

Union Calendar No. 5

111TH CONGRESS
1ST SESSION

H. R. 788

[Report No. 111-13]

To provide a safe harbor for mortgage servicers who engage in specified mortgage loan modifications, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 2009

Mr. KANJORSKI (for himself, Mr. CASTLE, and Mr. FRANK of Massachusetts) introduced the following bill; which was referred to the Committee on Financial Services

FEBRUARY 10, 2009

Additional sponsor: Mr. CAPUANO

FEBRUARY 10, 2009

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on February 2, 2009]

A BILL

To provide a safe harbor for mortgage servicers who engage in specified mortgage loan modifications, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SERVICER SAFE HARBOR.**

2 (a) *SAFE HARBOR.*—

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

13 (A) *any person, based on that person’s own-*
14 *ership of a residential mortgage loan or any in-*
15 *terest in a pool of residential mortgage loans or*
16 *in securities that distribute payments out of the*
17 *principal, interest and other payments in loans*
18 *on the pool;*

19 (B) *any person who is obligated pursuant*
20 *to a derivatives instrument to make payments*
21 *determined in reference to any loan or any in-*
22 *terest referred to in subparagraph (A); or*

23 (C) *any person that insures any loan or*
24 *any interest referred to in subparagraph (A)*
25 *under any law or regulation of the United States*

1 or any law or regulation of any State or polit-
2 ical subdivision of any State.

3 (2) *ABILITY TO MODIFY MORTGAGES.*—

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

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

13 (ii) shall not be obligated to repurchase
14 loans from or otherwise make payments to
15 the securitization vehicle on account of a
16 modification, workout, or other loss mitiga-
17 tion plan for a residential mortgage or a
18 class of residential mortgages that constitute
19 a part or all of the mortgages in the
20 securitization vehicle,

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

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

1 (i) *Default on the payment of such*
2 *mortgage has occurred or is reasonably fore-*
3 *seeable.*

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

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

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

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

1 *lations specifying the form, content, and timing of such re-*
2 *ports.*

3 (c) *DEFINITION OF SECURITIZATION VEHICLES.—For*
4 *purposes of this section, the term “securitization vehicle”*
5 *means a trust, corporation, partnership, limited liability*
6 *entity, special purpose entity, or other structure that—*

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

12 (2) *holds such mortgages.*

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