “(C) by providing for payments of such
21 modified loan directly to the holder of the claim
22 or, at the discretion of the court, through the
23 trustee during the term of the plan; and”;

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

1 “(g) A claim may be reduced under subsection
2 (b)(11)(A) only on the condition that if the debtor sells
3 the principal residence securing such claim during the
4 pendency of the case under this chapter and receives net
5 proceeds from the sale of such residence—

6 “(1) the debtor agrees to pay to such holder 50
7 percent of the amount of the difference between the
8 sale price and the amount of such claim, as origi-
9 nally determined under subsection (b)(11) (plus
10 costs of sale and improvements), but not to exceed
11 the unpaid amount of the allowed secured claim de-
12 termined as if such claim had not been reduced
13 under such subsection;

14 “(2) the debtor notifies the holder of such claim
15 (or entity collecting payments on behalf of such
16 holder), not later than 30 days before the closing
17 date of such sale, of the details of sale, including the
18 buyer’s name and address, the buyer’s relationship
19 to the debtor, if any, purchase price, anticipated sale
20 closing date, name and address of the closing agent,
21 and any other relevant information; and

22 “(3) any amount to be received by the holder
23 is listed in the closing documents.

24 “(h) With respect to a claim of the kind described
25 in subsection (b)(11) that is secured by the senior security

1 interest in the debtor’s principal residence, the plan may
2 not contain a modification under the authority of sub-
3 section (b)(11)—

4 “(1) in a case commenced under this chapter
5 after the expiration of the 45-day period beginning
6 on the effective date of this subsection, unless the
7 debtor certifies that the debtor sought a qualified
8 loan modification offer or a qualified loan refi-
9 nancing offer, as those terms are defined in para-
10 graphs (43A) and (43B) of section 101, respectively,
11 and submitted the required information, as that
12 term is defined in section 101(43A)(G);

13 “(2) in any other case under this chapter, un-
14 less the debtor certifies that the debtor sought a
15 qualified loan modification offer or qualified loan re-
16 financing offer, as those terms are so defined, at
17 least 45 days before—

18 “(A) the date of confirmation of a plan
19 under section 1321 that contains a modification
20 under the authority of subsection (b)(11) of
21 this section; or

22 “(B) the date of modification of a plan
23 under section 1323 or 1329 to contain a modi-
24 fication under the authority of subsection
25 (b)(11) of this section;

1 “(3) except as provided in subsection (i)(2), if
2 the debtor’s monthly housing payment prior to loan
3 modification or refinance is less than 31 percent of
4 the debtor’s gross monthly income (as those terms
5 are defined in section 101(43A)(D)); or

6 “(4) except as provided in subsection (i)(2), if
7 the debtor has received a qualified loan modification
8 offer or a qualified loan refinancing offer, as those
9 terms are so defined.

10 “(i)(1) If the debtor’s income at the time at which
11 a petition is filed under this chapter is equal to or greater
12 than 80 percent of the area median income, as published
13 by the Department of Housing and Urban Development,
14 with respect to a claim of the kind described in subsection
15 (b)(11), and if the debtor has received a qualified loan
16 modification offer or a qualified loan refinancing offer (as
17 those terms are defined in paragraphs (43A) and (43B)
18 of section 101, respectively for purposes of this sub-
19 section), such debtor may not modify the rights of the
20 holder of a claim that is secured by the senior security
21 interest in the debtor’s principal residence pursuant to
22 subsection (b)(11), regardless of whether the debtor has
23 accepted the offer.

24 “(2) If the debtor’s income at the time at which a
25 petition is filed under this chapter is not equal to or great-

1 er than 80 percent of the area median income, as pub-
2 lished by the Department of Housing and Urban Develop-
3 ment, the debtor shall be subject to all requirements appli-
4 cable to other debtors under this section with respect to
5 a claim of the kind described in subsection (b)(11), pro-
6 vided that—

7 “(A) if the debtor is subject to subsection
8 (h)(3) or (h)(4), such debtor may still modify the
9 rights of the holder of a claim secured by the senior
10 security interest in the debtor’s principal residence
11 pursuant to subsection (b)(11), other than by reduc-
12 tion in the principal balance, if the payments that
13 would be due under a modification implemented by
14 a plan under this chapter permitting payments over
15 a term of 40 years and an interest rate equal to the
16 currently applicable prime offer rate described in
17 subsection (b)(11)(B)(ii) would be less than the pay-
18 ments due under the qualified loan modification
19 offer or a qualified loan refinancing offer; and

20 “(B) if the debtor has received an otherwise
21 qualified loan modification offer or a qualified loan
22 refinancing offer that reduces the debtor’s monthly
23 housing payment to 25 percent or less of the debt-
24 or’s monthly gross income (as those terms are de-
25 fined in section 101(43A)(D)), such debtor may not

1 modify the rights of the holder of a claim secured
2 by the senior security interest in the debtor’s prin-
3 cipal residence pursuant to subsection (b)(11), re-
4 gardless of whether or not the debtor has accepted
5 the offer.

6 “(j) In determining the holder’s allowed secured
7 claim under section 506(a)(1) for purposes of subsection
8 (b)(11)(A) of this section, the value of the debtor’s prin-
9 cipal residence shall be the fair market value of such resi-
10 dence on the date of the determination of the value of the
11 allowed secured claim and, if the issue of value is con-
12 tested, the court shall determine such value in accordance
13 with the appraisal rules used by the Federal Housing Ad-
14 ministration.

15 “(k) If the rights of a holder of a claim of the kind
16 described in subsection (b)(11) have been modified pursu-
17 ant to subsection (b)(11), the court may not approve, and
18 the debtor may not borrow, any additional funds during
19 the pendency of the case that are secured by a security
20 interest in the debtor’s principal residence that is junior
21 to the lien securing such claim.”.

22 **SEC. 504. COMBATING EXCESSIVE FEES.**

23 Section 1322(c) of title 11, United States Code, is
24 amended—

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

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

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

6 “(3) the debtor, the debtor’s property, and
7 property of the estate are not liable for a fee, cost,
8 or charge that is incurred while the case under this
9 chapter is pending and arises from a debt that is se-
10 cured by the debtor’s principal residence, except to
11 the extent that—

12 “(A) the holder of the claim for the debt
13 files with the court and serves on the trustee,
14 the debtor, and the debtor’s attorney (annually
15 or, in order to permit filing consistent with
16 clause (ii), more frequently, as the court deter-
17 mines necessary) notice of the fee, cost, or
18 charge before the earlier of—

19 “(i) 1 year after the date on which the
20 fee, cost, or charge is incurred; or

21 “(ii) 60 days before the closing of the
22 case under this chapter; and

23 “(B) the fee, cost, or charge is not unlaw-
24 ful under applicable nonbankruptcy law, and is

1 reasonable and provided for in the applicable
2 security agreement;

3 “(4) the failure of a party to give notice de-
4 scribed in paragraph (3) shall be deemed a waiver
5 of any claim for any fee, cost, or charge described
6 in paragraph (3) for all purposes, and any attempt
7 to collect such a fee, cost, or charge shall constitute
8 a violation of section 524(a)(2) or, if the violation
9 occurs before the date of discharge, of section
10 362(a); and

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

14 **SEC. 505. CONFIRMATION OF PLAN.**

15 Section 1325(a) of title 11, United States Code, is
16 amended—

17 (1) in paragraph (5)—

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

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

24 (2) in paragraph (8), by striking “and” at the
25 end;

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

3 (4) by inserting immediately after paragraph
4 (9) the following:

5 “(10) notwithstanding paragraph (5)(B)(i)(I),
6 in a case in which the plan modifies a claim in ac-
7 cordance with section 1322(b)(11), the holder of a
8 claim whose rights are modified pursuant to section
9 1322(b)(11) retains the lien until the full payment
10 of the allowed secured claim of the holder, together
11 with postpetition interest, fees, costs, and charges
12 permitted under section 1322(b)(11) and, if applica-
13 ble, 1322(c)(3); and

14 “(11) in a case in which the plan modifies a
15 claim in accordance with section 1322(b)(11), the
16 court—

17 “(A) finds that the modification is in good
18 faith, which the court may not find if the debt-
19 or has no need for relief under section
20 1322(b)(11) because the debtor can pay all of
21 the debts of the debtor and any payment in-
22 creases on such debts without difficulty for the
23 foreseeable future, including the positive amor-
24 tization of mortgage debt; and

1 “(B) does not find that the debtor has
2 been criminally convicted of actual fraud in ob-
3 taining the extension, renewal, or refinancing of
4 credit that gives rise to a modified claim.”.

5 **SEC. 506. DISCHARGE.**

6 Section 1328(a) of title 11, United States Code, is
7 amended—

8 (1) in the matter preceding paragraph (1), by
9 inserting “(other than payments to holders of claims
10 whose rights are modified under section
11 1322(b)(11))” after “paid”; and

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

16 **SEC. 507. STANDING TRUSTEE FEES.**

17 (a) AMENDMENT TO TITLE 28.—Section
18 586(e)(1)(B)(i) of title 28, United States Code, is amend-
19 ed—

20 (1) by inserting “(I) except as provided in sub-
21 clause (II),” after “(i)”;

22 (2) by striking “or” at the end and inserting
23 “and”; and

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

1 (1) IN GENERAL.—Except as provided in para-
2 graph (2), the amendments made by this title shall
3 apply with respect to any case commenced under
4 title 11 of the United States Code before, on, or
5 after the date of enactment of this Act with respect
6 to loans serviced by entities affiliated with entities
7 for which participation in the Homeowner Afford-
8 ability and Stability Plan announced and imple-
9 mented by the Secretary of the Treasury on March
10 4, 2009, (and any successor thereto) is mandatory.

11 (2) EXCEPTION.—With respect to loans serv-
12 iced by entities that are unaffiliated with entities for
13 which participation in the Homeowner Affordability
14 and Stability Plan is mandatory, and that have an-
15 nounced and implemented a policy of ceasing all
16 foreclosure activities for 45 days after the date of
17 enactment of this Act, the time period in clause (iii)
18 of section 101(43A)(B) of title 11, United States
19 Code (as added by this title), shall expire on the
20 later of 90 days after the date of enactment of this
21 Act or the date on which it would otherwise expire
22 under that clause.

23 (3) LIMITATION.—The amendments made by
24 this subtitle shall not apply with respect to any case
25 closed under title 11 of the United States Code as

1 of the date of enactment of this Act that is not
2 pending on appeal in, nor appealable to, any court
3 of the United States.

4 (b) SUNSET.—The amendments made by sections
5 501, 503, 505, 506, and 507 shall not apply to any case
6 commenced under title 11 of the United States Code after
7 the later of December 31, 2012 or the expiration of any
8 extension of the Homeowner Affordability and Stability
9 Plan (or any successor thereto).

10 **SEC. 509. GAO STUDY AND REPORT.**

11 (a) STUDY.—The Comptroller General of the United
12 States shall carry out a study of—

13 (1) the number of debtors who filed, during the
14 1-year period beginning on the date of enactment of
15 this Act, cases under chapter 13 of title 11, United
16 States Code, for the purpose of restructuring a
17 mortgage loan secured by the principal residence of
18 the debtor;

19 (2) the number of such mortgages restructured
20 under the amendments made by this subtitle that
21 subsequently resulted in default and foreclosure; and

22 (3) a comparison between the effectiveness of
23 mortgages restructured under programs outside of
24 bankruptcy law, such as Hope Now, the Homeowner
25 Affordability and Stability Plan (as implemented by

1 the Secretary of the Treasury on March 4, 2009),
2 and the HOPE for Homeowners program, and mort-
3 gages restructured under the amendments made by
4 this subtitle.

5 (b) REPORT.—Not later than 2 years after the date
6 of enactment of this Act, the Comptroller General shall
7 submit a report on the results of the study required by
8 subsection (a) to the Committee on the Judiciary of the
9 Senate and the Committee on the Judiciary of the House
10 of Representatives.

11 **SEC. 510. UNENFORCEABILITY OF CERTAIN PROVISION AS**
12 **BEING CONTRARY TO PUBLIC POLICY.**

13 (a) CONGRESSIONAL FINDINGS.—Congress finds
14 that—

15 (1) in conjunction with the amendments made
16 by this subtitle, the enforcement of provisions of cer-
17 tain investment contracts in effect on the date of en-
18 actment of this Act, which require excess bankruptcy
19 losses that exceed a certain dollar amount on resi-
20 dential mortgages to be borne by classes of certifi-
21 cates on a pro rata basis, would affect the parties
22 to those contracts in ways that could not have oc-
23 curred under the law in effect at the time at which
24 such contracts were entered into, would interfere
25 with the achievement of the purposes of this subtitle,

1 and would have adverse effects on the national econ-
2 omy, potentially including adverse effects on the se-
3 curity of depositors of banking institutions and pol-
4 icyholders of insurance companies operating in inter-
5 state commerce; and

6 (2) to achieve the purposes of this subtitle to
7 avoid preventable foreclosures, avoid unintended and
8 adverse systemic effects on the national economy,
9 and preserve the existing economic expectations of
10 the parties to investment contracts to the extent rea-
11 sonably possible, it is necessary that such provisions
12 be unenforceable to the extent that such provisions
13 refer to types of bankruptcy losses that could not
14 have been incurred under the law in effect at the
15 time at which such contracts were entered into.

16 (b) UNENFORCEABILITY OF PROVISIONS.—

17 (1) IN GENERAL.—Any bankruptcy loss alloca-
18 tion provision in any mortgage-backed securities con-
19 tract in effect on the date of enactment of this Act
20 shall be unenforceable as contrary to public policy,
21 to the extent that such bankruptcy loss allocation
22 provision allocates to senior classes of mortgage-
23 backed securities of the issuer bankruptcy losses
24 that could not have been incurred under the law in
25 effect on the date on which such mortgage-backed

1 securities contract was entered into, without the con-
2 sent of the holder of the related residential mortgage
3 or mortgages.

4 (2) EFFECT OF UNENFORCEABILITY.—Any
5 bankruptcy losses that would have been allocated
6 under a bankruptcy loss allocation provision that is
7 unenforceable under paragraph (1) shall be allocated
8 as if the bankruptcy losses constituted losses (other
9 than bankruptcy losses) under the applicable mort-
10 gage-backed securities contract.

11 (c) COVERED BANKRUPTCY LOSSES.—For purposes
12 of subsection (b), the term “bankruptcy losses that could
13 not have been incurred under the law in effect on the date
14 on which such mortgage-backed securities contract was
15 entered into, without the consent of the holder of the re-
16 lated residential mortgage or mortgages” includes all
17 bankruptcy losses incurred as a result of the application
18 of section 1322(b)(11) of title 11, United States Code, as
19 amended by this title.

20 (d) DEFINITIONS.—For purposes of this section, the
21 following definitions shall apply:

22 (1) BANKRUPTCY LOSS ALLOCATION PROVI-
23 SION.—The term “bankruptcy loss allocation provi-
24 sion” means any provision in a mortgage-backed se-
25 curities contract that allocates any portion of bank-

1 rruptcy losses to senior classes of mortgage-backed
2 securities of the issuer before the outstanding prin-
3 cipal amount of subordinated classes of the mort-
4 gage-backed securities of the issuer has been re-
5 duced to zero as a result of the allocation of losses
6 or otherwise.

7 (2) BANKRUPTCY LOSSES.—The term “bank-
8 rruptcy losses” means any losses relating to residen-
9 tial mortgages held by a securitization vehicle that
10 arise in a proceeding under title 11 of the United
11 States Code.

12 (3) MORTGAGE-BACKED SECURITIES.—The
13 term “mortgage-backed securities” means mortgage
14 pass-through certificates, participation certificates,
15 mortgage-backed securities, or other similar securi-
16 ties backed by a pool of assets that includes residen-
17 tial mortgage loans.

18 (4) MORTGAGE-BACKED SECURITIES CON-
19 TRACT.—The term “mortgage-backed securities con-
20 tract” means a contract or other instrument that
21 governs the terms of mortgage-backed securities.

22 (5) SECURITIZATION VEHICLE.—The term
23 “securitization vehicle” means a trust, corporation,
24 partnership, limited liability entity, special purpose
25 entity, or other structure that—

1 (A) is the issuer, or is created by the
2 issuer, of mortgage pass-through certificates,
3 participation certificates, mortgage-backed secu-
4 rities, or other similar securities backed by a
5 pool of assets that includes residential mortgage
6 loans; and

7 (B) holds such mortgages.

8 **Subtitle B—Related Mortgage** 9 **Modification Provisions**

10 **SEC. 511. ADJUSTMENTS AS A RESULT OF MODIFICATION** 11 **IN BANKRUPTCY OF HOUSING LOANS GUAR-** 12 **ANTEED BY THE DEPARTMENT OF VETERANS** 13 **AFFAIRS.**

14 (a) IN GENERAL.—Section 3732(a)(2) of title 38,
15 United States Code, is amended—

16 (1) by inserting “(A)” after “(2)”; and

17 (2) by adding at the end the following new sub-
18 paragraph:

19 “(B) In the event that a housing loan guaran-
20 teed under this chapter is modified under the au-
21 thority provided under section 1322(b)(11) of title
22 11, United States Code, the Secretary shall pay the
23 holder of the obligation the unpaid balance of the
24 obligation due as of the date of the filing of the peti-
25 tion under title 11, United States Code, plus accrued

1 interest, but only upon the assignment, transfer, and
2 delivery to the Secretary (in a form and manner sat-
3 isfactory to the Secretary) of all rights, interest,
4 claims, evidence, and records with respect to the
5 housing loan.”.

6 (b) MATURITY OF HOUSING LOANS.—Section
7 3703(d)(1) of title 38, United States Code, is amended
8 by inserting “at the time of origination” after “loan”.

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

13 **SEC. 512. PAYMENT OF FHA MORTGAGE INSURANCE BENE-**
14 **FITS.**

15 (a) IN GENERAL.—Section 204(a) of the National
16 Housing Act (12 U.S.C. 1710(a)) is amended—

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

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

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

1 a mortgage in accordance with section
2 506(a)(1) of title 11, United States Code,
3 and the amount of such allowed secured
4 claim is less than the amount due under
5 the mortgage as of the date of the filing of
6 the petition under title 11, United States
7 Code, or (b) reduces the interest to be paid
8 under a mortgage in accordance with sec-
9 tion 1325 of such title, the Secretary shall
10 pay insurance benefits for the mortgage in
11 1 of the following manners:

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

1 which was unpaid upon the date of
2 the filing by the mortgagor of the pe-
3 tition under title 11 of the United
4 States Code. Nothing in this clause
5 may be construed to prevent the Sec-
6 retary from providing insurance under
7 this title for a mortgage that has pre-
8 viously been assigned to the Secretary
9 under this subclause.

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

1 by the amount of the allowed secured
2 claim. Such allowed secured claim
3 shall continue to be insured under sec-
4 tion 203.

5 “(III) INTEREST PAYMENTS.—
6 The Secretary may make periodic pay-
7 ments, or a one-time payment, of in-
8 surance benefits for interest payments
9 that are reduced pursuant to such
10 order, as determined by the Secretary,
11 but only upon assignment to the Sec-
12 retary of all rights and interest re-
13 lated to such payments.

14 “(ii) DELIVERY OF EVIDENCE OF
15 ENTRY OF ORDER.—Notwithstanding any
16 other provision of this paragraph, no insur-
17 ance benefits may be paid pursuant to this
18 subparagraph for a mortgage before deliv-
19 ery to the Secretary of evidence of the
20 entry of the order issued pursuant to title
21 11, United States Code, in a form satisfac-
22 tory to the Secretary.”; and

23 (2) in paragraph (5), in the matter preceding
24 subparagraph (A), by inserting after “section 520,

1 and” the following: “, except as provided in para-
2 graph (1)(E),”.

3 (b) IMPLEMENTATION.—The Secretary of Housing
4 and Urban Development may implement the amendments
5 made by this section through notice or mortgagee letter.

6 **SEC. 513. ADJUSTMENTS AS RESULT OF MODIFICATION OF**
7 **RURAL SINGLE FAMILY HOUSING LOANS IN**
8 **BANKRUPTCY.**

9 (a) GUARANTEED RURAL HOUSING LOANS.—Section
10 502(h) of the Housing Act of 1949 (42 U.S.C. 1472(h))
11 is amended—

12 (1) in paragraph (7)—

13 (A) in subparagraph (A), by inserting be-
14 fore the semicolon at the end the following: “,
15 unless the maturity date of the loan is modified
16 in a bankruptcy proceeding or authorized at the
17 discretion of the Secretary in accordance with
18 paragraph (15)(A)”;

19 (B) in subparagraph (B), by inserting be-
20 fore the semicolon the following: “, unless such
21 rate is modified in a bankruptcy proceeding or
22 as provided in paragraph (14) or (15)”;

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

1 (3) by inserting after paragraph (12) the fol-
2 lowing new paragraphs:

3 “(13) PAYMENT OF LOSSES.—To pay for losses
4 incurred by holders or servicers in the event of a
5 modification pursuant to the authority provided
6 under section 1322(b)(11) of title 11, United States
7 Code, that either (1) determines the amount of an
8 allowed secured claim under a mortgage in accord-
9 ance with section 506(a)(1) of title 11, United
10 States Code, and the amount of such allowed se-
11 cured claim is less than the amount due under the
12 mortgage as of the date of the filing of the petition
13 under title 11, United States Code, or (2) reduces
14 the interest to be paid under a mortgage in accord-
15 ance with section 1325 of such title, as follows:

16 “(A) FULL PAYMENT AND ASSIGNMENT.—
17 The Secretary may pay the guarantee for the
18 mortgage, but only upon the assignment, trans-
19 fer, and delivery to the Secretary of all rights,
20 interest, claims, evidence, and records with re-
21 spect to the mortgage. The guarantee shall be
22 paid in the amount equal to the original prin-
23 cipal obligation of the mortgage (with such ad-
24 ditions and deductions as the Secretary deter-
25 mines are appropriate) which was unpaid upon

1 the date of the filing by the mortgagor of the
2 petition under title 11 of the United States
3 Code. Nothing in this subparagraph may be
4 construed to prevent the Secretary from pro-
5 viding a guarantee under this subsection for a
6 mortgage that has previously been assigned to
7 the Secretary under this subparagraph.

8 “(B) ASSIGNMENT OF UNSECURED
9 CLAIM.—The Secretary may make a partial
10 payment of the guarantee for any unsecured
11 claim under the mortgage, but only upon the
12 assignment to the Secretary of any unsecured
13 claim of the mortgagee against the mortgagor
14 or others arising out of such order. Such as-
15 signment shall be deemed valid irrespective of
16 whether such claim has been or will be dis-
17 charged under title 11 of the United States
18 Code. The guarantee shall be paid in the
19 amount specified subparagraph (A), as such
20 amount is reduced by the amount of the allowed
21 secured claim. Such allowed secured claim shall
22 continue to be insured under section 1472 and
23 1487, without reduction for any amounts modi-
24 fied.

1 “(C) INTEREST PAYMENTS.—The Sec-
2 retary may make periodic payments, or a one-
3 time payment, of guarantees for interest pay-
4 ments that are reduced pursuant to such order,
5 as determined by the Secretary, but only upon
6 assignment to the Secretary of all rights and in-
7 terest related to such payments.

8 “(D) DELIVERY OF EVIDENCE OF ENTRY
9 OF ORDER.—Notwithstanding any other provi-
10 sion of this section, no guarantees may be paid
11 pursuant to this paragraph for a mortgage be-
12 fore delivery to the Secretary of evidence of the
13 entry of the order issued pursuant to title 11,
14 United States Code, in a form satisfactory to
15 the Secretary.”.

16 (b) INSURED RURAL HOUSING LOANS.—Section
17 517(j) of the Housing Act of 1949 (42 U.S.C. 1487(j))
18 is amended—

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

21 (2) by inserting after paragraph (1) the fol-
22 lowing new paragraph:

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

1 (c) TECHNICAL AMENDMENTS.—Subsection (h) of
2 section 502 of the Housing Act of 1949 (42 U.S.C.
3 1472(h)) is amended—

4 (1) in paragraph (5)(A), by striking “(as de-
5 fined in paragraph (13))” and inserting “(as defined
6 in paragraph (14))”; and

7 (2) in paragraph (18)(E) (as so redesignated by
8 subsection (a)(2)), by—

9 (A) striking “paragraphs (3), (6), (7)(A),
10 (8), and (10))” and inserting “paragraphs (3),
11 (6), (7)(A), (8), (10), and (13))”; and

12 (B) striking “paragraphs (2) through
13 (13))” and inserting “paragraphs (2) through
14 (15))”.

15 (d) PROCEDURE.—

16 (1) IN GENERAL.—The promulgation of regula-
17 tions necessitated and the administration actions re-
18 quired by the amendments made by this section shall
19 be made without regard to—

20 (A) the notice and comment provisions of
21 section 553 of title 5, United States Code;

22 (B) the Statement of Policy of the Sec-
23 retary of Agriculture effective July 24, 1971
24 (36 Fed. Reg. 13804), relating to notices of

1 proposed rulemaking and public participation in
2 rulemaking; and

3 (C) chapter 35 of title 44, United States
4 Code (commonly known as the “Paperwork Re-
5 duction Act”).

6 (2) CONGRESSIONAL REVIEW OF AGENCY RULE-
7 MAKING.—In carrying out this section, and the
8 amendments made by this section, the Secretary
9 shall use the authority provided under section 808 of
10 title 5, United States Code.