

Calendar No. 52

111TH CONGRESS
1ST SESSION**S. 896**

To prevent mortgage foreclosures and enhance mortgage credit availability.

IN THE SENATE OF THE UNITED STATES

APRIL 24, 2009

Mr. DODD (for himself, Mr. DURBIN, and Mr. SCHUMER) introduced the following bill; which was read the first time

APRIL 27, 2009

Read the second time and placed on the calendar

A BILL

To prevent mortgage foreclosures and enhance mortgage credit availability.

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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as “Help-
5 ing Families Save Their Homes Act of 2009”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is the following:

Sec. 1. Short title; table of contents.

TITLE I—PREVENTION OF MORTGAGE FORECLOSURES

- Sec. 101. FHA loan modification program.
 Sec. 102. Mortgage modification data collecting and reporting.

TITLE II—FORECLOSURE MITIGATION AND CREDIT
AVAILABILITY

- Sec. 201. Servicer safe harbor for mortgage loan modifications.
 Sec. 202. Changes to HOPE for Homeowners Program.
 Sec. 203. Requirements for FHA-approved mortgagees.
 Sec. 204. Enhancement of liquidity and stability of insured depository institutions to ensure availability of credit and reduction of foreclosures.
 Sec. 205. Application of GSE conforming loan limit to mortgages assisted with TARP funds.
 Sec. 206. Mortgages on certain homes on leased land.
 Sec. 207. Sense of Congress regarding mortgage revenue bond purchases.

TITLE III—MORTGAGE FRAUD

- Sec. 301. Short title.
 Sec. 302. Nationwide Mortgage Fraud Task Force.

TITLE IV—FORECLOSURE MORATORIUM PROVISIONS

- Sec. 401. Sense of the Congress on foreclosures.

1 **TITLE I—PREVENTION OF**
 2 **MORTGAGE FORECLOSURES**

3 **SEC. 101. FHA LOAN MODIFICATION PROGRAM.**

4 (a) IN GENERAL.—Subsection (a) of section 204 of
 5 the National Housing Act (12 U.S.C. 1710(a)) is amended
 6 by adding at the end the following new paragraph:

7 “(10) LOAN MODIFICATION PROGRAM.—

8 “(A) AUTHORITY.—The Secretary may
 9 carry out a program solely to encourage loan
 10 modifications for eligible delinquent mortgages
 11 through the payment of insurance benefits and
 12 assignment of the mortgage to the Secretary
 13 and the subsequent modification of the terms of

1 the mortgage according to a loan modification
2 approved by the mortgagee.

3 “(B) PAYMENT OF BENEFITS AND ASSIGN-
4 MENT.—Under the program under this para-
5 graph, the Secretary may pay insurance bene-
6 fits for a mortgage, in the amount determined
7 in accordance with paragraph (5)(A), without
8 reduction for any amounts modified, but only
9 upon the assignment, transfer, and delivery to
10 the Secretary of all rights, interest, claims, evi-
11 dence, and records with respect to the mortgage
12 specified in clauses (i) through (iv) of para-
13 graph (1)(A).

14 “(C) DISPOSITION.—After modification of
15 a mortgage pursuant to this paragraph, the
16 Secretary may provide insurance under this
17 title for the mortgage. The Secretary may sub-
18 sequently—

19 “(i) re-assign the mortgage to the
20 mortgagee under terms and conditions as
21 are agreed to by the mortgagee and the
22 Secretary;

23 “(ii) act as a Government National
24 Mortgage Association issuer, or contract
25 with an entity for such purpose, in order

1 to pool the mortgage into a Government
2 National Mortgage Association security; or
3 “(iii) re-sell the mortgage in accord-
4 ance with any program that has been es-
5 tablished for purchase by the Federal Gov-
6 ernment of mortgages insured under this
7 title, and the Secretary may coordinate
8 standards for interest rate reductions
9 available for loan modification with inter-
10 est rates established for such purchase.

11 “(D) LOAN SERVICING.—In carrying out
12 the program under this section, the Secretary
13 may require the existing servicer of a mortgage
14 assigned to the Secretary under the program to
15 continue servicing the mortgage as an agent of
16 the Secretary during the period that the Sec-
17 retary acquires and holds the mortgage for the
18 purpose of modifying the terms of the mort-
19 gage. If the mortgage is resold pursuant to sub-
20 paragraph (C)(iii), the Secretary may provide
21 for the existing servicer to continue to service
22 the mortgage or may engage another entity to
23 service the mortgage.”.

24 (b) AMENDMENT TO PARTIAL CLAIM AUTHORITY.—
25 Paragraph (1) of section 230(b) of the National Housing

1 Act (12 U.S.C. 1715u(b)(1)) is amended by striking “12
2 of the monthly mortgage payments” and inserting “30
3 percent of the unpaid principal balance of the mortgage”.

4 (c) IMPLEMENTATION.—The Secretary of Housing
5 and Urban Development may implement the amendments
6 made by this section through notice or mortgagee letter.

7 **SEC. 102. MORTGAGE MODIFICATION DATA COLLECTING**
8 **AND REPORTING.**

9 (a) REPORTING REQUIREMENTS.—Not later than
10 120 days after the date of the enactment of this Act, and
11 quarterly thereafter, the Comptroller of the Currency, in
12 coordination with the Director of the Office of Thrift Su-
13 pervision, shall submit a report to the Committee on
14 Banking, Housing, and Urban Affairs of the Senate, the
15 Committee on Financial Services of the House of Rep-
16 resentatives, and the Joint Economic Committee on the
17 volume of mortgage modifications reported to the Office
18 of the Comptroller of the Currency and the Office of
19 Thrift Supervision, under the mortgage metrics program
20 of each such Office, during the previous quarter, including
21 the following:

22 (1) A copy of the data collection instrument
23 currently used by the Office of the Comptroller of
24 the Currency and the Office of Thrift Supervision to
25 collect data on loan modifications.

1 (2) The total number of mortgage modifications
2 resulting in each of the following:

3 (A) Additions of delinquent payments and
4 fees to loan balances.

5 (B) Interest rate reductions and freezes.

6 (C) Term extensions.

7 (D) Reductions of principal.

8 (E) Deferrals of principal.

9 (F) Combinations of modifications de-
10 scribed in subparagraph (A), (B), (C), (D), or
11 (E).

12 (3) The total number of mortgage modifications
13 in which the total monthly principal and interest
14 payment resulted in the following:

15 (A) An increase.

16 (B) Remained the same.

17 (C) Decreased less than 10 percent.

18 (D) Decreased between 10 percent and 20
19 percent.

20 (E) Decreased 20 percent or more.

21 (4) The total number of loans that have been
22 modified and then entered into default, where the
23 loan modification resulted in—

24 (A) higher monthly payments by the home-
25 owner;

1 (B) equivalent monthly payments by the
2 homeowner;

3 (C) lower monthly payments by the home-
4 owner of up to 10 percent;

5 (D) lower monthly payments by the home-
6 owner of between 10 percent to 20 percent; or

7 (E) lower monthly payments by the home-
8 owner of more than 20 percent.

9 (b) DATA COLLECTION.—

10 (1) REQUIRED.—

11 (A) IN GENERAL.—Not later than 60 days
12 after the date of the enactment of this Act, the
13 Comptroller of the Currency and the Director
14 of the Office of Thrift Supervision, shall issue
15 mortgage modification data collection and re-
16 porting requirements to institutions covered
17 under the reporting requirement of the mort-
18 gage metrics program of the Comptroller or the
19 Director.

20 (B) INCLUSIVENESS OF COLLECTIONS.—

21 The requirements under subparagraph (A) shall
22 provide for the collection of all mortgage modi-
23 fication data needed by the Comptroller of the
24 Currency and the Director of the Office of

1 Thrift Supervision to fulfill the reporting re-
 2 quirements under subsection (a).

3 (2) REPORT.—The Comptroller of the Currency
 4 shall report all requirements established under para-
 5 graph (1) to each committee receiving the report re-
 6 quired under subsection (a).

7 **TITLE II—FORECLOSURE MITI-**
 8 **GATION AND CREDIT AVAIL-**
 9 **ABILITY**

10 **SEC. 201. SERVICER SAFE HARBOR FOR MORTGAGE LOAN**
 11 **MODIFICATIONS.**

12 (a) SAFE HARBOR.—

13 (1) LOAN MODIFICATIONS AND WORKOUT
 14 PLANS.—Notwithstanding any other provision of
 15 law, and notwithstanding any investment contract
 16 between a servicer and a securitization vehicle or in-
 17 vestor, a servicer that acts consistent with the duty
 18 set forth in section 129A(a) of Truth in Lending Act
 19 (15 U.S.C. 1639a) shall not be liable for entering
 20 into a loan modification, workout, or other loss miti-
 21 gation plan, including, but not limited to, disposi-
 22 tion, including any modification or refinancing un-
 23 dertaken pursuant to standard loan modification,
 24 sale, or disposition guidelines issued by the Sec-
 25 retary of the Treasury or his designee under the

1 Emergency Economic Stabilization Act of 2008, with
2 respect to any such mortgage that meets all of the
3 criteria set forth in paragraph (2)(B) to—

4 (A) any person, based on that person's
5 ownership of a residential mortgage loan or any
6 interest in a pool of residential mortgage loans
7 or in securities that distribute payments out of
8 the principal, interest and other payments in
9 loans on the pool;

10 (B) any person who is obligated pursuant
11 to a derivatives instrument to make payments
12 determined in reference to any loan or any in-
13 terest referred to in subparagraph (A); or

14 (C) any person that insures any loan or
15 any interest referred to in subparagraph (A)
16 under any law or regulation of the United
17 States or any law or regulation of any State or
18 political subdivision of any State.

19 (2) ABILITY TO MODIFY MORTGAGES.—

20 (A) ABILITY.—Notwithstanding any other
21 provision of law, and notwithstanding any in-
22 vestment contract between a servicer and a
23 securitization vehicle or investor, a servicer—

24 (i) shall not be limited in the ability
25 to modify mortgages, the number of mort-

1 gages that can be modified, the frequency
2 of loan modifications, or the range of per-
3 missible modifications; and

4 (ii) shall not be obligated to repur-
5 chase loans from or otherwise make pay-
6 ments to the securitization vehicle on ac-
7 count of a modification, workout, or other
8 loss mitigation plan for a residential mort-
9 gage or a class of residential mortgages
10 that constitute a part or all of the mort-
11 gages in the securitization vehicle,

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

14 (B) CRITERIA.—The criteria under this
15 subparagraph with respect to a mortgage are as
16 follows:

17 (i) Default on the payment of such
18 mortgage has occurred or is reasonably
19 foreseeable.

20 (ii) The property securing such mort-
21 gage is occupied by the mortgagor of such
22 mortgage.

23 (iii) The servicer reasonably and in
24 good faith believes that the anticipated re-
25 covery on the principal outstanding obliga-

1 tion of the mortgage under the particular
2 modification or workout plan or other loss
3 mitigation action will exceed, on a net
4 present value basis, the anticipated recov-
5 ery on the principal outstanding obligation
6 of the mortgage to be realized through
7 foreclosure.

8 (3) **APPLICABILITY.**—This subsection shall
9 apply only with respect to modifications, workouts,
10 and other loss mitigation plans initiated before Jan-
11 uary 1, 2012.

12 (b) **REPORTING.**—Each servicer that engages in loan
13 modifications or workout plans subject to the safe harbor
14 in subsection (a) shall report to the Secretary on a regular
15 basis regarding the extent, scope and results of the
16 servicer’s modification activities. The Secretary shall pre-
17 scribe regulations specifying the form, content, and timing
18 of such reports.

19 (c) **DEFINITIONS.**—For purposes of this section, the
20 following definitions shall apply:

21 (1) **SECRETARY.**—The term “Secretary” means
22 the Secretary of the Treasury.

23 (2) **SECURITIZATION VEHICLE.**—The term
24 “securitization vehicle” means a trust, corporation,

1 partnership, limited liability entity, special purpose
2 entity, or other structure that—

3 (A) is the issuer, or is created by the
4 issuer, of mortgage pass-through certificates,
5 participation certificates, mortgage-backed secu-
6 rities, or other similar securities backed by a
7 pool of assets that includes residential mortgage
8 loans; and

9 (B) holds such mortgages.

10 **SEC. 202. CHANGES TO HOPE FOR HOMEOWNERS PRO-**
11 **GRAM.**

12 (a) PROGRAM CHANGES.—Section 257 of the Na-
13 tional Housing Act (12 U.S.C. 1715z–23) is amended—

14 (1) in subsection (c)—

15 (A) in the heading for paragraph (1), by
16 striking “THE BOARD” and inserting “SEC-
17 RETARY”;

18 (B) in paragraph (1), by striking “Board”
19 inserting “Secretary, after consultation with the
20 Board,”; and

21 (C) by adding after paragraph (2) the fol-
22 lowing:

23 “(3) DUTIES OF BOARD.—The Board shall ad-
24 vise the Secretary regarding the establishment and

1 implementation of the HOPE for Homeowners Pro-
2 gram.”.

3 (2) by striking “Board” each place such term
4 appears in subsections (e), (h)(1), (h)(3), (j), (l),
5 (n), (s)(3), and (v) and inserting “Secretary”;

6 (3) in subsection (e)—

7 (A) by striking paragraph (1) and insert-
8 ing the following:

9 “(1) BORROWER CERTIFICATION.—

10 “(A) NO INTENTIONAL DEFAULT OR
11 FALSE INFORMATION.—The mortgagor shall
12 provide a certification to the Secretary that the
13 mortgagor has not intentionally defaulted on
14 the existing mortgage or mortgages and has not
15 knowingly, or willfully and with actual knowl-
16 edge, furnished material information known to
17 be false for the purpose of obtaining the eligible
18 mortgage to be insured and has not been con-
19 victed under Federal or State law for fraud
20 during the 10-year period ending upon the in-
21 surance of the mortgage under this section.

22 “(B) LIABILITY FOR REPAYMENT.—The
23 mortgagor shall agree in writing that the mort-
24 gagor shall be liable to repay to the Secretary
25 any direct financial benefit achieved from the

1 reduction of indebtedness on the existing mort-
2 gage or mortgages on the residence refinanced
3 under this section derived from misrepresenta-
4 tions made by the mortgagor in the certifi-
5 cations and documentation required under this
6 paragraph, subject to the discretion of the Sec-
7 retary.”;

8 (B) in paragraph (4)(A), by striking “;
9 subject to standards established by the Board
10 under subparagraph (B),”;

11 (C) in paragraph (7), by striking “and pro-
12 vided that” and all that follows through “new
13 second lien” and inserting “and except that the
14 Secretary may, under such terms and condi-
15 tions as the Secretary may establish, permit the
16 establishment of a second lien on a property
17 under an eligible mortgage to be insured, for
18 the purpose of facilitating payment of closing or
19 refinancing costs by a State or locality using
20 funds provided under the HOME Investment
21 Partnerships program under title II of the
22 Cranston-Gonzalez National Affordable Hous-
23 ing Act (42 U.S.C. 12721 et seq.) or the com-
24 munity development block grants program
25 under title I of the Housing and Community

1 Development Act of 1974 (42 U.S.C. 5301 et
2 seq.) or by a State or local housing finance
3 agency”;

4 (D) in paragraph (9)—

5 (i) by striking “by procuring (A) an
6 income tax return transcript of the income
7 tax return of the mortgagor, or (B)” and
8 inserting “in accordance with procedures
9 and standards that the Secretary shall es-
10 tablish, which may include requiring the
11 mortgagee to procure”; and

12 (ii) by striking “and by any other
13 method, in accordance with procedures and
14 standards that the Board shall establish”;

15 (E) by striking subparagraph (10);

16 (F) in paragraph (11), by inserting before
17 the period at the end the following: “, except
18 that the Secretary may provide exceptions to
19 such latter requirement (relating to present
20 ownership interest) for any mortgagor who has
21 inherited a property or for any mortgagor who
22 has relocated to a new jurisdiction, and is in
23 the process of trying to sell such property or
24 has been unable to sell such property due to ad-
25 verse market conditions”;

1 (G) by redesignating paragraph (11) as
2 paragraph (10); and

3 (H) by adding at the end:

4 “(11) BAN ON MILLIONAIRES.—The mortgagor
5 shall not have a net worth, as of the date the mort-
6 gator first applies for a mortgage to be insured
7 under the Program under this section, that exceeds
8 \$1,000,000.”;

9 (4) in subsection (h)(2)—

10 (A) by striking “The Board shall prohibit
11 the Secretary from paying” and inserting “The
12 Secretary shall not pay”; and

13 (B) by inserting after the period at the end
14 the following: “In implementing this provision
15 with respect to a failure by a mortgagor to
16 make a first payment, the Secretary shall estab-
17 lish policies and timing of endorsements as con-
18 sistent as is possible with endorsement policies
19 established with respect to mortgages insured
20 under section 203(b)”;

21 (5) in subsection (i)—

22 (A) by inserting “, after weighing maxi-
23 mization of participation with consideration of
24 collection of premiums,” after “Secretary
25 shall”;

1 (B) in paragraph (1), by striking “equal to
2 3 percent” and inserting “not more than 2 per-
3 cent”; and

4 (C) in paragraph (2), by striking “equal to
5 1.5 percent” and inserting “not more than 1
6 percent”;

7 (6) in subsection (k)—

8 (A) by striking the subsection heading and
9 inserting “EXIT FEE”;

10 (B) in paragraph (1), in the matter pre-
11 ceding subparagraph (A), by striking “such sale
12 or refinancing” and inserting “the mortgage
13 being insured under this section”; and

14 (C) in paragraph (2), by striking “and the
15 mortgagor” and all that follows through the
16 end and inserting “may, upon any sale or dis-
17 position of the property to which the mortgage
18 relates, be entitled to up to 50 percent of ap-
19 preciation, up to the appraised value of the
20 home at the time when the mortgage being refi-
21 nanced under this section was originally made.
22 The Secretary may share any amounts received
23 under this paragraph with the holder of the eli-
24 gible mortgage refinanced under this section.”;

1 (7) in the heading for subsection (n), by strik-
2 ing “THE BOARD” and inserting “SECRETARY”;

3 (8) in subsection (p), by striking “Under the di-
4 rection of the Board, the” and inserting “The”;

5 (9) in subsection (s)—

6 (A) in the first sentence of paragraph (2),
7 by striking “Board of Directors of” and insert-
8 ing “Advisory Board for”; and

9 (B) in paragraph (3)(A)(ii), by striking
10 “subsection (e)(1)(B) and such other” and in-
11 serting “such”;

12 (10) in subsection (v), by inserting after the pe-
13 riod at the end the following: “The Secretary shall
14 conform documents, forms, and procedures for mort-
15 gages insured under this section to those in place for
16 mortgages insured under section 203(b) to the max-
17 imum extent possible consistent with the require-
18 ments of this section.”; and

19 (11) by adding at the end the following new
20 subsections:

21 “(x) PAYMENT TO EXISTING LOAN SERVICER.—The
22 Secretary may establish a payment to the servicer of the
23 existing senior mortgage for every loan insured under the
24 HOPE for Homeowners Program in an amount, for each
25 such loan, that does not exceed \$1,000.

1 (2) by inserting after subsection (c) the fol-
2 lowing new subsection:

3 “(d) LIMITATIONS ON PARTICIPATION IN ORIGINA-
4 TION AND MORTGAGEE APPROVAL.—

5 “(1) REQUIREMENT.—Any person or entity
6 that is not approved by the Secretary to serve as a
7 mortgagee, as such term is defined in subsection
8 (c)(7), shall not participate in the origination of an
9 FHA-insured loan except as authorized by the Sec-
10 retary.

11 “(2) ELIGIBILITY FOR APPROVAL.—In order to
12 be eligible for approval by the Secretary, an appli-
13 cant mortgagee shall not be, and shall not have any
14 officer, partner, director, principal, manager, super-
15 visor, loan processor, loan underwriter, or loan origi-
16 nator of the applicant mortgagee who is—

17 “(A) currently suspended, debarred, under
18 a limited denial of participation (LDP), or oth-
19 erwise restricted under part 24 or 25 of title 24
20 of the Code of Federal Regulations, or any suc-
21 cessor regulations to such parts, or under simi-
22 lar provisions of any other Federal agency;

23 “(B) under indictment for, or has been
24 convicted of, an offense that reflects adversely
25 upon the applicant’s integrity, competence or

1 fitness to meet the responsibilities of an ap-
2 proved mortgagee;

3 “(C) subject to unresolved findings con-
4 tained in a Department of Housing and Urban
5 Development or other governmental audit, in-
6 vestigation, or review;

7 “(D) engaged in business practices that do
8 not conform to generally accepted practices of
9 prudent mortgagees or that demonstrate irre-
10 sponsibility;

11 “(E) convicted of, or who has pled guilty
12 or nolo contendere to, a felony related to partici-
13 pation in the real estate or mortgage loan in-
14 dustry—

15 “(i) during the 7-year period pre-
16 ceding the date of the application for li-
17 censing and registration; or

18 “(ii) at any time preceding such date
19 of application, if such felony involved an
20 act of fraud, dishonesty, or a breach of
21 trust, or money laundering;

22 “(F) in violation of provisions of the
23 S.A.F.E. Mortgage Licensing Act of 2008 (12
24 U.S.C. 5101 et seq.) or any applicable provision
25 of State law; or

1 “(G) in violation of any other requirement
2 as established by the Secretary.

3 “(3) RULEMAKING AND IMPLEMENTATION.—

4 The Secretary shall conduct a rulemaking to carry
5 out this subsection. The Secretary shall implement
6 this subsection not later than the expiration of the
7 60-day period beginning upon the date of the enact-
8 ment of this subsection by notice, mortgagee letter,
9 or interim final regulations, which shall take effect
10 upon issuance.”; and

11 (3) by adding at the end the following new sub-
12 section:

13 “(h) USE OF NAME.—The Secretary shall, by regula-
14 tion, require each mortgagee approved by the Secretary
15 for participation in the FHA mortgage insurance pro-
16 grams of the Secretary—

17 “(1) to use the business name of the mortgagee
18 that is registered with the Secretary in connection
19 with such approval in all advertisements and pro-
20 motional materials, as such terms are defined by the
21 Secretary, relating to the business of such mort-
22 gagee in such mortgage insurance programs; and

23 “(2) to maintain copies of all such advertise-
24 ments and promotional materials, in such form and
25 for such period as the Secretary requires.”.

1 (c) CHANGE OF STATUS.—The National Housing Act
2 is amended by striking section 532 (12 U.S.C. 1735f–10)
3 and inserting the following new section:

4 **“SEC. 532. CHANGE OF MORTGAGEE STATUS.**

5 “(a) NOTIFICATION.—Upon the occurrence of any ac-
6 tion described in subsection (b), an approved mortgagee
7 shall immediately submit to the Secretary, in writing, noti-
8 fication of such occurrence.

9 “(b) ACTIONS.—The actions described in this sub-
10 section are as follows:

11 “(1) The debarment, suspension of a Limited
12 Denial of Participation (LDP), or application of
13 other sanctions, fines, or penalties applied to the
14 mortgagee or to any officer, partner, director, prin-
15 cipal, manager, supervisor, loan processor, loan un-
16 derwriter, or loan originator of the mortgagee pursu-
17 ant to applicable provisions of State or Federal law.

18 “(2) The revocation of a State-issued mortgage
19 loan originator license issued pursuant to the
20 S.A.F.E. Mortgage Licensing Act of 2008 (12
21 U.S.C. 5101 et seq.) or any other similar declaration
22 of ineligibility pursuant to State law.”.

23 (d) CIVIL MONEY PENALTIES.—Section 536 of the
24 National Housing Act (12 U.S.C. 1735f–14) is amend-
25 ed—

1 (1) in subsection (b)—

2 (A) in paragraph (1)—

3 (i) in the matter preceding subpara-
4 graph (A), by inserting “or any of its own-
5 ers, officers, or directors” after “mort-
6 gagee or lender”;

7 (ii) in subparagraph (H), by striking
8 “title I” and all that follows through “Act
9 of 1989)” and inserting “title I or II”; and

10 (iii) by inserting after subparagraph
11 (J) the following:

12 “(K) Violation of section 202(d) of this
13 Act (12 U.S.C. 1708(d)).”; and

14 (B) in paragraph (2)—

15 (i) in subparagraph (B), by striking
16 “or” at the end;

17 (ii) in subparagraph (C), by striking
18 the period at the end and inserting “; or”;
19 and

20 (iii) by adding at the end the fol-
21 lowing new subparagraph:

22 “(D) causing or participating in any of the
23 violations set forth in paragraph (1) of this sub-
24 section.”; and

1 (2) in subsection (g), by striking “The term”
2 and all that follows through the end of the sentence
3 and inserting “For purposes of this section, a person
4 acts knowingly when a person has actual knowledge
5 of acts or should have known of the acts.”.

6 (e) EXPANDED REVIEW OF FHA MORTGAGEE AP-
7 PLICANTS AND NEWLY APPROVED MORTGAGEES.—Not
8 later than the expiration of the 3-month period beginning
9 upon the date of the enactment of this Act, the Secretary
10 of Housing and Urban Development shall—

11 (1) expand the existing process for reviewing
12 new applicants for approval for participation in the
13 mortgage insurance programs of the Secretary for
14 mortgages on 1- to 4-family residences for the pur-
15 pose of identifying applicants who represent a high
16 risk to the Mutual Mortgage Insurance Fund; and

17 (2) implement procedures that, for mortgagees
18 approved during the 12-month period ending upon
19 such date of enactment—

20 (A) expand the number of mortgages origi-
21 nated by such mortgagees that are reviewed for
22 compliance with applicable laws, regulations,
23 and policies; and

24 (B) include a process for random reviews
25 of such mortgagees and a process for reviews

1 that is based on volume of mortgages originated
2 by such mortgagees.

3 **SEC. 204. ENHANCEMENT OF LIQUIDITY AND STABILITY OF**
4 **INSURED DEPOSITORY INSTITUTIONS TO EN-**
5 **SURE AVAILABILITY OF CREDIT AND REDUC-**
6 **TION OF FORECLOSURES.**

7 (a) PERMANENT INCREASE IN DEPOSIT INSUR-
8 ANCE.—

9 (1) AMENDMENTS TO FEDERAL DEPOSIT IN-
10 SURANCE ACT.—Effective upon the date of the en-
11 actment of this Act, section 11(a) of the Federal De-
12 posit Insurance Act (12 U.S.C. 1821(a)) is amend-
13 ed—

14 (A) in paragraph (1)(E), by striking
15 “\$100,000” and inserting “\$250,000”;

16 (B) in paragraph (1)(F)(i), by striking
17 “2010” and inserting “2015”;

18 (C) in subclause (I) of paragraph
19 (1)(F)(i), by striking “\$100,000” and inserting
20 “\$250,000”;

21 (D) in subclause (II) of paragraph
22 (1)(F)(i), by striking “the calendar year pre-
23 ceding the date this subparagraph takes effect
24 under the Federal Deposit Insurance Reform

1 Act of 2005” and inserting “calendar year
2 2008”; and

3 (E) in paragraph (3)(A), by striking “, ex-
4 cept that \$250,000 shall be substituted for
5 \$100,000 wherever such term appears in such
6 paragraph”.

7 (2) AMENDMENT TO FEDERAL CREDIT UNION
8 ACT.—Section 207(k) of the Federal Credit Union
9 Act (12 U.S.C. 1787(k)) is amended—

10 (A) in paragraph (3)—

11 (i) by striking the opening quotation
12 mark before “\$250,000”;

13 (ii) by striking “, except that
14 \$250,000 shall be substituted for \$100,000
15 wherever such term appears in such sec-
16 tion”; and

17 (iii) by striking the closing quotation
18 mark after the closing parenthesis; and

19 (B) in paragraph (5), by striking
20 “\$100,000” and inserting “\$250,000”.

21 (3) REPEAL OF EESA PROVISION.—Section 136
22 of the Emergency Economic Stabilization Act (12
23 U.S.C. 5241) is hereby repealed.

24 (b) EXTENSION OF RESTORATION PLAN PERIOD.—
25 Section 7(b)(3)(E)(ii) of the Federal Deposit Insurance

1 Act (12 U.S.C. 1817(b)(3)(E)(ii)) is amended by striking
2 “5-year period” and inserting “8-year period”.

3 (c) FDIC AND NCUA BORROWING AUTHORITY.—

4 (1) FDIC.—Section 14(a) of the Federal De-
5 posit Insurance Act (12 U.S.C. 1824(a)) is amended
6 by striking “\$30,000,000,000” and inserting
7 “\$100,000,000,000”.

8 (2) NCUA.—Section 203(d)(1) of the Federal
9 Credit Union Act (12 U.S.C. 1783(d)(1)) is amend-
10 ed by striking “\$100,000,000” and inserting
11 “\$6,000,000,000”.

12 (d) EXPANDING SYSTEMIC RISK SPECIAL ASSESS-
13 MENTS.—Section 13(c)(4)(G)(ii) of the Federal Deposit
14 Insurance Act (12 U.S.C. 1823(c)(4)(G)(ii)) is amended
15 to read as follows:

16 “(ii) REPAYMENT OF LOSS.—

17 “(I) IN GENERAL.—The Corpora-
18 tion shall recover the loss to the De-
19 posit Insurance Fund arising from
20 any action taken or assistance pro-
21 vided with respect to an insured de-
22 pository institution under clause (i)
23 from 1 or more special assessments on
24 insured depository institutions, deposi-
25 tory institution holding companies

1 (with the concurrence of the Secretary
2 of the Treasury with respect to hold-
3 ing companies), or both, as the Cor-
4 poration determines to be appropriate.

5 “(II) TREATMENT OF DEPOSI-
6 TORY INSTITUTION HOLDING COMPA-
7 NIES.—For purposes of this clause,
8 sections 7(c)(2) and 18(h) shall apply
9 to depository institution holding com-
10 panies as if they were insured depository
11 institutions.

12 “(III) REGULATIONS.—The Cor-
13 poration shall prescribe such regula-
14 tions as it deems necessary to imple-
15 ment this clause. In prescribing such
16 regulations, defining terms, and set-
17 ting the appropriate assessment rate
18 or rates, the Corporation shall estab-
19 lish rates sufficient to cover the losses
20 incurred as a result of the actions of
21 the Corporation under clause (i) and
22 shall consider: the types of entities
23 that benefit from any action taken or
24 assistance provided under this sub-
25 paragraph; economic conditions, the

1 effects on the industry, and such
 2 other factors as the Corporation
 3 deems appropriate and relevant to the
 4 action taken or the assistance pro-
 5 vided. Any funds so collected that ex-
 6 ceed actual losses shall be placed in
 7 the Deposit Insurance Fund.”.

8 (e) ESTABLISHMENT OF A NATIONAL CREDIT UNION
 9 SHARE INSURANCE FUND RESTORATION PLAN PE-
 10 RIOD.—Section 202(c)(2) of the Federal Credit Union Act
 11 (12 U.S.C. 1782(c)(2)) is amended by adding at the end
 12 the following new subparagraph:

13 “(D) FUND RESTORATION PLANS.—

14 “(i) IN GENERAL.—Whenever—

15 “(I) the Board projects that the
 16 equity ratio of the Fund will, within 6
 17 months of such determination, fall
 18 below the minimum amount specified
 19 in subparagraph (C) for the des-
 20 ignated equity ratio; or

21 “(II) the equity ratio of the Fund
 22 actually falls below the minimum
 23 amount specified in subparagraph (C)
 24 for the equity ratio without any deter-

1 mination under sub-clause (I) having
2 been made,
3 the Board shall establish and implement a
4 Share Insurance Fund restoration plan
5 within 90 days that meets the require-
6 ments of clause (ii) and such other condi-
7 tions as the Board determines to be appro-
8 priate.

9 “(ii) REQUIREMENTS OF RESTORA-
10 TION PLAN.—A Share Insurance Fund res-
11 toration plan meets the requirements of
12 this clause if the plan provides that the eq-
13 uity ratio of the Fund will meet or exceed
14 the minimum amount specified in subpara-
15 graph (C) for the designated equity ratio
16 before the end of the 5-year period begin-
17 ning upon the implementation of the plan
18 (or such longer period as the Board may
19 determine to be necessary due to extraor-
20 dinary circumstances).

21 “(iii) TRANSPARENCY.—Not more
22 than 30 days after the Board establishes
23 and implements a restoration plan under
24 clause (i), the Board shall publish in the
25 Federal Register a detailed analysis of the

1 factors considered and the basis for the ac-
2 tions taken with regard to the plan.”.

3 **SEC. 205. APPLICATION OF GSE CONFORMING LOAN LIMIT**
4 **TO MORTGAGES ASSISTED WITH TARP**
5 **FUNDS.**

6 In making any assistance available to prevent and
7 mitigate foreclosures on residential properties, including
8 any assistance for mortgage modifications, using any
9 amounts made available to the Secretary of the Treasury
10 under title I of the Emergency Economic Stabilization Act
11 of 2008, the Secretary shall provide that the limitation
12 on the maximum original principal obligation of a mort-
13 gage that may be modified, refinanced, made, guaranteed,
14 insured, or otherwise assisted, using such amounts shall
15 not be less than the dollar amount limitation on the max-
16 imum original principal obligation of a mortgage that may
17 be purchased by the Federal Home Loan Mortgage Cor-
18 poration that is in effect, at the time that the mortgage
19 is modified, refinanced, made, guaranteed, insured, or oth-
20 erwise assisted using such amounts, for the area in which
21 the property involved in the transaction is located.

1 **SEC. 206. MORTGAGES ON CERTAIN HOMES ON LEASED**
 2 **LAND.**

3 Section 255(b)(4) of the National Housing Act (12
 4 U.S.C. 1715z–20(b)(4)) is amended by striking subpara-
 5 graph (B) and inserting:

6 “(B) under a lease that has a term that
 7 ends no earlier than the minimum number of
 8 years, as specified by the Secretary, beyond the
 9 actuarial life expectancy of the mortgagor or co-
 10 mortgagor, whichever is the later date.”.

11 **SEC. 207. SENSE OF CONGRESS REGARDING MORTGAGE**
 12 **REVENUE BOND PURCHASES.**

13 It is the sense of the Congress that the Secretary of
 14 the Treasury should use amounts made available in this
 15 Act to purchase mortgage revenue bonds for single-family
 16 housing issued through State housing finance agencies
 17 and through units of local government and agencies there-
 18 of.

19 **TITLE III—MORTGAGE FRAUD**

20 **SEC. 301. SHORT TITLE.**

21 This title may be cited as the “Nationwide Mortgage
 22 Fraud Task Force Act of 2009”.

23 **SEC. 302. NATIONWIDE MORTGAGE FRAUD TASK FORCE.**

24 (a) ESTABLISHMENT.—There is established in the
 25 Department of Justice the Nationwide Mortgage Fraud
 26 Task Force (hereinafter referred to in this section as the

1 “Task Force”) to address mortgage fraud in the United
2 States.

3 (b) SUPPORT.—The Attorney General shall provide
4 the Task Force with the appropriate staff, administrative
5 support, and other resources necessary to carry out the
6 duties of the Task Force.

7 (c) EXECUTIVE DIRECTOR.—The Attorney General
8 shall appoint one staff member provided to the Task Force
9 to be the Executive Director of the Task Force and such
10 Executive Director shall ensure that the duties of the Task
11 Force are carried out.

12 (d) BRANCHES.—The Task Force shall establish,
13 oversee, and direct branches in each of the 10 States de-
14 termined by the Attorney General to have the highest con-
15 centration of mortgage fraud.

16 (e) MANDATORY FUNCTIONS.—The Task Force, in-
17 cluding the branches of the Task Force established under
18 subsection (d), shall—

19 (1) establish coordinating entities, and solicit
20 the voluntary participation of Federal, State, and
21 local law enforcement and prosecutorial agencies in
22 such entities, to organize initiatives to address mort-
23 gage fraud, including initiatives to enforce State
24 mortgage fraud laws and other related Federal and
25 State laws;

1 (2) provide training to Federal, State, and local
2 law enforcement and prosecutorial agencies with re-
3 spect to mortgage fraud, including related Federal
4 and State laws;

5 (3) collect and disseminate data with respect to
6 mortgage fraud, including Federal, State, and local
7 data relating to mortgage fraud investigations and
8 prosecutions; and

9 (4) perform other functions determined by the
10 Attorney General to enhance the detection of, pre-
11 vention of, and response to mortgage fraud in the
12 United States.

13 (f) OPTIONAL FUNCTIONS.—The Task Force, includ-
14 ing the branches of the Task Force established under sub-
15 section (d), may—

16 (1) initiate and coordinate Federal mortgage
17 fraud investigations and, through the coordinating
18 entities established under subsection (e), State and
19 local mortgage fraud investigations;

20 (2) establish a toll-free hotline for—

21 (A) reporting mortgage fraud;

22 (B) providing the public with access to in-
23 formation and resources with respect to mort-
24 gage fraud; and

1 (C) directing reports of mortgage fraud to
2 the appropriate Federal, State, and local law
3 enforcement and prosecutorial agency, including
4 to the appropriate branch of the Task Force es-
5 tablished under subsection (d);

6 (3) create a database with respect to suspen-
7 sions and revocations of mortgage industry licenses
8 and certifications to facilitate the sharing of such in-
9 formation by States;

10 (4) make recommendations with respect to the
11 need for and resources available to provide the
12 equipment and training necessary for the Task
13 Force to combat mortgage fraud; and

14 (5) propose legislation to Federal, State, and
15 local legislative bodies with respect to the elimination
16 and prevention of mortgage fraud, including meas-
17 ures to address mortgage loan procedures and prop-
18 erty appraiser practices that provide opportunities
19 for mortgage fraud.

20 (g) DEFINITION.—In this section, the term “mort-
21 gage fraud” means a material misstatement, misrepresen-
22 tation, or omission relating to the property or potential
23 mortgage relied on by an underwriter or lender to fund,
24 purchase, or insure a loan.

1 **TITLE IV—FORECLOSURE**
2 **MORATORIUM PROVISIONS**

3 **SEC. 401. SENSE OF THE CONGRESS ON FORECLOSURES.**

4 (a) IN GENERAL.—It is the sense of the Congress
5 that mortgage holders, institutions, and mortgage
6 servicers should not initiate a foreclosure proceeding or
7 a foreclosure sale on any homeowner until the foreclosure
8 mitigation provisions, like the Hope for Homeowners pro-
9 gram, as required under title II, and the President’s
10 “Homeowner Affordability and Stability Plan” have been
11 implemented and determined to be operational by the Sec-
12 retary of Housing and Urban Development and the Sec-
13 retary of the Treasury.

14 (b) SCOPE OF MORATORIUM.—The foreclosure mora-
15 torium referred to in subsection (a) should apply only for
16 first mortgages secured by the owner’s principal dwelling.

17 (c) FHA-REGULATED LOAN MODIFICATION AGREE-
18 MENTS.—If a mortgage holder, institution, or mortgage
19 servicer to which subsection (a) applies reaches a loan
20 modification agreement with a homeowner under the aus-
21 pices of the Federal Housing Administration before any
22 plan referred to in such subsection takes effect, subsection
23 (a) shall cease to apply to such institution as of the effec-
24 tive date of the loan modification agreement.

1 (d) DUTY OF CONSUMER TO MAINTAIN PROPERTY.—

2 Any homeowner for whose benefit any foreclosure pro-
3 ceeding or sale is barred under subsection (a) from being
4 instituted, continued , or consummated with respect to any
5 homeowner mortgage should not, with respect to any prop-
6 erty securing such mortgage, destroy, damage, or impair
7 such property, allow the property to deteriorate, or commit
8 waste on the property.

9 (e) DUTY OF CONSUMER TO RESPOND TO REASON-

10 ABLE INQUIRIES.—Any homeowner for whose benefit any
11 foreclosure proceeding or sale is barred under subsection
12 (a) from being instituted, continued, or consummated with
13 respect to any homeowner mortgage should respond to
14 reasonable inquiries from a creditor or servicer during the
15 period during which such foreclosure proceeding or sale
16 is barred.

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111TH CONGRESS
1ST Session

S. 896

A BILL

To prevent mortgage foreclosures and enhance
mortgage credit availability.

APRIL 27, 2009

Read the second time and placed on the calendar