

110TH CONGRESS
1ST SESSION

S. 2133

To authorize bankruptcy courts to take certain actions with respect to mortgage loans in bankruptcy, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 3, 2007

Mr. SPECTER introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To authorize bankruptcy courts to take certain actions with respect to mortgage loans in bankruptcy, 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 “Home Owners’ Mort-
5 gage and Equity Savings Act” or the “HOMES Act”.

6 **SEC. 2. AUTHORITY TO MODIFY CERTAIN MORTGAGES.**

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

9 (1) in paragraph (2), by inserting “except as
10 provided in paragraph (11),” after “residence,”;

1 (2) by redesignating paragraph (11) as para-
2 graph (12);

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

5 (4) by inserting after paragraph (10) the fol-
6 lowing:

7 “(11) with respect to a claim secured by a secu-
8 rity interest in real property initiated before Sep-
9 tember 26, 2007, that is the debtor’s principal resi-
10 dence, if the current monthly income of the debtor
11 and the debtor’s spouse combined, when multiplied
12 by 12, is less than, in the case of a debtor in a
13 household of 1 person, 150 percent of the median
14 family income of the applicable State for 1 earner,
15 in the case of a debtor in a household of 2, 3, or
16 4 individuals, the highest median family income of
17 the applicable State for a family of the same number
18 or fewer individuals, or in the case of a debtor in a
19 household exceeding 4 individuals, the highest me-
20 dian family income of the applicable State for a fam-
21 ily of 4 or fewer individuals, plus \$525 per month
22 for each individual in excess of 4—

23 “(A) modify the rights of any holder of
24 such claim by lowering the principal amount of
25 the loan to the fair market value of the real

1 property securing the loan at the time of sub-
2 mission of the plan, to the extent that such fair
3 market value is less than the principal amount
4 outstanding on the loan, if such action is agreed
5 to in writing by the debtor and the holder of
6 the claim;

7 “(B) waive any otherwise applicable early
8 repayment or prepayment penalties; and

9 “(C) in any case in which the applicable
10 rate of interest is adjustable under the mort-
11 gage contract, modify the rights of any holder
12 of such claim, by prohibiting or delaying adjust-
13 ments to the rate of interest applicable to the
14 debt on and after the date of filing of the plan
15 or voiding any such adjustments that occurred
16 during the 2-year period preceding that date of
17 filing; and”.

18 **SEC. 3. TREATMENT OF CERTAIN INTEREST AND FEES.**

19 Section 548(a) of title 11, United States Code, is
20 amended by adding at the end the following:

21 “(3) For purposes of chapter 13, where the court
22 finds there was a substantial failure to disclose material
23 terms regarding interest, late fees, or other fees related
24 to a claim secured by a security interest in the debtor’s
25 principal residence, the court may consider such interest,

1 late fees, or other fees to be a transfer covered under para-
 2 graph (1)(B).”.

3 **SEC. 4. DELAY OF COUNSELING REQUIREMENT WHEN**
 4 **HOUSES ARE IN FORECLOSURE.**

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

7 “(5) The requirements of paragraph (1) may be de-
 8 layed until after the date of filing, with respect to a debtor
 9 who submits to the court a certification that the holder
 10 of a claim secured by the debtor’s principal residence has
 11 initiated a judicial or nonjudicial foreclosure on the debt-
 12 or’s principal residence.”.

13 **SEC. 5. STUDY AND REPORT.**

14 (a) STUDY.—The Comptroller General of the United
 15 States shall conduct a study to determine the impact of
 16 allowing bankruptcy judges to restructure principal resi-
 17 dence mortgages on the secondary market for mortgages.

18 (b) REPORT TO CONGRESS.—Not later than 180 days
 19 after the date of enactment of this Act, the Comptroller
 20 General shall submit a report to Congress on the results
 21 of the study required under subsection (a).

22 **SEC. 6. SUNSET.**

23 This Act and the amendments made by this Act shall
 24 apply with respect to filings under chapter 13 of title 11,

- 1 United States Code, occurring during the 7-year period
- 2 following the date of enactment of this Act.

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