

110TH CONGRESS
2D SESSION

S. 3690

To help struggling families stay in their homes and to ensure that taxpayers are protected when the Secretary of the Treasury purchases equity shares in financial institutions.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 17 (legislative day, SEPTEMBER 17), 2008

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

A BILL

To help struggling families stay in their homes and to ensure that taxpayers are protected when the Secretary of the Treasury purchases equity shares in financial institutions.

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 “Homeowner Assistance
5 and Taxpayer Protection Act”.

1 **TITLE I—ASSISTING**
2 **HOMEOWNERS**

3 **SEC. 101. RESTRUCTURING LOANS OWNED BY THE GOV-**
4 **ERNMENT.**

5 (a) **MORTGAGES ACQUIRED BY THE SECRETARY.**—
6 Section 109(a) of the Emergency Economic Stabilization
7 Act of 2008 (division A of Public Law 110–343) is amend-
8 ed by striking “encourage” and inserting “require”.

9 (b) **MORTGAGES HELD BY FEDERAL PROPERTY**
10 **MANAGERS.**—Section 110(b)(1) of the Emergency Eco-
11 nomic Stabilization Act of 2008 (division A of Public Law
12 110–343) is amended by striking “encourage” and insert-
13 ing “require”.

14 (c) **OBLIGATIONS SECURED BY MORTGAGES HELD**
15 **BY FEDERAL PROPERTY MANAGERS.**—Section 110(c)(1)
16 of the Emergency Economic Stabilization Act of 2008 (di-
17 vision A of Public Law 110–343) is amended by striking
18 “encourage” and inserting “require”.

19 **SEC. 102. REQUIRING LENDERS TO PARTICIPATE IN HOPE**
20 **FOR HOMEOWNERS PROGRAM WHEN HOME-**
21 **OWNERS ELECT TO PARTICIPATE.**

22 Section 257(b)(1) of the National Housing Act (12
23 U.S.C. 1715z–23(b)(1)) is amended by striking “and ex-
24 isting loan holders” and inserting “, but required on the
25 part of existing loan holders when homeowners apply,”.

1 **SEC. 103. HELPING FAMILIES SAVE THEIR HOMES IN BANK-**
2 **RUPTCY.**

3 (a) SPECIAL RULES FOR MODIFICATION OF LOANS
4 SECURED BY RESIDENCES.—

5 (1) IN GENERAL.—Section 1322(b) of title 11,
6 United States Code, is amended—

7 (A) in paragraph (10), by striking “and”
8 at the end;

9 (B) by redesignating paragraph (11) as
10 paragraph (12); and

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

13 “(11) notwithstanding paragraph (2) and other-
14 wise applicable nonbankruptcy law—

15 “(A) modify an allowed secured claim se-
16 cured by the debtor’s principal residence, as de-
17 scribed in subparagraph (B), if, after deduction
18 from the debtor’s current monthly income of
19 the expenses permitted for debtors described in
20 section 1325(b)(3) of this title (other than
21 amounts contractually due to creditors holding
22 such allowed secured claims and additional pay-
23 ments necessary to maintain possession of that
24 residence), the debtor has insufficient remain-
25 ing income to retain possession of the residence
26 by curing a default and maintaining payments

1 while the case is pending, as provided under
2 paragraph (5); and

3 “(B) provide for payment of such claim—

4 “(i) in an amount equal to the
5 amount of the allowed secured claim;

6 “(ii) for a period that is not longer
7 than 40 years; and

8 “(iii) at a rate of interest accruing
9 after such date calculated at a fixed an-
10 nual percentage rate, in an amount equal
11 to the most recently published annual yield
12 on conventional mortgages published by
13 the Board of Governors of the Federal Re-
14 serve System, as of the applicable time set
15 forth in the rules of the Board, plus a rea-
16 sonable premium for risk; and”.

17 (2) CONFORMING AMENDMENT.—Section
18 1325(a)(5) of title 11, United States Code, is
19 amended by inserting before “with respect” the fol-
20 lowing: “except as otherwise provided in section
21 1322(b)(11) of this title,”.

22 (b) WAIVER OF COUNSELING REQUIREMENT WHEN
23 HOMES ARE IN FORECLOSURE.—Section 109(h) of title
24 11, United States Code, is amended by adding at the end
25 the following:

1 “(5) The requirements of paragraph (1) shall
2 not apply with respect to a debtor who files with the
3 court a certification that a foreclosure sale of the
4 debtor’s principal residence has been scheduled.”.

5 (c) COMBATING EXCESSIVE FEES.—Section 1322(c)
6 of title 11, the United States Code, is amended—

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

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

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

12 “(3) the plan need not provide for the payment
13 of, and the debtor, the debtor’s property, and prop-
14 erty of the estate shall not be liable for, any fee,
15 cost, or charge, notwithstanding section 506(b), that
16 arises in connection with a claim secured by the
17 debtor’s principal residence if the event that gives
18 rise to such fee, cost, or charge occurs while the case
19 is pending but before the discharge order, except to
20 the extent that—

21 “(A) notice of such fees, costs, or charges
22 is filed with the court, and served on the debtor
23 and the trustee, before the expiration of the
24 earlier of—

1 “(i) 1 year after the event that gives
2 rise to such fee, cost, or charge occurs; or

3 “(ii) 60 days before the closing of the
4 case; and

5 “(B) such fees, costs, or charges are law-
6 ful, reasonable, and provided for in the agree-
7 ment under which such claim or security inter-
8 est arose;

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

17 “(5) a plan may provide for the waiver of any
18 prepayment penalty on a claim secured by the prin-
19 cipal residence of the debtor.”.

20 (d) PROHIBITING CLAIMS ARISING FROM VIOLA-
21 TIONS OF CONSUMER PROTECTION LAWS.—Section
22 502(b) of title 11, United States Code, is amended—

23 (1) in paragraph (8), by striking “or” at the
24 end;

1 (2) in paragraph (9), by striking the period at
2 the end and inserting “; or”; and

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

4 “(10) such claim includes a request for dam-
5 ages or rescission based on a failure to comply with
6 the Truth in Lending Act (15 U.S.C. 1601 et seq.),
7 or any other provision of applicable State or Federal
8 consumer protection law in force when the failure to
9 comply occurred, notwithstanding a prior entry of a
10 foreclosure judgment.”.

11 (e) APPLICATION OF AMENDMENTS.—The amend-
12 ments made to title 11, United States Code, by this sec-
13 tion shall apply with respect to cases commenced under
14 that title 11 on or after the date of enactment of this Act,
15 or pending on the date of enactment of this Act.

16 **TITLE II—PROTECTING** 17 **TAXPAYERS**

18 **SEC. 201. BARRING DIVIDEND INCREASES.**

19 Section 113(d) of the Emergency Economic Stabiliza-
20 tion Act of 2008 (division A of Public Law 110–343) is
21 amended by adding at the end the following:

22 “(4) DIVIDENDS.—If the Secretary purchases
23 troubled assets under the authority of this Act, the
24 financial institutions from which such assets are
25 purchased may not pay dividends in a cumulative

1 amount that is higher in the current or a future fis-
 2 cal year than the cumulative dividends paid in the
 3 fiscal year immediately preceding the sale of the
 4 troubled assets until such time as the troubled as-
 5 sets are no longer owned by the Secretary.”.

6 **SEC. 202. REDUCING DIVIDENDS TO PAY FOR EXCESSIVE**
 7 **EXECUTIVE COMPENSATION.**

8 Section 111(b)(2) of the Emergency Economic Sta-
 9 bilization Act of 2008 (Public Law 110–343) is amend-
 10 ed—

11 (1) in subparagraph (B), by striking “and” at
 12 the end;

13 (2) in subparagraph (C), by striking the period
 14 at the end and inserting “; and”; and

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

16 “(D) a reduction in dividends paid by the
 17 institution in its next fiscal year equal to the
 18 executive compensation paid to senior executive
 19 officers in excess of \$500,000 per officer in the
 20 current fiscal year.”.

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