

110TH CONGRESS
2D SESSION

H. R. 7328

To amend title 11 of the United States Code with respect to modification of certain mortgages on principal residences, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 10, 2008

Mr. CONYERS (for himself, Mr. DELAHUNT, and Mr. NADLER) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 11 of the United States Code with respect to modification of certain mortgages on principal residences, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Homeowners’ Protec-
5 tion Act of 2008”.

6 **SEC. 2. WAIVER OF COUNSELING REQUIREMENT WHEN**
7 **HOUSES ARE IN FORECLOSURE.**

8 Section 109(h) of title 11, United States Code, is
9 amended by adding at the end the following:

1 “(5) The requirements of paragraph (1) shall not
2 apply in a case under chapter 13 with respect to a debtor
3 who submits to the court a certification that the debtor
4 has received notice that the holder of a claim secured by
5 the debtor’s principal residence may commence a fore-
6 closure on the debtor’s principal residence.”.

7 **SEC. 3. AUTHORITY TO MODIFY CERTAIN MORTGAGES.**

8 Section 1322(b) of title 11, United States Code, is
9 amended—

10 (1) by redesignating paragraph (11) as para-
11 graph (12),

12 (2) in paragraph (10) by striking “and” at the
13 end, and

14 (3) by inserting after paragraph (10) the fol-
15 lowing:

16 “(11) notwithstanding paragraph (2) and other-
17 wise applicable nonbankruptcy law, with respect to a
18 claim for a debt for a loan secured by a security in-
19 terest in the debtor’s principal residence that is the
20 subject of a notice that a foreclosure may be com-
21 menced, modify the rights of the holder of such
22 claim—

23 “(A) by reducing such claim to equal the
24 value of the interest of the debtor in such resi-
25 dence securing such claim;

1 “(B) by waiving any otherwise applicable
2 early repayment or prepayment penalties;

3 “(C) if any applicable rate of interest is
4 adjustable under the terms of such security in-
5 terest by prohibiting, reducing, or delaying ad-
6 justments to such rate of interest applicable on
7 and after the date of filing of the plan; and

8 “(D) by modifying the terms and condi-
9 tions of such loan—

10 “(i) to extend the repayment period
11 for a period that is the longer of 40 years
12 (reduced by the period for which such loan
13 has been outstanding) or the remaining
14 term of such loan, beginning on the date of
15 the order for relief under this chapter; and

16 “(ii) to provide for the payment of in-
17 terest accruing after the date of the order
18 for relief under this chapter at an annual
19 percentage rate calculated at a fixed an-
20 nual percentage rate, in an amount equal
21 to the then most recently published annual
22 yield on conventional mortgages published
23 by the Board of Governors of the Federal
24 Reserve System, as of the applicable time

1 set forth in the rules of the Board, plus a
2 reasonable premium for risk; and”.

3 **SEC. 4. COMBATING EXCESSIVE FEES.**

4 Section 1322(c) of title 11, the United States Code,
5 is amended—

6 (1) in paragraph (1) by striking “and” at the
7 end,

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

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

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

16 “(A) the holder of the claim for such debt
17 files with the court notice of such fee, cost, or
18 charge before the earlier of—

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

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

23 “(B) such fee, cost, or charge—

24 “(i) is lawful under applicable non-
25 bankruptcy law, reasonable, and provided

1 for in the applicable security agreement;
2 and

3 “(ii) is secured by property the value
4 of which is greater than the amount of
5 such claim, including such fee, cost, or
6 charge;

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

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

18 **SEC. 5. CONFIRMATION OF PLAN.**

19 Section 1325(a) of title 11, the United States Code,
20 is amended—

21 (1) in paragraph (8) by striking “and” at the
22 end,

23 (2) in paragraph (9) by striking the period at
24 the end and inserting a semicolon, and

1 (3) by inserting after paragraph (9) the fol-
2 lowing:

3 “(10) notwithstanding subclause (I) of para-
4 graph (5)(B)(i), the plan provides that the holder of
5 a claim whose rights are modified pursuant to sec-
6 tion 1322(b)(11) retain the lien until the later of—

7 “(A) the payment of such claim as reduced
8 and modified; or

9 “(B) discharge under section 1328; and

10 “(11) the plan modifies a claim in accordance
11 with section 1322(b)(11), and the court finds that
12 such modification is in good faith.”.

13 **SEC. 6. DISCHARGE.**

14 Section 1328 of title 11, the United States Code, is
15 amended—

16 (1) in subsection (a)—

17 (A) by inserting “(other than payments to
18 holders of claims whose rights are modified
19 under section 1322(b)(11)” after “paid” the
20 1st place it appears, and

21 (B) in paragraph (1) by inserting “or, to
22 the extent of the unpaid portion of the claim as
23 reduced, provided for in section 1322(b)(11)”
24 after “1322(b)(5)”, and

1 (2) in subsection (c)(1) by inserting “or, to the
2 extent of the unpaid portion of the claim as reduced,
3 provided for in section 1322(b)(11)” after
4 “1322(b)(5)”.

5 **SEC. 7. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

6 (a) **EFFECTIVE DATE.**—Except as provided in sub-
7 section (b), this Act and the amendments made by this
8 Act shall take effect on the date of the enactment of this
9 Act.

10 (b) **APPLICATION OF AMENDMENTS.**—The amend-
11 ments made by this Act shall apply only with respect to
12 cases commenced under title 11 of the United States Code
13 on or after the date of the enactment of this Act.

○