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H. R. 101

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

JANUARY 3, 2013

Mr. CONYERS (for himself, Mr. COHEN, Mr. NADLER, Mr. MCDERMOTT, Mr. SCOTT of Virginia, Mr. JOHNSON of Georgia, and Ms. JACKSON LEE) introduced the following bill; which was 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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Home Foreclosure Reduction Act of 2013''.

SEC. 2. DEFINITION.

Section 101 of title 11, United States Code, is amended by inserting after paragraph (43) the following

(and make such technical and conforming changes as may be appropriate):

"(43A) The term 'qualified loan modification' means a loan modification agreement made in accordance with the guidelines of the Obama Administration's Homeowner Affordability and Stability Plan as implemented March 4, 2009, that—

"(A) reduces the debtor's payment (including principal and interest, and payments for real estate taxes, hazard insurance, mortgage insurance premium, homeowners' association dues, ground rent, and special assessments) on a loan secured by a senior security interest in the principal residence of the debtor, to a percentage of the debtor's income in accordance with such guidelines, without any period of negative amortization or under which the aggregate amount of the regular periodic payments would not fully amortize the outstanding principal amount of such loan;

"(B) requires no fees or charges to be paid by the debtor in order to obtain such modification; and

"(C) permits the debtor to continue to make payments under the modification agree-

ment notwithstanding the filing of a case under this title, as if such case had not been filed.''.

SEC. 3. ELIGIBILITY FOR RELIEF.

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

(1) by adding at the end of subsection (e) the following: ''For purposes of this subsection, the computation of debts shall not include the secured or unsecured portions of—

''(1) debts secured by the debtor's principal residence if the value of such residence as of the date of the order for relief under chapter 13 is less than the applicable maximum amount of noncontingent, liquidated, secured debts specified in this subsection; or

''(2) debts secured or formerly secured by what was the debtor's principal residence that was sold in foreclosure or that the debtor surrendered to the creditor if the value of such real property as of the date of the order for relief under chapter 13 was less than the applicable maximum amount of noncontingent, liquidated, secured debts specified in this subsection.'', and

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

"(5) Notwithstanding the 180-day period specified in paragraph (1), with respect to a debtor in a case under chapter 13 who submits to the court a certification that the debtor has received notice that the holder of a claim secured by the debtor's principal residence may commence a foreclosure on the debtor's principal residence, the requirements of paragraph (1) shall be considered to be satisfied if the debtor satisfies such requirements not later than the expiration of the 30-day period beginning on the date of the filing of the petition.".

SEC. 4. PROHIBITING CLAIMS ARISING FROM VIOLATIONS OF THE TRUTH IN LENDING ACT.

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

(1) in paragraph (8) by striking "or" at the end,

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

(3) by adding at the end the following:

"(10) the claim for a loan secured by a security interest in the debtor's principal residence is subject to a remedy for rescission under the Truth in Lending Act notwithstanding the prior entry of a foreclosure judgment, except that nothing in this para-

graph shall be construed to modify, impair, or supersede any other right of the debtor.''.

SEC. 5. AUTHORITY TO MODIFY CERTAIN MORTGAGES.

Section 1322 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) by redesignating paragraph (11) as paragraph (12),

(B) in paragraph (10) by striking ''and'' at the end, and

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

''(11) notwithstanding paragraph (2), with respect to a claim for a loan originated before the effective date of this paragraph and secured by a security interest in the debtor's principal residence that is the subject of a notice that a foreclosure may be commenced with respect to such loan, modify the rights of the holder of such claim (and the rights of the holder of any claim secured by a subordinate security interest in such residence)—

''(A) by providing for payment of the amount of the allowed secured claim as determined under section 506(a)(1);

"(B) if any applicable rate of interest is adjustable under the terms of such loan by prohibiting, reducing, or delaying adjustments to such rate of interest applicable on and after the date of filing of the plan;

"(C) by modifying the terms and conditions of such loan—

"(i) to extend the repayment period for a period that is no longer than the longer of 40 years (reduced by the period for which such loan has been outstanding) or the remaining term of such loan, beginning on the date of the order for relief under this chapter; and

"(ii) to provide for the payment of interest accruing after the date of the order for relief under this chapter at a fixed annual rate equal to the currently applicable average prime offer rate as of the date of the order for relief under this chapter, corresponding to the repayment term determined under the preceding paragraph, as published by the Federal Financial Institutions Examination Council in its table enti-

tled 'Average Prime Offer Rates—Fixed', plus a reasonable premium for risk; and

''(D) by providing for payments of such modified loan directly to the holder of the claim or, at the discretion of the court, through the trustee during the term of the plan; and'', and

(2) by adding at the end the following:

''(g) A claim may be reduced under subsection (b)(11)(A) only on the condition that if the debtor sells the principal residence securing such claim, before completing all payments under the plan (or, if applicable, before receiving a discharge under section 1328(b)) and receives net proceeds from the sale of such residence, then the debtor agrees to pay to such holder not later than 15 days after receiving such proceeds—

''(1) if such residence is sold in the 1st year occurring after the effective date of the plan, 90 percent of the amount of the difference between the sales price and the amount of such claim as originally determined under subsection (b)(11) (plus costs of sale and improvements), but not to exceed the unpaid amount of the allowed secured claim determined as if such claim had not been reduced under such subsection;

"(2) if such residence is sold in the 2d year occurring after the effective date of the plan, 70 percent of the amount of the difference between the sales price and the amount of such claim as originally determined under subsection (b)(11) (plus costs of sale and improvements), but not to exceed the unpaid amount of the allowed secured claim determined as if such claim had not been reduced under such subsection;

"(3) if such residence is sold in the 3d year occurring after the effective date of the plan, 50 percent of the amount of the difference between the sales price and the amount of such claim as originally determined under subsection (b)(11) (plus costs of sale and improvements), but not to exceed the unpaid amount of the allowed secured claim determined as if such claim had not been reduced under such subsection;

"(4) if such residence is sold in the 4th year occurring after the effective date of the plan, 30 percent of the amount of the difference between the sales price and the amount of such claim as originally determined under subsection (b)(11) (plus costs of sale and improvements), but not to exceed the unpaid amount of the allowed secured claim de-

termined as if such claim had not been reduced under such subsection; and

"(5) if such residence is sold in the 5th year occurring after the effective date of the plan, 10 percent of the amount of the difference between the sales price and the amount of such claim as originally determined under subsection (b)(11) (plus costs of sale and improvements), but not to exceed the unpaid amount of the allowed secured claim determined as if such claim had not been reduced under such subsection.

"(h) With respect to a claim of the kind described in subsection (b)(11), the plan may not contain a modification under the authority of subsection (b)(11)—

"(1) in a case commenced under this chapter after the expiration of the 30-day period beginning on the effective date of this subsection, unless—

"(A) the debtor certifies that the debtor—

"(i) not less than 30 days before the commencement of the case, contacted the holder of such claim (or the entity collecting payments on behalf of such holder) regarding modification of the loan that is the subject of such claim;

"(ii) provided the holder of the claim (or the entity collecting payments on behalf of such holder) a written statement of the debtor's current income, expenses, and debt substantially conforming with the schedules required under section 521(a) or such other form as is promulgated by the Judicial Conference of the United States for such purpose; and

"(iii) considered any qualified loan modification offered to the debtor by the holder of the claim (or the entity collecting payments on behalf of such holder); or

"(B) a foreclosure sale is scheduled to occur on a date in the 30-day period beginning on the date of case is commenced; and

"(2) in any other case pending under this chapter, unless the debtor certifies that the debtor attempted to contact the holder of such claim (or the entity collecting payments on behalf of such holder) regarding modification of the loan that is the subject of such claim, before—

"(A) filing a plan under section 1321 that contains a modification under the authority of subsection (b)(11); or

"(B) modifying a plan under section 1323 or 1329 to contain a modification under the authority of subsection (b)(11).

"(i) In determining the holder's allowed secured claim under section 506(a)(1) for purposes of subsection (b)(11)(A), the value of the debtor's principal residence shall be the fair market value of such residence on the date such value is determined and, if the issue of value is contested, the court shall determine such value in accordance with the appraisal rules used by the Federal Housing Administration.".

SEC. 6. COMBATING EXCESSIVE FEES.

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

(1) in paragraph (1) by striking "and" at the end,

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

(3) by adding at the end the following:

"(3) the debtor, the debtor's property, and property of the estate are not liable for a fee, cost, or charge that is incurred while the case is pending and arises from a debt that is secured by the debtor's principal residence except to the extent that—

"(A) the holder of the claim for such debt files with the court and serves on the trustee, the debtor, and the debtor's attorney (annually or, in order to permit filing consistent with clause (ii), at such more frequent periodicity as the court determines necessary) notice of such fee, cost, or charge before the earlier of—

"(i) 1 year after such fee, cost, or charge is incurred; or

"(ii) 60 days before the closing of the case; and

"(B) such fee, cost, or charge—

"(i) is lawful under applicable non-bankruptcy law, reasonable, and provided for in the applicable security agreement; and

"(ii) is secured by property the value of which is greater than the amount of such claim, including such fee, cost, or charge;

"(4) the failure of a party to give notice described in paragraph (3) shall be deemed a waiver of any claim for fees, costs, or charges described in paragraph (3) for all purposes, and any attempt to collect such fees, costs, or charges shall constitute a

violation of section 524(a)(2) or, if the violation occurs before the date of discharge, of section 362(a); and

''(5) a plan may provide for the waiver of any prepayment penalty on a claim secured by the debtor's principal residence.''.

SEC. 7. CONFIRMATION OF PLAN.

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

(1) in the matter preceding paragraph (1) strike ''subsection (b)'' and insert ''subsections (b) and (d)'',

(2) in paragraph (5)—

(A) by inserting ''except as otherwise provided in section 1322(b)(11),'' after ''(5)'', and

(B) in subparagraph (B)(iii)(I) by inserting ''(including payments of a claim modified under section 1322(b)(11))'' after ''payments'' the first place it appears,

(3) in paragraph (8) by striking ''and'' at the end,

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

(5) by inserting after paragraph (9) the following:

"(10) notwithstanding subclause (I) of paragraph (5)(B)(i), whenever the plan modifies a claim in accordance with section 1322(b)(11), the holder of a claim whose rights are modified pursuant to section 1322(b)(11) shall retain the lien until the later of—

"(A) the payment of such holder's allowed secured claim; or

"(B) completion of all payments under the plan (or, if applicable, receipt of a discharge under section 1328(b)); and

"(11) whenever the plan modifies a claim in accordance with section 1322(b)(11), the court finds that such modification is in good faith (Lack of good faith exists if the debtor has no need for relief under this paragraph because the debtor can pay all of his or her debts and any future payment increases on such debts without difficulty for the foreseeable future, including the positive amortization of mortgage debt. In determining whether a reduction of the principal amount of the loan resulting from a modification made under the authority of section 1322(b)(11) is made in good faith, the court shall consider whether the holder of such claim (or the entity collecting payments on behalf of such holder)

has offered to the debtor a qualified loan modification that would enable the debtor to pay such debts and such loan without reducing such principal amount.) and does not find that the debtor has been convicted of obtaining by actual fraud the extension, renewal, or refinancing of credit that gives rise to a modified claim.''.

(b) Section 1325 of title 11, United States Code, is amended by adding at the end the following (and make such technical and conforming changes as may be appropriate):

''(d) Notwithstanding section 1322(b)(11)(C)(ii), the court, on request of the debtor or the holder of a claim secured by a senior security interest in the debtor's principal residence, may confirm a plan proposing a reduction in the interest rate on the loan secured by such security interest and that does not reduce the principal, provided the total monthly mortgage payment is reduced to a percentage of the debtor's income in accordance with the guidelines of the Obama Administration's Homeowner Affordability and Stability Plan as implemented March 4, 2009, if, taking into account the debtor's financial situation, after allowance of expenses that would be permitted for a debtor under this chapter subject to paragraph (3) of subsection (b), regardless of whether the debtor is oth-

erwise subject to such paragraph, and taking into account additional debts and fees that are to be paid in this chapter and thereafter, the debtor would be able to prevent foreclosure and pay a fully amortizing 30-year loan at such reduced interest rate without such reduction in principal.''.

SEC. 8. DISCHARGE.

Section 1328(a) of title 11, United States Code, is amended—

(1) by inserting ''(other than payments to holders of claims whose rights are modified under section 1322(b)(11))'' after ''paid'', and

(2) in paragraph (1) by inserting ''or, to the extent of the unpaid portion of an allowed secured claim, provided for in section 1322(b)(11)'' after ''1322(b)(5)''.

SEC. 9. STANDING TRUSTEE FEES.

(a) AMENDMENT TO TITLE 28.—Section 586(e)(1)(B)(i) of title 28, United States Code, is amended—

(1) by inserting ''(I) except as provided in subparagraph (II)'' after ''(i)'',

(2) by striking ''or'' at the end and inserting ''and'', and

(3) by adding at the end the following:

"(II) 4 percent with respect to payments received under section 1322(b)(11) of title 11 by the individual as a result of the operation of section 1322(b)(11)(D) of title 11, unless the bankruptcy court waives all fees with respect to such payments based on a determination that such individual has income less than 150 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved and payment of such fees would render the debtor's plan infeasible.".

(b) CONFORMING PROVISION.—The amendments made by this section shall apply to any trustee to whom the provisions of section 302(d)(3) of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (Public Law 99–554; 100 Stat. 3121) apply.

SEC. 10. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this subtitle and the amendments made by this

subtitle shall take effect on the date of the enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this subtitle shall apply with respect to cases commenced under title 11 of the United States Code before, on, or after the date of the enactment of this Act.

(2) LIMITATION.—Paragraph (1) shall not apply with respect to cases closed under title 11 of the United States Code as of the date of the enactment of this Act that are neither pending on appeal in, nor appealable to, any court of the United States.

SEC. 11. GAO STUDY.

The Comptroller General shall carry out a study, and submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate, not later than 2 years after the date of the enactment of this Act a report containing—

(1) the results of such study of—

(A) the number of debtors who filed, during the 1-year period beginning on the date of the enactment of this Act, cases under chapter 13 of title 11 of the United States Code for the

purpose of restructuring their principal residence mortgages,

(B) the number of mortgages restructured under the amendments made by this subtitle that subsequently resulted in default and foreclosure,

(C) a comparison between the effectiveness of mortgages restructured under programs outside of bankruptcy, such as Hope Now and Help for Homeowners, and mortgages restructured under the amendments made by this subtitle,

(D) the number of cases presented to the bankruptcy courts where mortgages were restructured under the amendments made by this subtitle that were appealed,

(E) the number of cases presented to the bankruptcy courts where mortgages were restructured under the amendments made by the subtitle that were overturned on appeal, and

(F) the number of bankruptcy judges disciplined as a result of actions taken to restructure mortgages under the amendments made by this subtitle, and

(2) a recommendation as to whether such amendments should be amended to include a sunset clause.

SEC. 12. REPORT TO CONGRESS.

Not later than 18 months after the date of the enactment of this Act, the Comptroller General, in consultation with the Federal Housing Administration, shall submit to the Congress, a report containing—

(1) a comprehensive review of the effects of the amendments made by this subtitle on bankruptcy court,

(2) a survey of whether the program should limit the types of homeowners eligible for the program, and

(3) a recommendation on whether such amendments should remain in effect.

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