

111TH CONGRESS  
1ST SESSION

# S. 61

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

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## IN THE SENATE OF THE UNITED STATES

JANUARY 6, 2009

Mr. DURBIN (for himself, Mrs. BOXER, Mrs. FEINSTEIN, Mr. HARKIN, Mr. SCHUMER, and Mr. WHITEHOUSE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## 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 “Helping Families Save  
5 Their Homes in Bankruptcy Act of 2009”.

6 **SEC. 2. ELIGIBILITY FOR RELIEF.**

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

1           (1) by adding at the end of subsection (e) the  
2 following: “For purposes of this subsection, the com-  
3 putation of debts shall not include the secured or  
4 unsecured portions of—

5           “(1) debts secured by the debtor’s principal res-  
6 idence if the current value of that residence is less  
7 than the secured debt limit; or

8           “(2) debts secured or formerly secured by real  
9 property that was the debtor’s principal residence  
10 that was sold in foreclosure or that the debtor sur-  
11 rendered to the creditor if the current value of such  
12 real property is less than the secured debt limit.”;  
13 and

14           (2) by adding at the end of subsection (h) the  
15 following:

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

22 **SEC. 3. PROHIBITING CLAIMS ARISING FROM VIOLATIONS**  
23 **OF CONSUMER PROTECTION LAWS.**

24           Section 502(b) of title 11, United States Code, is  
25 amended—

1           (1) in paragraph (8) by striking “or” at the  
2 end,

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

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

6           “(10) the claim is subject to any remedy for  
7 damages or rescission due to failure to comply with  
8 any applicable requirement under the Truth in  
9 Lending Act, or any other provision of applicable  
10 State or Federal consumer protection law that was  
11 in force when the noncompliance took place, notwith-  
12 standing the prior entry of a foreclosure judgment.”.

13 **SEC. 4. AUTHORITY TO MODIFY CERTAIN MORTGAGES.**

14           Section 1322(b) of title 11, United States Code, is  
15 amended—

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

18           (2) in paragraph (10) by striking “and” at the  
19 end, and

20           (3) by inserting after paragraph (10) the fol-  
21 lowing:

22           “(11) notwithstanding paragraph (2) and other-  
23 wise applicable nonbankruptcy law, with respect to a  
24 claim for a loan secured by a security interest in the  
25 debtor’s principal residence that is the subject of a

1 notice that a foreclosure may be commenced, modify  
2 the rights of the holder of such claim—

3 “(A) by providing for payment of the  
4 amount of the allowed secured claim as deter-  
5 mined under section 506(a)(1);

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

11 “(C) by modifying the terms and condi-  
12 tions of such loan—

13 “(i) to extend the repayment period  
14 for a period that is no longer than the  
15 longer of 40 years (reduced by the period  
16 for which such loan has been outstanding)  
17 or the remaining term of such loan, begin-  
18 ning on the date of the order for relief  
19 under this chapter; and

20 “(ii) to provide for the payment of in-  
21 terest accruing after the date of the order  
22 for relief under this chapter at an annual  
23 percentage rate calculated at a fixed an-  
24 nual percentage rate, in an amount equal  
25 to the then most recently published annual

1 yield on conventional mortgages published  
2 by the Board of Governors of the Federal  
3 Reserve System, as of the applicable time  
4 set forth in the rules of the Board, plus a  
5 reasonable premium for risk; and

6 “(D) by providing for payments of such  
7 modified loan directly to the holder of the  
8 claim; and”.

9 **SEC. 5. COMBATING EXCESSIVE FEES.**

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

12 (1) in paragraph (1) by striking “and” at the  
13 end,

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

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

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

22 “(A) the holder of the claim for such debt  
23 files with the court (annually or, in order to  
24 permit filing consistent with clause (ii), at such  
25 more frequent periodicity as the court deter-

1           mines necessary) notice of such fee, cost, or  
2           charge before the earlier of—

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

5                   “(ii) 60 days before the closing of the  
6                   case; and

7                   “(B) such fee, cost, or charge—

8                           “(i) is lawful under applicable non-  
9                           bankruptcy law, reasonable, and provided  
10                           for in the applicable security agreement;  
11                           and

12                                   “(ii) is secured by property the value  
13                                   of which is greater than the amount of  
14                                   such claim, including such fee, cost, or  
15                                   charge;

16                   “(4) the failure of a party to give notice de-  
17                   scribed in paragraph (3) shall be deemed a waiver  
18                   of any claim for fees, costs, or charges described in  
19                   paragraph (3) for all purposes, and any attempt to  
20                   collect such fees, costs, or charges shall constitute a  
21                   violation of section 524(a)(2) or, if the violation oc-  
22                   curs before the date of discharge, of section 362(a);  
23                   and

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

4 **SEC. 6. CONFIRMATION OF PLAN.**

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

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

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

11          (3) by inserting after paragraph (9) the fol-  
12          lowing:

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

17                       “(A) the payment of such holder’s allowed  
18                       secured claim; or

19                       “(B) discharge under section 1328; and

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

23 **SEC. 7. DISCHARGE.**

24           Section 1328 of title 11, the United States Code, is  
25 amended—

1 (1) in subsection (a)—

2 (A) by inserting “(other than payments to  
3 holders of claims whose rights are modified  
4 under section 1322(b)(11)” after “paid” the  
5 1st place it appears, and

6 (B) in paragraph (1) by inserting “or, to  
7 the extent of the unpaid portion of an allowed  
8 secured claim, provided for in section  
9 1322(b)(11)” after “1322(b)(5)”, and

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

14 **SEC. 8. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

15 (a) **EFFECTIVE DATE.**—Except as provided in sub-  
16 section (b), this Act and the amendments made by this  
17 Act shall take effect on the date of the enactment of this  
18 Act.

19 (b) **APPLICATION OF AMENDMENTS.**—The amend-  
20 ments made by this Act shall apply with respect to cases  
21 commenced under title 11 of the United States Code be-  
22 fore, on, or after the date of the enactment of this Act.

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