

RPTS JOHNSON

DCMN HOFSTAD

MARKUP OF H.R. 200, THE "HELPING FAMILIES
SAVE THEIR HOMES IN BANKRUPTCY ACT OF 2009"
AND THE COMMITTEE'S OVERSIGHT PLAN

Tuesday, January 27, 2009

House of Representatives,
Committee on the Judiciary,
Washington, D.C.

The committee met, pursuant to call, at 1:31 p.m., in Room 2141, Rayburn House Office Building, Hon. John Conyers, Jr. [chairman of the committee] presiding.

Present: Representatives Conyers, Berman, Nadler, Scott, Watt, Lofgren, Jackson Lee, Waters, Delahunt, Wexler, Cohen, Johnson, Pierluisi, Gutierrez, Sherman, Baldwin, Gonzalez, Weiner, Schiff, Sanchez, Wasserman Schultz, Maffei, Smith, Sensenbrenner, Coble, Gallegly, Goodlatte, Lungren, Issa, Forbes, King, Franks, Gohmert, Jordan, Poe,

Chaffetz, Rooney, and Harper.

Staff Present: Perry Apelbaum, Staff Director/Chief Counsel; Ted Kalo, General Counsel/Deputy Staff Director; George Slover, Legislative Counsel/Parliamentarian; Sean McLaughlin, Minority Chief of Staff/General Counsel; Allison Halataei, Minority Deputy Chief of Staff/Parliamentarian; and Anita L. Johnson, Clerk.

Chairman Conyers. The committee will come to order.

Welcome to our first markup in Judiciary of the 111th Congress.

Pursuant to notice, I call up the bill H.R. 200 for purposes of markup, and ask the clerk to report the bill.

The Clerk. H.R. 200, a bill cited as the "Helping Families Save Their Homes in Bankruptcy Act of 2009."

[The information follows:]

***** COMMITTEE INSERT *****

Chairman Conyers. Without objection, the bill is considered as read, open to amendment at any point.

Before us today, my colleagues, is legislation that would grant bankruptcy courts the ability to modify the terms of a home mortgage in a Chapter 13 bankruptcy to bring them closer in line with the value of the home in a depressed real estate market. For families in distress, this is a much-needed reform. Considering the realistic alternatives, it is fair to all concerned.

I have been working on this legislation, not only on a bipartisan but a bicameral basis as well, for almost 2 years because I believe it represents one of the most tangible steps we can take to limit the fallout from the real estate depression sweeping the Nation. And it speaks to the plight of the small citizen. This is not a bailout; this is not a corporate relief operation.

Now, while this small bankruptcy reform provision may not provide all of the answers, surely it provides a common-sense, practical approach to helping stop the spiral of home foreclosures, which not only are not helping anyone, but they are hurting people who are not involved in the foreclosures.

To those who say we should continue to hold up this legislation while we seek to encourage voluntary mortgage

modifications, let me save you some time. The evidence that we have is quite substantial that these voluntary modifications don't work. For one thing, most of the servicers who control the mortgage loans are not even legally permitted to agree to voluntary modifications. And if they do, their financial incentives are stacked in the direction of foreclosure. As a result, the much-vaunted HOPE for Homeowners program has only processed less than 400 applications to date.

To those who claim that this legislation will only end up harming consumers by increasing the cost of credit, I respectfully suggest that they are not taking account of the track record of the modern-day Bankruptcy Code and may not have kept up with the latest changes that we will be making to the bill today.

For more than 3 decades, the Bankruptcy Code has permitted the very kind of court modification we are considering today for every other form of secure debt, including loans secured by second homes, investment properties, and, yes, luxury yachts, and even jets. And for over 200 years, this very same kind of modification has been available even for home mortgages if the home was a family farm. There is no indication that this has in any way increased the cost of credit for any of these kinds of loans.

Leaving aside the strong evidence of experience, the manager's amendment that will be considered shortly is aimed to limit the new authority to existing mortgages, ensuring that it cannot possibly impact the price of new mortgages. That is one reason that Citigroup and the National Association of Home Builders support the proposal. So does the Obama administration.

And, finally, to those who argue that this legislation constitutes some form of moral hazard that will encourage reckless borrowing in the future, I invite you to please come to Detroit, Michigan, where we have had more than 100,000 foreclosures over the last 3 years, continuing at the rate of 126 every day. We have block after block of for-sale and foreclosure signs feeding off each other, driving down home values, uprooting families, decimating communities, and causing local tax revenue that pays for police and firefighters to plummet.

We don't have the luxury of worrying about theoretical future moral lessons. We need to stop the actual bleeding today. The same is true in Ohio, California, Florida, Nevada, Massachusetts, and Arizona, and countless other communities all across the Nation.

If we can spend \$700 billion to bail out the brokers on Wall Street, it seems the very least we can do is allow working families willing to repay their debts as best they

can under court supervision and give them the dignity of being able to stay in their home.

So I have been open, as many of you know, about constructive proposals to improve this legislation. And today we are including a significant set of compromises in the manager's amendment that have taken into considerations of the gentleman from California, Mr. Sherman, the ranking member, Mr. Smith, and others. And I continue to be open to further good-faith proposals even after today's markup.

And so with one in 10 homeowners behind in their mortgages as we meet today and 10 million foreclosures expected over the next several years, the time for some meaningful action is now.

And I appreciate your patience. I recognize my friend, the ranking member, the gentleman from Texas, Lamar Smith.

Mr. Smith. Thank you, Mr. Chairman.

Mr. Chairman, this country is in a serious economic downturn, a downturn that is worsened by the foreclosure crisis. Until we address the foreclosure crisis, it will be difficult for the economy to recover.

Nearly 3 million homeowners are more than 60 days late on their mortgage payments and in danger of losing their homes. I am sure these bleak numbers and a sincere desire to get the economy back on track animate the proponents of mortgage bankruptcy legislation.

However, this bankruptcy bill not only will fail to solve the foreclosure crisis, but it will also make the foreclosure crisis deeper, longer, and wider. The result of this legislation will be to increase the overall cost of lending. This, in turn, will require borrowers to pay higher interest rates and other up-front costs when they borrow in the future. So the cost of allowing mortgage modification will be borne by future homeowners.

This legislation will also encourage borrowers to file for bankruptcy. Borrowers' ability to cram down mortgage principal, with the knowledge that if they sell their home in the future they will capture any appreciation, will provide a strong incentive to file for bankruptcy.

There is no guarantee that bankruptcy courts will even be able to handle the flood of bankruptcy claims that will occur should this bill be adopted. There are only 368 bankruptcy judges. If bankruptcy filings double or triple as a result of this legislation, as is predicted, it is unclear that the courts could handle the increased caseload in a quick or effective manner. This will prolong the crisis, as borrowers wait for their bankruptcy plan to be approved.

We have better alternatives available to us to enable borrowers and lenders to work together to modify unaffordable mortgages. Although many loan modification

efforts have not worked, many others are working, and more can be done. Several proposals have been made to address the problems that are preventing loan officers from providing workable loan modifications, proposals that will cost the taxpayers far less than the cost this bankruptcy bill will impose.

The majority has attempted to narrow its bill with a manager's amendment, and it does represent an improvement, but doesn't go far enough.

One section of the manager's amendment points out the problematic nature of this legislation. Section 8 of the amendment adds a rule of construction intended to shield FHA, VA, and Rural Housing Service loans from modification in bankruptcy, which is an improvement. But this raises the question, if the bill is too costly and damaging to be applied to government loan programs, why isn't it too costly and damaging to be applied to private-sector loans?

A bankruptcy solution, in my judgment, would need to be limited to subprime and nontraditional mortgages. It would need to provide bankruptcy courts clear guidance on the procedure to follow in modifying the terms of home mortgages, guidance that would make lowering payments to an affordable level the paramount goal of bankruptcy modification. It would also need to provide much stricter provisions for allowing a lender to recapture any principal

that is reduced in bankruptcy if the home is later sold at a profit.

Now, because the manager's amendment does not go far enough in narrowing the scope of this bill, I have to urge my colleagues to vote against passage of this legislation.

Mr. Chairman, I will yield back, but let me say for the sake of our colleagues here that, in discussions with you in the last few minutes, it appears that one or two amendments will be acceptable to you. And I just want to thank you for that consideration. This augurs well for this Congress and for the tone of bipartisanship that your offer sets, and it is much appreciated.

Chairman Conyers. I thank the gentleman.

I know that Brad Sherman, Steve Cohen, Trent Franks want to get in on this, but let me get the manager's substitute on the way, because we know there is going to be a vote very shortly. And so I ask the clerk to report the manager's substitute amendment that is at the desk.

The Clerk. Amendment in the nature of a substitute to H.R. 200, offered by Mr. Conyers of Michigan on behalf of himself and Ms. Jackson Lee, Ms. Lofgren, Mr. Nadler, Mr. Cohen, Mr. Johnson of Georgia, and Mr. Delahunt.

[The information follows:]

***** COMMITTEE INSERT *****

Chairman Conyers. Without objection, the amendment is considered as read.

I want to thank particularly Bill Delahunt, Steve Cohen, Jerry Nadler, Zoe Lofgren, Sheila Jackson Lee for their input in this.

And, as many of you know, earlier this month, the assistant leader from Illinois on the Senate side, Dick Durbin, and our colleague Brad Miller, and I announced an agreement with Citigroup, Incorporated. In exchange for Citigroup's support, we agreed to make three important, substantive revisions, all of which are reflected in this substitute amendment.

First, for a mortgage to be eligible for modification under the bill, it must have originated prior to the date of enactment. This significant concession removes every concern, real or otherwise, that judicial modification in bankruptcy might impact interest rates prospectively. We are very concerned about not doing that. This was one of the principal differences between my legislation and our colleague Mr. Miller's bill, which also applied only to existing mortgages.

Second, the substitute clarifies that the right of rescission that is preserved for homeowners in bankruptcy only applies to claims that are subject to rescission for

violation of the Truth in Lending Act. Some were concerned that the version of this provision in the bill as introduced was ambiguous and could have been construed to create an entirely new right to void a mortgage debt entirely for violation of any State or Federal consumer protection law.

And finally, to be eligible under the bill, a homeowner must have attempted, at least 15 days before filing for bankruptcy relief, to contact the mortgage lender or servicer. For bankruptcy cases already pending on the date of enactment, the homeowner must reach out to the lender or servicer before proposing a repayment plan to the court.

The manager's substitute also contains two additional revisions. One ensures if the homeowner sells the home after the mortgage has been modified in bankruptcy, the mortgage lender will share in any gain from the net sales proceeds, if any, on a sliding scale over the life of the Chapter 13 plan. The other additional revision is a rule of construction making clear that the bill is to have no impact on any obligation of the FHA, VA, or USDA to guarantee or insure the payment of a mortgage modified under the act.

Is there further discussion on the manager's substitute?

Mr. Smith. Mr. Chairman?

Chairman Conyers. I recognize the gentleman from Texas, Mr. Smith.

Mr. Smith. Mr. Chairman, I just want to say very briefly that I think the manager's amendment does improve the bill, at least on the edges, and I support it.

Chairman Conyers. Mr. Sherman.

Mr. Sherman. Thank you, Mr. Chairman.

This bill is going to help people stay in their homes, it is going to help families, it is going to help communities, it is going to help our national economy. Some are going to stay in their homes through what the courts do. Some are going to be able to negotiate changes in their loans by lenders who are inspired to keep them out of bankruptcy. And those negotiations will go better if the Financial Services Committee and this committee can change the incentives and legal situation that the servicers find themselves in.

However, this is not something we are accomplishing without any costs or without any effects that we want to avoid. First, keep in mind that homeowners are under water to the tune of \$4 trillion. That is to say, if you look at the homes where the mortgage exceeds the value of the home and add that all up, it is \$4 trillion. And the banking system in this country is close to insolvent.

We, in the Financial Services Committee, have provided \$700 billion. We are going to be asked for more. So whatever losses the banking system suffers may not be borne

by executives and investors but may end up being borne by taxpayers.

I think this bill may affect future loans, but only to a modest degree. And that is, we are establishing a principle here that says Congress can come in, change the bankruptcy laws. Some Congress, 10 or 20 years from now, may do exactly what we are doing here today.

I think the manager's amendment is a very good step. I think it is important to clarify that the FHA and the other government agencies are not affected. I applaud the chairman for including shared appreciation, but I would like to work to make that much stronger.

And I look forward to this being the beginning of a process, look forward to working with you hopefully to strengthen the shared appreciation provision and provide a sunset for the bill so that it applies only during the upcoming period of national economic distress.

I yield back.

Chairman Conyers. The chairman appreciates the fact that the gentleman from California serves on both this committee and the finance committee, and his input has been very important.

The Chair recognizes Chairman Emeritus Jim Sensenbrenner.

Mr. Sensenbrenner. Thank you, Mr. Chairman. I move to

strike the last word.

Chairman Conyers. Without objection, the gentleman is recognized.

Mr. Sensenbrenner. Mr. Chairman, I think that the manager's amendment is a slight improvement over this bill and, like my friend from Texas, Mr. Smith, support it.

However, this is a bad bill, and it is going to have consequences that will be far-reaching. And the consequences are twofold.

First of all, the current provision in the law has been there since 1898. And it survived the Great Depression simply because everybody knew that if bankruptcy judges were allowed to modify the terms of home mortgages it would be much more difficult to attract capital into the mortgage market. And that is what is going to happen if this legislation is passed. So there isn't going to be as much money that will be available to people who do qualify for loans. And it is going to be much more difficult for people to qualify and to get that money, particularly when we get out of the current financial mess that we are in.

Secondly, banks are not charitable institutions. A lot of them are in trouble. We have already passed a \$700 billion bailout that is largely going to banks that have gotten into trouble. And what is going to happen is that the 95-plus percent of the people who end up paying their

mortgages as agreed upon are going to end up getting charged more money when they refinance, if they have adjustable rate mortgages and whatever.

This modification isn't going to come free, and it is going to be on the backs of those of our constituents who are not in trouble with their mortgages. And it will end up having them, through the higher bank fees, bailing out the people who have gotten in trouble. I don't think that is fair, and that is why I think that the bill ought to be defeated.

And I yield back the balance of my time.

Chairman Conyers. I thank the gentleman from Wisconsin, reminding him that the farmers in Wisconsin enjoy this very same provision that some of us without farmers are trying to get for those who live in urban areas.

The Chair recognizes Zoe Lofgren.

Ms. Lofgren. Thank you, Mr. Chairman. I move to strike the last word.

Chairman Conyers. Without objection, the gentlelady is recognized.

Ms. Lofgren. I would just note that I think it is urgent that we enact this legislation. As has been mentioned, nationwide, homes have lost over \$2 trillion in value. And there is just a wave of foreclosures, which not only cause the disaster for the homeowners, but cause the

values of surrounding homes to go down, putting a new population of homeowners at risk for foreclosure with a chain reaction that not only erodes neighborhoods but also State and local tax bases. And it is also eroding our capital markets and our economy as a whole.

As was noted at last week's hearing, the voluntary efforts have not worked. And it is important to note that, just yesterday, Credit Suisse analyzed this measure that is before us today and concluded -- and this is a quote -- that it will provide about a 20 percent reduction in foreclosures and also increase voluntary loan modifications, particularly principal reduction modifications. Their report states that, quote, "Overall, we think the bankruptcy reform will be a net positive, in terms of foreclosure reduction, as it may be an effective way to improve both home equity and affordability."

I support the manager's amendment. I would like to note that, although I am convinced we do need to do something relative to FHA and VA loans, I am not convinced that the rule of construction in the manager's amendment is the best way to address that issue. I do agree it needs to be addressed. I understand that industry is weighing in and that you have great flexibility in refining this measure as it moves forward, and I commend you for that, Mr. Chairman.

Finally, I wanted to note the shared appreciation

provision in the manager's amendment. It prevents undue windfalls as a result of judicial modification. And this issue was brought to our attention by our colleague Jim Marshall, who was a witness at our hearing last week. And I would like to note that he deserves much of the credit, I think, for its inclusion here.

At the end of last week's hearing, Mr. Marshall and others raised several other issues that deserve attention as the bill moves forward, such as how to ensure that bona fide creditors have standing to assert their rights in bankruptcy proceedings and several other issues.

I know that we will continue to work on these issues, and I would really encourage lenders who have a point of view to weigh in with their ideas on this. If we are trying to do constructive work, please give us your ideas. We are seeking to improve this measure, not to block it or slow it down, but simply to refine it.

I think, Mr. Chairman, your amendment is a promising step, and I really thank you for the leadership you have shown on this entire issue. And I yield back.

Chairman Conyers. I thank the gentlelady.

I recognize the distinguished gentleman from California, Darrell Issa.

Mr. Issa. Thank you, Mr. Chairman. And I will be brief. I move to strike the last word. I apologize.

Chairman Conyers. Without objection, the gentleman is recognized.

Mr. Issa. This piece of legislation certainly represents a timely problem. And, to that extent, I think we are all in agreement that the crisis of homeownership today, as a result of perhaps an excess of credit and an excess of opportunity, is undeniable.

There are two things that I find difficult to understand in this piece of legislation. One is the absence of any regard for original equity.

I spent over 20 years in the business community, and if someone gives me a no-money-down, no-equity loan and then I want to reduce the value, the question is, on what basis do we have a relationship in which I ever had ownership of the original amount? If the loan-to-value was substantially the full purchase price, then this legislation should ask the question of, why would mandatory reconsideration be there when, in fact, the homeowner never lost any equity? That joint venture relationship that was often used under the old cram-down provision doesn't exist. And I think that is woefully missing in this legislation.

The other one is that, if the value of the property, based on a willing buyer, can be shown to be higher than the amount that the bankruptcy judge feels is the appropriate cram-down, there is nothing here to protect the lender,

meaning that a bankruptcy judge, for better or worse, could feel that the \$150,000 home should be \$80,000, when, in fact, it can be demonstrated that there are buyers for \$90,000 or \$100,000.

Again, if there is at the time of the sale an appreciation that can be shown, then it should void any purchase below that amount. Because, by definition, what you run into is you are saying, well, a year from now if there is a profit. Well, the homeowner only need hold that property a year and a day, and they will get that appreciation naturally.

So these are small items that are not included in the manager's amendment. Hopefully, before we go to the floor, these two items could be considered.

I yield back.

Chairman Conyers. We want to begin considering them right away. Your point is well-taken. I think there are some amendments that might speak to, at least one of the two --

Ms. Jackson Lee. Mr. Chairman?

Chairman Conyers. Just a moment.

The Chair recognizes Bill Delahunt of Massachusetts.

Mr. Delahunt. Thank you, Mr. Chairman. And I will be very brief.

The headlines in yesterday's newspaper, The Washington

Post, indicated that there was some 50,000 jobs that were eliminated. Today, of course, it was revised upwards to some 70,000 jobs. And this bill is on a 7.2 unemployment rate, which some predict will, in the not-too-distant future, end up in double digits. Caterpillar issued a press release that said this: "2009 is expected to be the weakest year yet for economic growth in the post-war period."

This really does represent collateral damage from the housing crisis. And we should remember that this meltdown began with the housing crisis and won't end until it is resolved. And one of the key tools to resolve it is to stop the epidemic foreclosures that are occurring all over the country. Otherwise, we are going to experience more layoffs, less demand, less capacity to spend, more foreclosures. And I don't think that anybody in the room would disagree with this.

My frustration is I can't believe that we are continuing to talk about this proposal. It appears like we are fiddling while this economic meltdown is occurring. To me, it is so obvious that, back in 2007, this bill should have been on President Bush's desk for his signature. And here we are 13, 14 months later, and things are undeniably getting worse.

And it was derailed at that point in time in favor of voluntary and government-sponsored mortgage modification

programs, which you indicated have not worked. In fact, it was President Bush's Secretary of HUD, Steve Preston, who admitted that the centerpiece of the Federal Government's efforts to help struggling homeowners has been a failure. That is his words. That is his words. And he was right.

And time is a'wasting. And as the bad news continues to mount, there really should be a sense of urgency regarding this particular initiative. We don't have any time; we just simply don't. So we better act quickly, before it is too late, and modify the Bankruptcy Code's home mortgage exemption so that debts can be restructured like other debts.

It will prevent hundreds of thousands of foreclosures. It will not use taxpayers' dollars. It is not going to cost \$700 billion. It is there. And because of the crisis we face, I am willing to compromise and support the manager's amendment. Time is of the essence.

I think that the extension should be eliminated, period. But you have done an extraordinary job, and others working with you, in creating this alternative to move us off the dime and get going. Otherwise, we are going to find ourselves in trouble, not just in housing but throughout the entire economy.

With that, I yield back.

Chairman Conyers. I thank the gentleman.

I am trying to recognize Ms. Sanchez, Judge Gonzalez, and Sheila Jackson Lee before the voting commences. So if you three will get comments in, we will recognize you for a few additional minutes if needed.

The former Chair of subcommittee number five is recognized.

Ms. Sanchez. Thank you, Mr. Chairman. I just wanted to speak very briefly on this bill.

And, you know, I think Mr. Delahunt said in many more words, valuable words, than I could that this bill is really long overdue.

As the former Chair of CAL, this bill has been in the works for more than a year. And we had numerous hearings at which we tried to get mortgage lenders and economists and consumer rights groups to agree as to what we could do to try to help keep families in their homes and keep them from losing their homes. And, essentially, there really isn't a good policy reason why people's primary residences under the Bankruptcy Code are treated differently than people who have second homes or yachts, who can get modifications for vacation homes or income properties, but not for basic American families who own one piece of property, and that is their family home that they want to try to save through the last resort of bankruptcy, and modification isn't available to them. I think that is just wrong. That is why this bill

is so necessary.

And to skeptics who say, well, bankruptcy judges are going to be overwhelmed, and, you know, how can they value property, the job of bankruptcy judges is to value property every single day. That is what their job is. They are experts at it. They know what the true value of homes are. And so I have every faith that bankruptcy judges are going to be able to perform these modifications -- and, I might say, at a time when lending institutions have been less than receptive to doing that.

We did a mortgage foreclosure avoidance workshop in my district. We had 500 families show up. Some of them had received notices of foreclosure. Some were on the brink of it. Many of them had attempted several times to contact their lenders and try to do these voluntary modifications, only to be passed around from person to person and never get a person on the phone who had the authority to work with them to modify their mortgages. These are proud people who want to stay in their homes, they want to continue paying their mortgages, but the economic climate has just simply not allowed for that.

So I think we need to help struggling families. I think this is a great bill. I want to give proper respect to everybody whose time and effort went into crafting the bill and the manager's amendment. And I really, really urge

my colleagues to support it.

It is the least that we can do for American families who want to have the dignity of being able to stay in their home and continue do it in a way that at least provides some kind of compensation to banks, rather than these properties sitting vacant, becoming eyesores and attracting crime and a whole host of other problems. So I urge my colleagues to support the manager's amendment and the underlying bill.

And I yield back.

Chairman Conyers. Charles Gonzalez.

Mr. Gonzalez. Thank you very much, Mr. Chairman.

Two specific points. I would like to address a couple of the concerns expressed by my colleagues on the other side.

First, that this provision survived the Great Depression and has been on the books. My observation would be, well, then what was the alternative during that period of time? And I would be happy to join my colleagues on the other side in proposing a Home Owners' Loan Corporation, as was established in the 1930s up until 1951. We can discuss that history and how it saved many Americans' homes and allowed them to remain as an alternative. I think that would be more drastic, but I would be happy to explore that legislative remedy with them if, in fact, they can't support what we are trying to do here today.

Secondly, that bankruptcy judges are going to be gamed by litigants. I think my colleague Ms. Sanchez has already indicated these are experts in their field. The support staff and the trustees, I assure you, will do a much more thorough job than what is presently being done. And it is the appropriate process, if there is to be a process to be utilized.

Lastly, and overall, what is the responsibility of Congress and this committee? And that is to make our laws relevant to the present environment.

This is the way Randy Pulman and Adam Block, two bankruptcy lawyers in San Antonio, expressed it and described the current environment -- and who created that environment may well be the same people that are criticizing this potential relief. But this is the way the two bankruptcy lawyers in San Antonio described it. They said, "Lenders worked with Wall Street speculators to find more and more ways to make money off the same underlying transaction. It is like the person who asks to have his pizza cut into 16 pieces instead of eight because he is really hungry."

They were really hungry, to the point of greed. And that is the way we arrived to today. And that is why we need to modify this particular aspect of principal residences being an exception, which doesn't make any sense

at all. Our duty is to make the laws relevant to the needs of our citizens, and that is what we are doing here today.

And I yield back, Mr. Chairman.

Chairman Conyers. Sheila Jackson Lee.

Ms. Jackson Lee. Mr. Chairman, let me, first of all, thank you for your passion and the, I think, enormously convincing statements that you have made before our Democratic caucus in insisting that this matter go forward.

I think it is important that Congresswoman Sanchez confirmed that we have had a number of hearings on this issue. And my comment is just to say that all economists have said that the mortgage collapse is the reason for the financial collapse that we have.

Just try to be a mortgage holder and try to reach your servicer on a 1-800 number somewhere far beyond your imagination. You won't reach them. You won't comprehend what they are saying. They won't comprehend what you are saying. I know it because my constituents have tried. They have tried to work out their mortgages. They have tried to be responsible. And they have not been successful because that mortgage servicer is one person today and another operator tomorrow.

What the manager's amendment does is, I think -- Mr. Chairman, I congratulate you -- it is both restrained, but it is important. And it really takes up the challenge that

President Barack Obama accepted during his election, which is that he wanted the bankruptcy provision to be in.

And, one, I think what is important, we remove this pressure of having to see a counselor before going into bankruptcy, which we have seen that the HOPE for Homeowners was not successful, and so these individuals can go into the courthouse, an amendment that we worked on together.

It also requires that debtors talk with their creditors 15 days before the bankruptcy, which means they are going to try to get the servicers, and the servicers should try to work with them. But if that does not work, as I have seen it not work because they are operators on a telephone, they can go into the bankruptcy court.

And, of course, there is the provision that it deals with those in place at the time of the enactment of this law. I would like it to be longer, but I believe that if we don't get our hands around this we are not only going to see a collapse, we are going to see a crash of our financial markets. This is urgent and imperative. And we, as Congress, owe the American people a solution. This is a solution. I ask my colleagues to support the manager's amendment.

Thank you, Mr. Chairman, and I yield back.

Chairman Conyers. I thank the gentlelady for her customary brevity.

The Chair will take a recess while we dispose of four votes, and then return immediately to continue the deliberation of the manager's substitute.

We stand in recess now.

[Recess.]

RPTS SMITH

DCMN HOFSTAD

[3:08 p.m.]

Chairman Conyers. The committee will come to order.

The gentleman from Texas.

Mr. Smith. Mr. Speaker, I think I am asking unanimous consent that we consider the oversight plan.

Chairman Conyers. Right. And go back to the bankruptcy provision.

If you would please look at the oversight plan, members, pursuant to notice, I call up the committee's oversight plan for the 111th Congress for purposes of mark up.

The clerk will report.

The Clerk. "House Judiciary Committee Oversight Plan, 111th Congress. This outlines the current plans of the Committee on the Judiciary for oversight activities in the 111th Congress, subject to addition and revision in light of developments."

[The information follows:]

***** COMMITTEE INSERT *****

Chairman Conyers. Without objection, the oversight plan is considered as read and open for amendment at any point.

This oversight plan, my colleagues, has been prepared pursuant to House rules which require each standing committee to adopt an oversight plan at the beginning of each Congress and submit it to the House Administration and Oversight and Government Reform Committees.

Oversight, of course, is one of the Congress's core constitutional responsibilities. Our members all recognize the importance of effective oversight to the proper functioning of our government. We had an active oversight agenda in the last Congress. I expect that the same will apply to the 111th, as well.

This plan has been prepared in consultation with myself, Mr. Smith, and members on both sides of the aisle. We have endeavored to state the issues in a neutral manner so that this can be a consensus document, as it has been in the past.

The plan before us sets forth our present intent regarding oversight activities, recognizing that we may consider other matters based upon developments, while flagging certain issues that it is our present intent to include in the focus. In other words, it is a guideline; it

is not to be considered as binding.

And I turn now to Lamar Smith, the ranking member.

Mr. Smith. Thank you, Mr. Chairman.

Before us now is the Judiciary Committee's oversight plan for the 111th Congress. House Rule X requires every standing committee to adopt an oversight plan by February 15th of each new Congress.

Ms. Lofgren. Mr. Chairman, I can't hear Mr. Smith.

Mr. Smith. I know. We are having mike problems. So, rather than delay the beginning of the markup, I just decided to continue speaking.

The committee's oversight function is one of its primary responsibilities. In the past, we have conducted robust oversight, and I hope that will continue in the 111th Congress.

I hope that we can focus on issues that are truly important to the American people. We should adopt the President's philosophy of looking forward, as opposed to looking backwards, and finding solutions for the American people. Our oversight should focus on whether the executive branch is effectively executing the laws as passed by Congress.

Chairman Conyers. The reporter can't hear.

Mr. Smith. Mr. Chairman, let me ask unanimous consent that my opening statement be made a part of the record.

Chairman Conyers. Without objection.

[The information follows:]

***** INSERT 2-1 *****

Chairman Conyers. In other words, Mr. Smith agreed on the importance of oversight and cited a couple of things that have been added to the plan that his side thought were important to be considered and are now included.

Is there any further discussion or amendments before we take a vote on the oversight plan?

In that case, a reporting quorum being present, the question is on approving the oversight plan.

All those in favor, say, "Aye."

Those opposed, say, "No."

The ayes have it. The oversight plan is approved.

And, without objection, we will go back to the bankruptcy measure that was before us. And I recognize the gentleman from Texas for an amendment.

Mr. Smith. Success with the mike, Mr. Chairman.

Mr. Chairman, I have an amendment at the desk.

Chairman Conyers. The clerk will report the amendment.

The Clerk. Amendment offered by Mr. Smith of Texas to the amendment in the nature of a substitute to H.R. --

[The information follows:]

***** COMMITTEE INSERT *****

Mr. Smith. Mr. Chairman, I ask unanimous consent that the amendment be considered as read.

Chairman Conyers. Without objection. And the gentleman is recognized in support of his amendment.

Mr. Smith. Thank you, Mr. Chairman.

Mr. Chairman, this amendment will ensure that the legislation is used only to reduce otherwise unaffordable monthly mortgage payments to affordable levels. It will thus help to salvage truly troubled loans while lessening the legislation's adverse impacts on lenders and the credit market. In this way, it will mitigate the legislation's potential to make the mortgage crisis deeper, wider, and longer.

How does the amendment do that? In place of the one-size-fits-all approach of the underlying bill, this amendment substitutes the framework of the much-heralded FDIC mortgage modification program.

First, the amendment establishes a goal, an affordable monthly mortgage payment. The goal will be a reduced payment that is between 31 and 38 percent of a homeowner's monthly income.

Second, the amendment establishes a clear three-step process that bankruptcy courts must use to reach that goal. As a first step, the bankruptcy courts will be allowed to

modify a loan's interest rate. This step alone may be sufficient to cure many exploding adjustable rate mortgages. If a reduction of the interest rate is not enough to hit the target monthly payment, the courts will then be permitted to take an extra step and extend a loan's maturity date. Modification of the interest rate and the maturity date together should be enough to stabilize many, many loans. As a third step, and only as a last resort, the courts will be allowed to reduce the principal value of a loan. This step should be reached only in the cases of the most troubled loans. And, because it will be available only in these cases, it will inject considerably less risk and uncertainty into the credit markets.

Finally, like the FDIC program, this amendment ensures that the lender recovers any of the loan's principal that is reduced in bankruptcy if the house is later sold at a profit. This, too, will help to mitigate the chilling effects of the legislation on the home lending market.

In short, this three-tiered approach will minimize the cost this bill imposes, while allowing borrowers to reduce their monthly payments to affordable levels. Because this approach is the same approach as the approach taken by the FDIC program, this amendment will mitigate the negative effects this bill will have on other foreclosure prevention efforts.

Using the FDIC approach should be appealing to those on the other side of the aisle. For instance, Maxine Waters, who, in addition to being a member of this committee, is the Chair of the Financial Services Subcommittee on Housing and Community Opportunity, has spoken favorably of the FDIC program.

It would be better to follow the FDIC's approach outside of bankruptcy. But if the Bankruptcy Code is to be brought to bear on this crisis, then bankruptcy courts should be required to follow the FDIC's proven approach. If the amendment is adopted, they will be. That will help the bankruptcy courts achieve consistency. It will help keep the bankruptcy courts from being overwhelmed by limiting the lure of cram-down. And it will help us, in short, to avoid the wrong kind of change.

Mr. Chairman, I urge my colleagues to support the amendment, and yield back the balance of my time.

Chairman Conyers. I thank the gentleman for his amendment.

We have come to some consensus on at least one of the amendments that have been offered, but this isn't one of them. This amendment adds several layers of complexity that could lead to a lot of litigation.

The amendment uses current monthly income, a concept added to the Bankruptcy Code in 2005, and is used for means

tests in Chapter 7, and is used in Chapter 13 to determine how much a debtor must repay creditors in a Chapter 13 plan. Courts are still tied up in litigation trying to determine how to administer this test. So if you note my un-enthusiasm about including it in this bill, you are right. Unlike the means test, this language does not allow the court to consider special circumstances to adjust the debtors' current monthly income to comport with reality.

And I don't want to badmouth this amendment, so maybe I ought to stop while we are ahead. This isn't the one I was looking for.

I recognize the gentlelady from -- oh, wait a minute. Anyone on your side want to join in on this? The gentleman from Mississippi is recognized.

Mr. Harper. Thank you, Mr. Chairman.

I would like to certainly speak in support of this. I think the amendment is well-taken, and I would encourage all the members to look at this and support it. I don't see it as adding layers or additional litigation or court matters. I think this would be something that would actually -- should be adopted.

Chairman Conyers. Thank you.

Zoe Lofgren.

Ms. Lofgren. Mr. Chairman, I concur in your analysis and would simply add that the amendment contains a shared

appreciation provision, but we have already accommodated that need in the manager's amendment previously discussed, which I think actually is preferable. And certainly we are willing to discuss further refinements as we move forward. But I wanted to also note that, in addition to the concerns that you have raised, which I concur.

And I would yield to my colleague, Mr. Watt.

Mr. Watt. I thank the gentlelady for yielding.

And I just wanted to indicate to Mr. Smith that he is right that there are some people who have supported the FDIC framework as a process for doing it, but it is obviously not working. And the bankruptcy provision is the last-resort provision, which I think imposing the FDIC framework on would just give you the same -- I mean, if you are going to use the same process, I don't know why people wouldn't avail themselves of that opportunity outside bankruptcy if it would work. And it is not working as effectively or as extensively as it needs to work to solve this problem.

I think it is a micromanagement of the bankruptcy system to impose this set of criteria, although, as the gentleman indicated, we have been very supportive of the approach outside of bankruptcy that FDIC is using. And if they used it more and used it more aggressively, and if lenders would use it more and use it more aggressively, we would be happy to have that as an alternative to having the

bankruptcy provision. But to impose it on the bankruptcy bill, I think, is counterproductive.

I thank the gentlelady, and I will yield back to her.

Ms. Lofgren. And I would yield back to the chairman.

Chairman Conyers. Thank you.

Is there further discussion?

Mr. Lungren. Mr. Chairman, if I could strike the requisite number of words.

Chairman Conyers. The gentleman is recognized.

Mr. Lungren. Thank you very much, Mr. Chairman.

I listened very carefully to my colleague who just spoke, and I understood his logic, but I didn't understand his conclusion. If, in fact, this three-step loan work-out protocol makes sense in the FDIC context but it is not being used enough, I do not understand that, if we go to the bankruptcy courts, why its application would not be persuasive here as well.

If, in fact, we have all recognized the dangers of the cram-down -- that is, with the attributes that have been expressed, there are also some dangers with the final impact of cram-down that have been recognized by this body, in terms of the manager's amendment that the chairman brought forward. That is a concern of what might be called unintended consequences of making it more difficult to be able to procure mortgages in the future, particularly for

the very individuals we seek to assist.

Testimony has been, as we know, that we run the danger of increasing the rates in the future, number one, and number two, making it difficult, if not impossible, for those who have not the best credit scores to be able to actually access the credit market in the future. So we may be solving a problem in the short term, but making a long-term problem more difficult.

If that is the case, and the manager's amendment seems to recognize it, Mr. Smith's amendment is precisely the kind of amendment which would go towards limiting any long-term damage that might be done while we attempted to deal with some short-term advantages, because it precisely instructs the bankruptcy court to attempt to try and address this problem in the three-tier way, such that the last recourse would be essentially the cram-down of the principal.

And since it is recognized that it is an appropriate mechanism in the FDIC context, it would seem to me to be absolutely an advantage to put it in the context of the bankruptcy court.

Mr. Watt. Does the gentleman yield?

Mr. Lungren. I would be happy to yield.

Mr. Watt. I presume the gentleman wants me to try to take one more stab at helping him understand what I was trying to say.

If it is not working outside of the bankruptcy court, the notion that it is going to work inside the bankruptcy court -- it is not working, and people are ending up in bankruptcy. They need more help than this three-step process will allow them to get.

And they start there. The bill provides that that they have to make effort to try to get a work-out, so you presume that they will have exhausted this as a potential remedy in the first place. So they wouldn't be in bankruptcy if it had been an effective remedy outside of bankruptcy. That is the point I was trying to make.

Mr. Lungren. I understand. If I might reclaim my time, reviewing the material, I note that well more than a majority of those that enter into Chapter 13 bankruptcies don't really succeed, and yet we are attempting to put this new cram-down authority in there with the prospect of allowing these kinds of bankruptcies to succeed in the future.

You are saying that because the FDIC approach has not been utilized extensively enough and been utilized enough, even though it is a worthy proposition, is a reason we ought not to put it in the bankruptcy context. I would just think that putting it in the bankruptcy context may allow this type of procedure to succeed where it is not being utilized outside.

And I would just once again say, the recognition by the majority in this body that, in fact, we have to worry about the long-term consequences of a cram-down on the prospects of the availability of mortgages in the future, number one, for certain groups, and number two, the cost of such mortgages in the future, that that same reasoning ought to apply here. Because it seems to mitigate against the problem that we recognized without foreclosing -- without foreclosing -- the possibility of utilizing the cram-down. It doesn't say you can't use it. It says go through the three-step process before you go there.

Mr. Watt. Will the gentleman yield?

Mr. Lungren. I would be happy to yield.

Mr. Watt. The gentleman acknowledges that this step is available outside of bankruptcy. We support it outside of bankruptcy. The concerns the gentleman has raised have been addressed by limiting the applicability of this bill to existing mortgages. The cost of future mortgages won't come into play because the bill itself is limited to existing mortgages.

Mr. Lungren. Will the gentleman yield on that point?

I understand that, and I applaud us for moving in that direction. However, once you have sent a message to the market that Congress will, in fact, interject itself to mandate cram-downs in this way, even for a period of time,

one who looks at the actions of the Congress would have to prudently say this could happen again and calculate into their process what if this happens again.

All I am saying is, if we give them more assurance, the prospect is less. And the prospect, therefore, is less that we might have unnecessary premiums placed in the cost of a mortgage, number one, and the accessibility of a mortgage.

But I appreciate the gentleman's comments, and I would yield back the balance of my time.

Chairman Conyers. Well, thank you.

Are there any other points of view that we need to examine here?

Well, the Chair is going to call for a vote on the proposal offered by Mr. Smith of Texas.

All in favor, say, "Aye."

All opposed, say, "No."

Mr. Smith. Mr. Chairman, I would like a recorded vote.

Chairman Conyers. Okay. Recorded vote.

The Clerk. Mr. Conyers.

Chairman Conyers. No.

The Clerk. Mr. Conyers votes no.

Mr. Berman.

[No response.]

The Clerk. Mr. Boucher.

[No response.]

The Clerk. Mr. Nadler.

Mr. Nadler. No.

The Clerk. Mr. Nadler votes no.

Mr. Scott.

Mr. Scott. No.

The Clerk. Mr. Scott votes no.

Mr. Watt.

Mr. Watt. No.

The Clerk. Mr. Watt votes no.

Ms. Lofgren.

Ms. Lofgren. No.

The Clerk. Ms. Lofgren votes no.

Ms. Jackson Lee.

[No response.]

The Clerk. Ms. Waters.

[No response.]

The Clerk. Mr. Delahunt.

[No response.]

The Clerk. Mr. Wexler.

[No response.]

The Clerk. Mr. Cohen.

Mr. Cohen. No.

The Clerk. Mr. Cohen votes no.

Mr. Johnson.

[No response.]

The Clerk. Mr. Pierluisi.

Mr. Pierluisi. No.

The Clerk. Mr. Pierluisi votes no.

Mr. Gutierrez.

[No response.]

The Clerk. Mr. Sherman.

[No response.]

The Clerk. Ms. Baldwin.

Ms. Baldwin. No.

The Clerk. Ms. Baldwin votes no.

Mr. Gonzalez.

Mr. Gonzalez. No.

The Clerk. Mr. Gonzalez votes no.

Mr. Weiner.

[No response.]

The Clerk. Mr. Schiff.

[No response.]

The Clerk. Ms. Sanchez.

Ms. Sanchez. No.

The Clerk. Ms. Sanchez votes no.

Ms. Wasserman Schultz.

[No response.]

The Clerk. Mr. Maffei.

Mr. Maffei. No.

The Clerk. Mr. Maffei votes no.

Mr. Smith.

Mr. Smith. Aye.

The Clerk. Mr. Smith votes aye.

Mr. Goodlatte.

Mr. Goodlatte. Aye.

The Clerk. Mr. Goodlatte votes aye.

Mr. Sensenbrenner.

Mr. Sensenbrenner. Aye.

The Clerk. Mr. Sensenbrenner votes aye.

Mr. Coble.

Mr. Coble. Aye.

The Clerk. Mr. Coble votes aye.

Mr. Gallegly.

Mr. Gallegly. Aye.

The Clerk. Mr. Gallegly votes aye.

Mr. Lungren.

Mr. Lungren. Aye.

The Clerk. Mr. Lungren votes aye.

Mr. Issa.

[No response.]

The Clerk. Mr. Forbes.

[No response.]

The Clerk. Mr. King.

Mr. King. Aye.

The Clerk. Mr. King votes aye.

Mr. Franks.

Mr. Franks. Aye.

The Clerk. Mr. Franks votes aye.

Mr. Gohmert.

Mr. Gohmert. Yes.

The Clerk. Mr. Gohmert votes yes.

Mr. Jordan.

Mr. Jordan. Yes.

The Clerk. Mr. Jordan votes yes.

Mr. Poe.

Mr. Poe. Aye.

The Clerk. Mr. Poe votes aye.

Mr. Chaffetz.

Mr. Chaffetz. Aye.

The Clerk. Mr. Chaffetz votes aye.

Mr. Rooney.

[No response.]

The Clerk. Mr. Harper.

Mr. Harper. Aye.

The Clerk. Mr. Harper votes aye.

Chairman Conyers. Other members? Mr. Gutierrez?

Mr. Gutierrez. No.

The Clerk. Mr. Gutierrez votes no.

Chairman Conyers. Mr. Schiff?

Mr. Schiff. No.

The Clerk. Mr. Schiff votes no.

Chairman Conyers. Mr. Wexler?

Mr. Wexler. No.

The Clerk. Mr. Wexler votes no.

Chairman Conyers. Mr. Johnson.

Mr. Johnson. No.

The Clerk. Mr. Johnson votes no.

Chairman Conyers. Mr. Issa.

Mr. Issa. Aye.

The Clerk. Mr. Issa votes aye.

Chairman Conyers. Mr. Weiner.

Mr. Weiner. No.

The Clerk. Mr. Weiner votes no.

Chairman Conyers. Ms. Wasserman Schultz.

Ms. Wasserman Schultz. No.

The Clerk. Ms. Wasserman Schultz votes no.

Chairman Conyers. Other members? Mr. Delahunt.

Mr. Delahunt. No.

The Clerk. Mr. Delahunt votes no.

Chairman Conyers. Ms. Waters.

Ms. Waters. No.

The Clerk. Ms. Waters votes no.

Chairman Conyers. Others? Ms. Jackson Lee.

Ms. Jackson Lee. No.

The Clerk. Ms. Jackson Lee votes no.

Chairman Conyers. The clerk will report, please.

The Clerk. Mr. Chairman, 20 members voted nay, 14 members voted aye.

Chairman Conyers. The amendment fails.

The gentleman from Arizona, Trent Franks.

Mr. Franks. Mr. Chairman, I have an amendment at the desk.

Chairman Conyers. The clerk will report the amendment.

The Clerk. Amendment --

[The information follows:]

***** COMMITTEE INSERT *****

Mr. Franks. Mr. Chairman, I ask unanimous consent that the reading be dispensed with.

Chairman Conyers. Without objection, so ordered.

The gentleman is recognized in support of his amendment.

Mr. Franks. Thank you, Mr. Chairman.

Mr. Chairman, I suppose it is no shock to you that I sincerely disagree with the fundamental effect of the bill before us. And so my amendment is not to suggest that this makes it perfect, but it is designed to try to target relief to those impacted by the current housing crisis.

It limits the scope of the bill to mortgages made between 2004 and 2008. The amendment also places a 3-year sunset on the bill and would, therefore, extend the benefits only to those who seek bankruptcy protection within 3 years of the enactment of the bill.

Mr. Chairman, after multiple on hearings this issue, I think the committee understands my perspective here. I believe that the legislation will impose costs on future borrowers when they seek to refinance or purchase a new home. I believe that this legislation will have the inevitable effect of causing private-sector investors or those in large-group investment firms to say "hands off" to any of these mortgage instruments. And it will leave only

government then to respond to this crisis, and I am not sure we are up to it.

So, with that, I believe that the least the committee should do when considering this legislation is to limit the scope to the current crisis. And I encourage the committee to adopt the amendment.

And I yield back.

Chairman Conyers. I thank the gentleman and recognize the gentleman from Tennessee, Mr. Cohen.

Mr. Cohen. Thank you, Mr. Chairman.

The studies that I have seen indicate that the problem with homeowners and the foreclosure problem does not simply go back 3 years; that picking an artificial time, even though some have suggested that much of this has occurred in the last 3 years -- indeed, much of it even more has occurred in the last 2 years and in the last year -- is denying people the opportunity to remain in their homes. And, beyond that, it is denying the communities to have the opportunity to have a neighborhood that is satisfactory for people to live in, that doesn't have crime and other urban blight.

So what we are trying do with this particular bill -- and I think the chairman has gone a long way, and I appreciate it, to work with others with the manager's amendment to take into consideration other perspectives.

But, by limiting it to 3 years, we are working against what we are trying to do in an artificial way and limit access to what is a remedy for people who have been in the front lines of this economic disaster that has hit us.

We have done much to help the banks. We have done much to help the monied interests and the people that, in some cases -- in often cases, brought on this crisis. But we have done very little to help the people who have been the victims. And that is the people that we should be more concerned about and I think this bill is directed at.

So, with understanding of the idea -- and I appreciate Mr. Franks' frankness in expressing the fact that he is against the bill -- he certainly limits its opportunities for people to take advantage of it. And I think the bill should be as complete as possible. I think the fact that it is not prospective and only retroactive is something the chairman has already done to limit it, and that is as far as I think we should go. So I would hope we would vote against the amendment.

And I would yield the --

Ms. Lofgren. Would the gentleman yield?

Mr. Cohen. Yes.

Ms. Lofgren. Just briefly, I concur in the gentleman's comments. And, like our colleague Mr. Delahunt, my preference would be to simply repeal this provision. But,

as is noted, we have come to a point where we have worked across party lines and we have worked across ideological lines and also working with our colleagues in the Senate to try and come up with something we can accomplish, which is as you have referenced.

And thank you for your leadership in, now taking up this subcommittee, existing mortgages. That is a limitation. It is one I am willing to compromise so we can take action.

And I thank the gentleman for yielding and yield back to him.

Mr. Cohen. With that, I would yield the remainder -- Mr. Nadler, would you like for me to yield to you?

Mr. Nadler. No, no, no.

Mr. Cohen. No, you want your own time.

Chairman Conyers. Does someone on this side -- Mr. Smith. The gentleman is recognized.

Mr. Smith. Thank you, Mr. Chairman.

Mr. Chairman, I support this amendment.

We have heard many times that this legislation is proposed as a solution to the current mortgage crisis. But if the legislation is to respond to this crisis, it ought to be targeted at the problem loans of this crisis.

H.R. 200 would allow all existing loans to be modified in bankruptcy. This approach could cause very serious collateral damage. It will compound the credit crisis. It

will cause banks to continue to protect themselves by holding large reserves of capital out of the market. And it will overwhelm the bankruptcy court.

The amendment, on the other hand, will concentrate the bill's effects on the loans provoking the crisis. As a result, it will mitigate all of these adverse effects. It will cover the wave of problem loans originating from 2004 through 2007, and it will assure prompt filings.

If the goal is to cleanse the problem loans from the economy promptly without harming future home buyers, this amendment should be adopted. I urge my colleagues to join me in support of this amendment.

And, Mr. Chairman, I just want to add one more thing, and that is, on the way back from this last vote, I had a conversation with a colleague of ours who actually testified at the hearing a couple of days ago, the gentleman from Georgia.

And let me say, before I get into his point of view, that I consider him to be the acknowledged expert in Congress, certainly far more knowledgeable than I am. He was a law professor who taught bankruptcy law. He was an attorney who practiced bankruptcy law. His wife, for 30 years, has been a bankruptcy trustee.

And he happens to agree not with everything that this amendment does, nor with everything that was in my

substitute amendment, but he agrees with the need to limit the underlying bill in many ways that the minority amendment have attempted to do to today.

So I just hope that all Members of Congress on the majority side and the minority side will heed the good advice of the gentleman from Georgia and consider some of the suggestions that he has to make this bill a better bill.

Mr. Nadler. Will the gentleman yield for a question?

Mr. Smith. I would be happy to yield.

Mr. Nadler. I am just wondering which gentleman from Georgia you are referring to. You said the gentleman from Georgia. Who are you talking about?

Mr. Smith. Oh, Jim Marshall.

Mr. Nadler. Thank you.

Chairman Conyers. Thank you.

The Chair recognizes Jerald Nadler.

Mr. Nadler. Thank you, Mr. Chairman.

I, too, wish that this bill had not been amended to have any sunset date, to be retroactive only. And I think that -- I will address the specific amendment in a moment, but I wish we hadn't made this compromise. I think all the fears of this, when you have a cram-down, everything except the first home mortgage, you cram down the car loan, you cram down everything else, we haven't seen these horrible effects.

And also, I would note that when we debated the terrible, terrible bankruptcy bill that we passed, unfortunately, 3 years ago, 4 years ago, we were assured by the same people who are opposing this bill now, by the same interest groups that are opposing this bill now, that if we passed that bill, everybody's interest costs would go down by \$400 a family or a person -- I forget which -- that the interest rates on all the credit cards would go down. I haven't seen that savings.

In fact, I offered an amendment at that time, mandating that if we didn't see that savings, that the interest rates be automatically be put down, and that didn't happen. And so it was a total nonsense, the argument for that bill. It didn't happen. And the arguments now are also total nonsense.

Now, we are told by Mr. Smith and by others that the bill should only apply to loans that are implicated in the crisis, the subprime loans that caused this crisis that were issued in the few years prior -- in the last few years. Aside from the fact that we have already said, unfortunately, that it won't be prospective, it is only retroactive, the fact is that the crisis has spread beyond those loans, and its effects will be felt for many years.

Because of the huge drop in home values, the crisis has spread to more conventional mortgages, for which foreclosure

rates have increased dramatically. Many of these loans are now underwater, leaving the borrower unable to sell or to refinance, two common remedies in more normal times.

And we are not talking about the ARMs, the adjustable-rate mortgages that people perhaps should have been wary of, but the normal, fixed-rate, long-term loans in areas that people simply didn't anticipate their home values would collapse. No one -- I shouldn't say no one. There were some liberal academics and economists who anticipated that, but, aside from them, almost no one anticipated that.

In addition, the extraordinarily high rates of unemployment that exist and are expected to rise put many more families in need of relief. It is absolutely necessary to stop as many foreclosures on all loans as possible, or more homes will be dumped on the market, which will not only further devalue the value of remaining homes -- if the homes on either side of your home are foreclosed and nobody is mowing the lawns and so forth and they are abandoned because no one is moving in, your home value is going to go down -- but it will also continue the cycle of magnifying the losses on securities, which are causing the whole debacle in the economy.

Credit Suisse, in a report released yesterday, just yesterday, states, and I quote, "The fact is that close to 70 percent of delinquent nonagency loans have negative

equity, compared to only 37 percent of current loans with negative equity. This indicates that the lack of equity potentially is an important driver of today's performance deterioration." That is to say that the fact that the homes are no longer worth as much as the loans is an important driver of today's performance deterioration. "Further, this data shows that a large percentage of delinquent borrowers could benefit from cram-downs," unquote.

Chairman Conyers. Okay.

Mr. Nadler. And they also state, quote, "The proposed bankruptcy law reform provides a useful tool" -- the proposed bankruptcy reform without even the amendment that was put on "provides a useful tool to address both the affordability and equity issues borrowers face today," unquote.

So I think this amendment is perverse. It would destroy, to a large extent, the value of this bill. And we ought to reject it.

Chairman Conyers. I thank the gentleman because his time -- you can't yield.

Mr. Nadler. Oh, well, I yield back the balance of my time.

Chairman Conyers. You don't have any.

Mr. Nadler. I don't yield back the balance of my time.

Chairman Conyers. All right. Your time has expired.

Now, assuming there is no further discussion, let's move to a vote.

All those in favor, say, "Aye."

All those opposed, say, "No."

The noes have it.

Mr. Franks. Mr. Chairman, we request a roll call on that.

Chairman Conyers. Absolutely. The clerk will call the roll.

The Clerk. Mr. Conyers.

Chairman Conyers. No.

The Clerk. Mr. Conyers votes no.

Mr. Berman.

[No response.]

The Clerk. Mr. Boucher.

[No response.]

The Clerk. Mr. Nadler.

Mr. Nadler. No.

The Clerk. Mr. Nadler votes no.

Mr. Scott.

Mr. Scott. No.

The Clerk. Mr. Scott votes no.

Mr. Watt.

Mr. Watt. No.

The Clerk. Mr. Watt votes no.

Ms. Lofgren.

Ms. Lofgren. No.

The Clerk. Ms. Lofgren votes no.

Ms. Jackson Lee.

[No response.]

The Clerk. Ms. Waters.

[No response.]

The Clerk. Mr. Delahunt.

Mr. Delahunt. No.

The Clerk. Mr. Delahunt votes no.

Mr. Wexler.

[No response.]

The Clerk. Mr. Cohen.

Mr. Cohen. No.

The Clerk. Mr. Cohen votes no.

Mr. Johnson.

Mr. Johnson. No.

The Clerk. Mr. Johnson votes no.

Mr. Pierluisi.

Mr. Pierluisi. No.

The Clerk. Mr. Pierluisi votes no.

Mr. Gutierrez.

[No response.]

The Clerk. Mr. Sherman.

Mr. Sherman. No.

The Clerk. Mr. Sherman votes no.

Ms. Baldwin.

Ms. Baldwin. No.

The Clerk. Ms. Baldwin votes no.

Mr. Gonzalez.

Mr. Gonzalez. No.

The Clerk. Mr. Gonzalez votes no.

Mr. Weiner.

[No response.]

The Clerk. Mr. Schiff.

Mr. Schiff. No.

The Clerk. Mr. Schiff votes no.

Ms. Sanchez.

Ms. Sanchez. No.

The Clerk. Ms. Sanchez votes no.

Ms. Wasserman Schultz.

Ms. Wasserman Schultz. No.

The Clerk. Ms. Wasserman Schultz votes no.

Mr. Maffei.

[No response.]

The Clerk. Mr. Smith.

Mr. Smith. Aye.

The Clerk. Mr. Smith votes aye.

Mr. Goodlatte.

Mr. Goodlatte. Aye.

The Clerk. Mr. Goodlatte votes aye.

Mr. Sensenbrenner.

Mr. Sensenbrenner. Aye.

The Clerk. Mr. Sensenbrenner votes aye.

Mr. Coble.

Mr. Coble. Aye.

The Clerk. Mr. Coble votes aye.

Mr. Gallegly.

Mr. Gallegly. Aye.

The Clerk. Mr. Gallegly votes aye.

Mr. Lungren.

Mr. Lungren. Aye.

The Clerk. Mr. Lungren votes aye.

Mr. Issa.

[No response.]

The Clerk. Mr. Forbes.

Mr. Forbes. Aye.

The Clerk. Mr. Forbes votes aye.

Mr. King.

Mr. King. Aye.

The Clerk. Mr. King votes aye.

Mr. Franks.

Mr. Franks. Aye.

The Clerk. Mr. Franks votes aye.

Mr. Gohmert.

Mr. Gohmert. Aye.

The Clerk. Mr. Gohmert votes aye.

Mr. Jordan.

Mr. Jordan. Yes.

The Clerk. Mr. Jordan votes yes.

Mr. Poe.

Mr. Poe. Aye.

The Clerk. Mr. Poe votes aye.

Mr. Chaffetz.

Mr. Chaffetz. Aye.

The Clerk. Mr. Chaffetz votes aye.

Mr. Rooney.

[No response.]

The Clerk. Mr. Harper.

Mr. Harper. Aye.

The Clerk. Mr. Harper votes aye.

Chairman Conyers. Mr. Weiner.

Mr. Weiner. How am I recorded?

The Clerk. Mr. Weiner has not voted.

Mr. Weiner. No.

The Clerk. Mr. Weiner votes no.

Chairman Conyers. Mr. Wexler.

Mr. Wexler. No.

The Clerk. Mr. Wexler votes no.

Chairman Conyers. Mr. Berman.

Mr. Berman. No.

The Clerk. Mr. Berman votes no.

Chairman Conyers. Mr. Gutierrez.

Mr. Gutierrez. No.

The Clerk. Mr. Gutierrez votes no.

Chairman Conyers. Ms. Jackson Lee.

Ms. Jackson Lee. How am I recorded?

The Clerk. Ms. Jackson Lee is not recorded.

Ms. Jackson Lee. No.

The Clerk. Ms. Jackson Lee votes no.

Chairman Conyers. Others? Darrell Issa.

Mr. Issa. Yes.

The Clerk. Mr. Issa votes yes.

Chairman Conyers. The clerk will report.

The Clerk. Mr. Chairman, 15 members voted aye, 20 members voted nay.

Chairman Conyers. The amendment fails.

I think we can get in one more amendment before we are summoned to the floor. Randy Forbes of Virginia.

Mr. Forbes. Thank you, Mr. Chairman.

Mr. Chairman, I have an amendment at the desk.

Chairman Conyers. The clerk will report the amendment.

The Clerk. "An amendment offered by Mr. Forbes to the amendment in the nature of a substitute to H.R. 200. Page 2, strike lines 3 through 10 and make such technical --"

[The information follows:]

***** COMMITTEE INSERT *****

Chairman Conyers. I ask unanimous consent the amendment be considered as read, and recognize the gentleman from Virginia in support of his amendment.

Mr. Forbes. Thank you, Mr. Chairman. I will be brief. I know our time is expiring quickly.

But my amendment will correct, really, two flaws in the legislation, one of which I believe has already been agreed to, with some modification. But the first part of it is the amendment will reinstate the credit counseling requirement for Chapter 13 bankruptcies that this bill strips away.

There is absolutely no reason to remove the credit counseling requirement from debtors facing foreclosure. Bankruptcy credit counseling benefits consumers by providing the financial education needed to emerge successfully from bankruptcy. Homeowners facing foreclosure are ideal candidates for credit counseling, not because they can avoid bankruptcy, but so they can get help to increase their chances of having a successful post-bankruptcy experience. Indeed, the vast majority of Americans that receive credit counseling believe strongly that it benefits them. Moreover, credit counseling may provide one last opportunity for a homeowner to reach out to his or her lender and see if the loan modification may be possible.

Now, I know there are some who will argue that there is

not enough time to conduct credit counseling when a homeowner is facing foreclosure, but that is simply not the case. Taking part in credit counseling is a relatively simple process that, in some cases, can be conducted over the phone. Additionally, in instances where there truly is not enough time for credit counseling to take place, bankruptcy judges are already empowered to set the requirement aside. In short, there is just no reason to set aside this available step in the Chapter 13 process.

And, Mr. Chairman, the second part of the amendment addresses a situation where borrowers committed fraud on their mortgage application, but it is my understanding that the committee has already reached an agreement on that provision.

And, with that, I urge my colleagues to support this reasonable, common-sense amendment to the manager's amendment.

Chairman Conyers. I thank the gentleman.

Zoe Lofgren.

Ms. Lofgren. Mr. Chairman, I oppose the amendment, and I want to say briefly why.

I am a member of the subcommittee, and we have reviewed the operations of the bankruptcy law that the Congress passed over the years. And it is worth noting that the General Accounting Office did a study of the credit

counseling requirement and they found, and this is a quote, "Very few clients appeared to be entering into repayment plans administered by these agencies." They reported to us that this provision was of, at best, marginal value, and also did create other problems for the individual seeking bankruptcy protection. So, to reinstate that requirement does not make sense to me. Although I am sure the amendment is well-intended, this will not help.

I would note that, in the manager's amendment, we have put in a 15-day notice requirement, which is something that we have compromised on, but it is actually a suggestion, as I understand it, made by the Citigroup, which would permit -- actually, require someone who was seeking bankruptcy protection in Chapter 13 to reach out to the lender and seek an opportunity to try and work this out.

So I think that actually accomplishes what the gentleman is trying to do with the credit proposal in this amendment and avoids the problems that the General Accounting Office has reported to us with the existing requirement. The credit counselors we found were not well-versed in mortgage issues because primarily they deal with unsecured debts. And it just didn't work out as intended.

So I think we should reject this amendment, with thanks for the gentleman who has offered it in good faith.

And I would yield back.

Chairman Conyers. I thank the gentlelady and recognize Mr. Goodlatte.

Mr. Goodlatte. Thank you, Mr. Chairman. I want to speak in strong support of this amendment.

People who go through bankruptcy proceedings in a Chapter 13 who may have a foreclosure pending on their home have often many other debt obligations and financial considerations. And how and whether or not they can handle the conditions of the Chapter 13 are all good reasons why they should get credit counseling.

And I would hate to see this committee and this Congress back away from credit counseling. It is a great service that is offered to people to help them not only handle the bankruptcy process but to be able to handle their finances after they get out of bankruptcy and help them manage that long process of being in a Chapter 13, which can take years.

So to simply eliminate an important provision that we recently added wouldn't be very helpful.

Mr. Forbes. Would the gentleman yield?

Mr. Goodlatte. Yes, I will yield.

Mr. Forbes. Mr. Chairman, I would just also ask the gentleman if we haven't seen so many articles about the financial literacy around the country today, and that

oftentimes that is getting people in very difficult situations. And this particular kind of counseling can certainly help them. And it doesn't make much sense to just simply say that some of the counselors we had weren't very good and weren't doing the right job. We just simply need to fix the counselors and make sure that is working.

But to throw this out, I think, jeopardizes a very important asset that we have if we are going to try to help these people make it through their financial situations.

So I would --

Mr. Delahunt. Would the gentleman yield for a moment?

Mr. Goodlatte. Reclaiming time before I yield, I just want to say, given the paucity of programs in our public schools and in our colleges and universities regarding the practical handling of finances, to take the opportunity to take the people who have most suffered from that lack of learning and tell them, no, you no longer have to have credit counseling, I think that is a very bad idea. And I would support this amendment to put it back into the bill.

And I would be happy to yield to the gentleman from Massachusetts.

Okay, I yield back.

Chairman Conyers. Let me say to my colleagues that there is a great opportunity for us to finish up before we vote because there is an inclination to accept Steve King's

amendment, and then we have Jordan's amendment. But we want to take his first and then go to Steve King, and then we are ready for final. There is not a requirement for a roll call vote.

Mr. Forbes. Mr. Chairman, we are going to ask for roll call vote on this, depending on how it is ultimately decided.

Chairman Conyers. All right. The question occurs on the amendment of the gentleman from Virginia.

All in favor, say, "Aye."

All those opposed, say, "No."

The noes have it.

Mr. Forbes. Mr. Chairman, with that, I would ask for a roll call vote please.

Chairman Conyers. The clerk will call the roll.

The Clerk. Mr. Conyers.

Chairman Conyers. No.

The Clerk. Mr. Conyers votes no.

Mr. Berman.

Mr. Berman. No.

The Clerk. Mr. Berman votes no.

Mr. Boucher.

[No response.]

The Clerk. Mr. Nadler.

Mr. Nadler. No.

The Clerk. Mr. Nadler votes no.

Mr. Scott.

Mr. Scott. No.

The Clerk. Mr. Scott votes no.

Mr. Watt.

[No response.]

The Clerk. Ms. Lofgren.

Ms. Lofgren. No.

The Clerk. Ms. Lofgren votes no.

Ms. Jackson Lee.

Ms. Jackson Lee. No.

The Clerk. Ms. Jackson Lee votes no.

Ms. Waters.

[No response.]

The Clerk. Mr. Delahunt.

Mr. Delahunt. No.

The Clerk. Mr. Delahunt votes no.

Mr. Wexler.

Mr. Wexler. No.

The Clerk. Mr. Wexler votes no.

Mr. Cohen.

Mr. Cohen. No.

The Clerk. Mr. Cohen votes no.

Mr. Johnson.

Mr. Johnson. No.

The Clerk. Mr. Johnson votes no.

Mr. Pierluisi.

Mr. Pierluisi. No.

The Clerk. Mr. Pierluisi votes no.

Mr. Gutierrez.

Mr. Gutierrez. No.

The Clerk. Mr. Gutierrez votes no.

Mr. Sherman.

Mr. Sherman. No.

The Clerk. Mr. Sherman votes no.

Ms. Baldwin.

Ms. Baldwin. No.

The Clerk. Ms. Baldwin votes no.

Mr. Gonzalez.

Mr. Gonzalez. No.

The Clerk. Mr. Gonzalez votes no.

Mr. Weiner.

Mr. Weiner. No.

The Clerk. Mr. Weiner votes no.

Mr. Schiff.

Mr. Schiff. No.

The Clerk. Mr. Schiff votes no.

Ms. Sanchez.

Ms. Sanchez. No.

The Clerk. Ms. Sanchez votes no.

Ms. Wasserman Schultz.

Ms. Wasserman Schultz. No.

The Clerk. Ms. Wasserman Schultz votes no.

Mr. Maffei.

Mr. Maffei. No.

The Clerk. Mr. Maffei votes no.

Mr. Smith.

Mr. Smith. Aye.

The Clerk. Mr. Smith votes aye.

Mr. Goodlatte.

Mr. Goodlatte. Aye.

The Clerk. Mr. Goodlatte votes aye.

Mr. Sensenbrenner.

[No response.]

The Clerk. Mr. Coble.

[No response.]

The Clerk. Mr. Gallegly.

Mr. Gallegly. Aye.

The Clerk. Mr. Gallegly votes aye.

Mr. Lungren.

Mr. Lungren. Aye.

The Clerk. Mr. Lungren votes aye.

Mr. Issa.

Mr. Issa. Aye.

The Clerk. Mr. Issa votes aye.

Mr. Forbes.

Mr. Forbes. Aye.

The Clerk. Mr. Forbes votes aye.

Mr. King.

Mr. King. Aye.

The Clerk. Mr. King votes aye.

Mr. Franks.

[No response.]

The Clerk. Mr. Gohmert.

Mr. Gohmert. Aye.

The Clerk. Mr. Gohmert votes aye.

Mr. Jordan.

Mr. Jordan. Yes.

The Clerk. Mr. Jordan votes yes.

Mr. Poe.

Mr. Poe. Aye.

The Clerk. Mr. Poe votes aye.

Mr. Chaffetz.

Mr. Chaffetz. Aye.

The Clerk. Mr. Chaffetz votes aye.

Mr. Rooney.

[No response.]

The Clerk. Mr. Harper.

Mr. Harper. Aye.

The Clerk. Mr. Harper votes aye.

Chairman Conyers. The clerk will report.

The Clerk. Mr. Chairman, 12 members voted aye, 20 members voted nay.

Chairman Conyers. The amendment is unsuccessful.

We have the Jordan amendment, the King amendment, and final passage. And we have all of 4 minutes and 1 second remaining.

The Chair recognizes the gentleman from Ohio for his amendment.

Mr. Jordan. Thank you, Mr. Chairman. I will read this quick.

Chairman Conyers. The clerk will report.

The Clerk. "Amendment offered by Mr. Jordan to the amendment in the nature of a substitute to H.R. --"

[The information follows:]

***** COMMITTEE INSERT *****

Chairman Conyers. Without objection, the amendment will be considered as read.

Mr. Jordan. I thank the chairman.

This amendment is based on legislation that you and our esteemed former colleague, Steve Chabot, put together back in the 110th Congress. It targets the bill --

Chairman Conyers. That is the wrong amendment.

Mr. Jordan. Do you want to take King's now?

I ask unanimous consent to withdraw that amendment. Let's consider the King amendment, Steve King.

RPTS JOHNSON

DCMN BURRELL

[4:00 p.m.]

Chairman Conyers. You got three Kings.

Mr. King. Mr. Chairman, I would like to offer amendment designated number 6 at this time.

Chairman Conyers. The Clerk will report number 6.

The Clerk. Amendment offered by King to the amendment in the nature of a substitute to H.R. 200.

[The information follows:]

***** COMMITTEE 3-1 *****

Chairman Conyers. Unanimous consent to have the amendment considered as read. Our friend is recognized.

Mr. King. Thank you, Mr. Chairman. This is an amendment that --

Chairman Conyers. Oh, by the way, we are going to accept this amendment. I ask unanimous consent to revise and extend my remarks.

Mr. King. I thank the chairman. Reclaiming my time, for the purposes of just immediately, this is about eliminating fraud, so that the members are aware of what we have. And also if the chairman would indulge me, I do have an amendment that I would like to discuss, not this one. I would be happy to urge its adoption and yield back.

Mr. Nadler. Mr. Chairman?

Chairman Conyers. All right. I recognize the gentleman from New York.

Mr. Nadler. I am concerned about this amendment only for one reason. It says the debtor did not obtain the extension, et cetera, that gives rise to a modified claim by debtor's material misrepresentation, false pretenses, or actual fraud. If I am assured that the "debtor's material" applies to the false pretenses, and that it cannot be read as the "debtor's material misrepresentation, false pretenses" by the mortgage broker, for example, "or actual

fraud," but that the debtor's material misrepresentation, the debtor's false pretenses, or the debtor's fraud, and not some third-party's fraud or misrepresentation like the mortgage broker. In other words, if you mean it has got to be the debtor's fault, then I have no problem with the amendment. If not, I have a problem with the amendment.

Mr. King. And if the gentleman has the time?

Mr. Nadler. I yield to the gentleman.

Mr. King. I thank the gentleman. It is the intent of this language that it address the debtor's material misrepresentation, because that is the subject matter --

Mr. Nadler. And the debtor's -- and false pretenses by the debtor?

Mr. King. Yes.

Mr. Nadler. And actual fraud by the debtor?

Mr. King. By the debtor.

Chairman Conyers. May I announce to the committee that we must return. We will suspend now. And please come back. I urge the members to come back.

Mr. Weiner. What time?

Chairman Conyers. Immediately. There are three votes. Three votes and we will come back. We stand in recess.

[Recess.]

Chairman Conyers. The committee will come to order. We left with the King amendment, supported by the Chair.

The question occurs on the amendment. All in favor say aye. All opposed say no. Ayes have it. A recorded vote is requested.

The Clerk. Mr. Conyers.

Chairman Conyers. Aye.

The Clerk. Mr. Conyers votes aye.

Mr. Berman.

[No response.]

The Clerk. Mr. Boucher.

[No response.]

The Clerk. Mr. Nadler.

[No response.]

The Clerk. Mr. Scott.

[No response.]

The Clerk. Mr. Watt.

[No response.]

The Clerk. Ms. Lofgren.

[No response.]

The Clerk. Ms. Jackson Lee.

[No response.]

The Clerk. Ms. Waters.

[No response.]

The Clerk. Mr. Delahunt.

[No response.]

The Clerk. Mr. Wexler.

Mr. Wexler. Yes.

The Clerk. Mr. Wexler votes yes.

Mr. Cohen.

Mr. Cohen. Yes.

The Clerk. Mr. Cohen votes yes.

Mr. Johnson.

Mr. Johnson. Yes.

The Clerk. Mr. Johnson votes yes.

Mr. Pierluisi.

Mr. Pierluisi. Yes.

The Clerk. Mr. Pierluisi votes yes.

Mr. Gutierrez.

[No response.]

The Clerk. Mr. Sherman.

[No response.]

The Clerk. Ms. Baldwin.

Ms. Baldwin. Yes.

The Clerk. Ms. Baldwin votes yes.

Mr. Gonzalez.

Mr. Gonzalez. Yes.

The Clerk. Mr. Gonzalez votes yes.

Mr. Weiner.

Mr. Weiner. Yes.

The Clerk. Mr. Weiner votes yes.

Mr. Schiff.

Mr. Schiff. Aye.

The Clerk. Mr. Schiff votes aye.

Ms. Sanchez.

[No response.]

The Clerk. Ms. Wasserman Schultz.

Ms. Wasserman Schultz. Aye.

The Clerk. Ms. Wasserman Schultz votes aye.

Mr. Maffei.

[No response.]

The Clerk. Mr. Smith.

Mr. Smith. Aye.

The Clerk. Mr. Smith votes aye.

Mr. Goodlatte.

Mr. Goodlatte. Aye.

The Clerk. Mr. Goodlatte votes aye.

Mr. Sensenbrenner.

[No response.]

The Clerk. Mr. Coble.

[No response.]

The Clerk. Mr. Gallegly.

[No response.]

The Clerk. Mr. Lungren.

[No response.]

The Clerk. Mr. Issa.

[No response.]

The Clerk. Mr. Forbes.

Mr. Forbes. Aye.

The Clerk. Mr. Forbes votes aye.

Mr. King.

Mr. King. Aye.

The Clerk. Mr. King votes aye.

Mr. Franks.

[No response.]

The Clerk. Mr. Gohmert.

[No response.]

The Clerk. Mr. Jordan.

Mr. Jordan. Yes.

The Clerk. Mr. Jordan votes yes.

Mr. Poe.

Mr. Poe. Aye.

The Clerk. Mr. Poe votes aye.

Mr. Chaffetz.

Mr. Chaffetz. Aye.

The Clerk. Mr. Chaffetz votes aye.

Mr. Rooney.

Mr. Rooney. Aye.

The Clerk. Mr. Rooney votes aye.

Mr. Harper.

Mr. Harper. Aye.

The Clerk. Mr. Harper votes aye.

Ms. Lofgren. Mr. Chairman? How am I recorded?

Chairman Conyers. Zoe Lofgren.

Ms. Lofgren. No.

The Clerk. Ms. Lofgren votes no.

Mr. Delahunt. Mr. Chairman.

Chairman Conyers. Bill Delahunt.

Mr. Delahunt. No.

The Clerk. Mr. Delahunt votes no.

Chairman Conyers. Mr. Berman.

Mr. Berman. No.

The Clerk. Mr. Berman votes no.

Chairman Conyers. Any others? Mr. Scott.

The Clerk. Mr. Scott is not recorded.

Mr. Scott. Aye.

The Clerk. Mr. Scott votes aye.

Chairman Conyers. Mr. Maffei.

Mr. Maffei. No.

Chairman Conyers. No.

The Clerk. Mr. Maffei votes no.

Maffei. Mr. Chairman, how am I recorded?

Chairman Conyers. Mr. Maffei?

The Clerk. Mr. Maffei voted no.

Mr. Maffei. I am sorry. It is aye.

Chairman Conyers. Others?

The Clerk. Mr. Maffei votes aye.

Chairman Conyers. If everyone has voted, then the Clerk shall report.

The Clerk. Mr. Chairman, 21 members voted aye, 3 members voted nay.

Chairman Conyers. Then the ayes have it and the amendment is agreed to. Mr. Jim Jordan.

Mr. Jordan. Thank you, Mr. Chairman. I have an amendment at the desk.

Chairman Conyers. The Clerk will report the Jordan amendment.

Mr. Jordan. Mr. Chairman, ask for unanimous consent that it be considered as read.

[The information follows:]

***** INSERT 3-2 *****

Chairman Conyers. Without objection, so ordered. The gentleman is recognized in support of his amendment.

Mr. Jordan. Thank the chairman. This amendment is based on legislation that you and our esteemed former colleague Steve Chabot negotiated in the 110th Congress. It targets the bill to provide relief to the borrowers whose loans are at the heart of the foreclosure crisis. These are the borrowers who entered into the subprime and other nontraditional loans that became popular earlier this decade.

Chairman Conyers. The gentleman will suspend. The Clerk will report the amendment. The Clerk doesn't have a copy.

Mr. Jordan. Amendment offered by Mr. Jordan to the amendment in the nature of a substitute to H.R. 200. Page one, after line 4, insert the following and make such technical and conforming changes as may be appropriate.

Chairman Conyers. Without objection, so ordered.

Mr. Jordan. Thank you, Mr. Chairman. Thank the Clerk.

Chairman Conyers. The gentleman is recognized.

Mr. Jordan. These loans were often made in the expectation of rising home values and the ability to refinance after a few years. When rising home values instead began to fall rapidly, those expectations came to an

end. So too did the viability of the loans on which they were based. Subprime and other nontraditional loans also were the loans most prone to abuse. In too many cases they were made to individuals with incomes and credit histories that previously would not have qualified them for mortgages. And in too many cases they were written as interest only or other adjustable rate mortgages that could not be supported by the borrowers' incomes.

Since it is these maladies in the mortgage market that have caused the crisis, it is these maladies that should be the subject of our legislation. And since it is clear that using bankruptcy medicine to cure them could cause debilitating side effects in the market as a whole, we should target the use of the medicine as precisely as we can. If we do not, we risk harming responsible borrowers, community banks that did not write abusive loans. What will we say, for example, to those who are still able to refinance or purchase new homes if this bill causes interest rates and down payment requirements to rise, potentially pricing many people out of their refinancing, or even pricing them out of their homes altogether?

There are those who would say we should allow all principal resident mortgages to be modified in bankruptcy in order to cure a supposed anomaly in the Bankruptcy Code. The fact is that keeping the principal residence mortgage

loans safe from modification in bankruptcy has not been an anomaly. It has been a positive policy tool, encouraging more flexible credit terms, increasing home lending and growth in our economy, and it has worked for a long time. Subprime and other nontraditional loans were also used to increase home lending, but they were abused. That to a great extent is what has caused the foreclosure crisis. It would be a terrible irony if the old dependable tools that responsibly increased home lending were thrown out entirely in an attempt to clean up after the new tools that were not used with care.

I encourage my colleagues to support the amendment and would yield back my time.

Chairman Conyers. Thank you. The Chair recognizes Bill Delahunt.

Mr. Delahunt. Thank you, Mr. Chairman. First I think I want to address the statement by the gentleman from Ohio that this bill is going to cause interest rates to rise. According to the testimony that we heard just recently, that is an inaccurate statement, and there is no data whatsoever to support that particular assertion. But beyond that, I would suggest, I would suggest that the delay that I referred to in my opening statement, where we had passed this bill out of committee back in December of 2007, has now allowed the problems that the gentleman enumerated that

began with exotic, 125 percent of equity loans that were issued, no documentation required, has infected the entire mortgage industry. Now loans that were considered prime are bordering on trash. And those individuals that unfortunately hold those mortgages and find themselves being laid off by the tens of thousands, according to yesterday's news 70,000 in a single day, should have an option to seek bankruptcy protection. And I therefore would oppose this particular --

Mr. Jordan. Would the gentleman yield?

Mr. Delahunt. Yes, I will.

Mr. Jordan. I appreciate the gentleman yielding. I just want to point out you mentioned no studies that point to some of the concerns I raised in my comments. Before we went to vote, our colleague from New York talked about the study from a financial institution that talked about the merits of the legislation. I would just like to report a study that UBS said. And this is their concluding statement. Be prepared -- if this legislation passes, their concluding statement was -- be prepared for mortgage loans in the future only be made available to those with perfect credit and 30 percent down payments.

Mr. Delahunt. Reclaiming my time, the gentleman cited a source, was it UPS?

Mr. Jordan. UBS.

Mr. Delahunt. Oh, Suisse. Okay. I just wanted to make sure I had the correct cite. You know, let me put it this way. The testimony that this committee and the Subcommittee on Administration and Commercial Law have conducted indicate otherwise. I think that we have learned rather painfully that many statements that have been made during the course of this crisis have proven to be inaccurate. I think we do have precedent, however, car loans, loans for second homes, loans for investment properties, naturally they do carry a higher risk, not necessarily based upon default, but simply because of the economics in those particular instruments have not in any shape, way or form noticed a particular significant difference because they are subject to the jurisdiction of the bankruptcy court and no exemption is made.

I think that what we have to do is to understand that these extraordinarily high rates of unemployment that we are witnessing every day are expected to rise. I daresay that, you know, the next round of -- I think it is more beyond speculation that the next numbers are going to be equally as bad, that we are going to find American families that were employed, earning decent wages that initially had secured so-called prime mortgages now find themselves in a situation where they are going to have difficulty making those kind of payments.

And I think it is important also to note that this isn't simply just about bankruptcy. This bill I would suggest creates an incentive for so-called short sales, that where negotiations will proceed much more expeditiously, will in fact incentivize the servicers to come to the table and negotiate and move through the system those loans that are in default and are at risk. We have got to move forward and do everything necessary to stop as many foreclosures on all loans. More homes are going to be dumped on the market, continuing the cycle, and magnifying the losses and the volatility in the financial markets. That is what we are talking about here.

With that I yield back.

Mr. Sensenbrenner. Mr. Chairman?

Chairman Conyers. The chairman emeritus is recognized.

Mr. Sensenbrenner. Mr. Chairman, I rise in support of the amendment.

Chairman Conyers. The gentleman is recognized.

Mr. Sensenbrenner. Mr. Chairman, we do have a study from the Mortgage Bankers Association that estimates that if you have got a prime borrower with a 30-year fixed loan of \$300,000 at 6 percent interest would pay \$1,799 a month in principal and interest. And the Mortgage Bankers Association estimates that holding the economy, interest rates, borrower's credit, et cetera, constant, the rate for

the same loan could go up to as much as 8 percent, which leads to a monthly payment of 2,201, an annual increase of \$4,824 and more than \$144,000 over the life of the loan.

That reiterates the point that several of those on this side of the aisle and I are making is that this is a cost shift to people who pay their loans as agreed on, who don't get in trouble. And when you are talking about this relatively modest example that the Mortgage Bankers Association has submitted, where we end up sticking the person who is paying their loan as agreed on \$144,000 over a 30-year period, this I think amply demonstrates that what is being proposed here is not a freebie. You know, granted you are giving some comfort to people who face foreclosure, but what about those who aren't facing foreclosure? You are making them pay. And at least what this amendment does is it narrows the scope of the legislation.

And I am happy to yield to the gentleman from Ohio if he wants some time.

Mr. Jordan. I am fine.

Mr. Sensenbrenner. I yield back then.

Chairman Conyers. I would like to recognize Mr. Cohen.

Mr. Cohen. Thank you, Mr. Chairman. The problem is when this agreement might have been made with Mr. Chabot a few years ago, the whole ramifications of the economic misdirection or lack of direction and failure of the

previous administration hadn't come to play to where so many people are now unemployed, to where maybe they have got a traditional loan but they have lost their job, their income has gone down, their neighborhood has been hurt. And the chairman emeritus speaks about the increase in the rate that might go to these folks, and they will pay a little bit more on their loans, but maybe their house might be burglarized if they are living there and everybody around them has lost their house because nobody can afford to pay except maybe a few people there and they get burglarized. Their insurance rates are going to go up. Your insurance rates won't go up so much if we can have some basis to our communities and keep them solid. Your crime might not go up, your tax rate might not go up. There are other costs that you lose. And the fact is the economy is so bad that there are people with conventional loans who need this help because of the effects of the last 8 years. And that is why this is not a good amendment.

Mr. Delahunt. Will the gentleman yield?

Mr. Cohen. I yield.

Mr. Delahunt. If the gentleman would yield to me, I think it is important to understand it isn't just about the individual that finds him or herself in trouble in terms of meeting the mortgage payments. We are talking about the neighborhood. We are talking about the neighborhood. And

until foreclosures are stanchd, the flow of foreclosures, what we are going to see is the individual that is paying his mortgage in fact is losing equity in his house because of the order of magnitude of foreclosures that have to be dealt with. This isn't just about keeping a family in a home, this is about saving neighborhoods and in fact saving communities from disaster, as the gentleman from Tennessee just indicated. This is, if it doesn't stop, we are going to see municipalities virtually have minimal tax basis to provide education, to provide public safety in the typical services that are provided at the local level. The Mortgage Bankers Association, their position has been one that they don't countenance any change.

Professor Levitin, when he was before this committee, had this to say. The MBA figure, and I am quoting him, is patently false, and is a result of cherry-picked compensation. You know, we talk a lot about voluntary and self-policing and, you know, regulation conducted by various groups and trade associations. When one examines the cause of this particular crisis and one hears the figures that those who were steered into these subprime loans, better than two-thirds of them would have qualified for a traditional fixed rate 30-year mortgage but were convinced by mortgage brokers to go for the more exotic instrument. And the reason was that their fees, rather than let's say

3,000, would have been \$12,000.

So I take that as evidence of an incentive to reach the conclusion that the Mortgage Bankers Association did. Let me put that right out there. I give it very little credence at this point in time. They are part of the problem. Let's face it. You know, it is time to do something for the average family rather than just simply taking care of investment properties, second homes, car loans, boat loans, and everything else. Why this exemption happened in the first place I find it difficult to understand, but I wasn't around in 1978.

Chairman Conyers. The gentleman from Tennessee yield back his time?

Mr. Cohen. I yield back the remainder of my time. Thank you, Mr. Chairman.

Chairman Conyers. There only remains Dan Lungren, Sheila Jackson Lee, and myself. Very, very briefly, because we have one more amendment before we report the full bill. And we want to keep everybody here. We don't want to wear people down. And so we have agreed, we three have agreed to move quite rapidly.

The gentleman from California.

Mr. Lungren. Thank you, Mr. Chairman. I rise in support of the amendment. I wasn't here in 1978. I didn't get here until 1979. But the professed reason why this

exemption was placed in there was precisely to protect the home mortgage market, not the banks, but to grant greater access to the traditional family attempting to try and get such a home. And we talk about the various studies. It is an elementary principle that rates are largely set by risk and how you determine that risk. The fact of the matter is, if subsequent to extending a mortgage government is allowed to mandate a cram-down of the principal, that is an additional risk that did not exist before. And unless we can in some ways suspend the laws of economics, which we seem to believe we can here in the Congress, it is going to inevitably lead to higher rates.

Now, recognizing that, the majority has agreed in the manager's amendment to have some limitations or parameters placed around this legislative vehicle. The gentleman from Ohio has offered another parameter to place around it to direct it at what is supposed to be the essential problem. The debate we are having today is remarkable because we seem to be having it in the absence of any memory of the great national debate that took place just 4 months ago. It was about Freddie and Fannie. Freddie and Fannie's failure, it seems to me, was the match that was lit with respect to all of the gunpowder that was lying around the room that has caused this economic difficulty that we have. And what did we do with Freddie and Fannie? We as a Congress promised

more than we could perform. We said the actions of the government can run counter to economics, and that it doesn't matter because there would be no ultimate conclusion and nobody to pay. And what the chairman emeritus suggested is correct, this is not a free lunch. There is going to be a pay. The question is how do we limit that? How do we target this to deal with the problem that we are most concerned about without making a greater problem, much as we did with Freddie and Fannie when there were only a few of us who voted against some of those expansions, concerned about the fact that while we wanted to wax eloquent here about extending home ownership, and we all agree with that, we took some irresponsible actions which now have not only affected those we attracted into a market under terms that have proven to be destructive to them, but it has affected their neighbor. It has affected the entire housing market. It has affected the entire credit market. It has affected the entire economics of America.

And so it just seems to me one of the lessons we ought to learn out of that is not to repeat those same problems. And all we are trying to say here is try and put some reasonable limits around this, quote-unquote, rescue effort that we are attempting here in this Congress in a way that won't make matters worse in the future. And so to somehow suggest that what we do here will have no ramifications in

terms of the possibility of increased mortgage rates, will have no possibility of impact in terms of the accessibility is just plain wrong unless you can convince the American people and yourselves that somehow you can suspend the laws of economics. It just doesn't happen. And all we are trying to do is --

Mr. Delahunt. Would my friend yield on that?

Mr. Lungren. I will be happy to yield. I don't need a report to tell me that additional risk is going to have something to do with the premium you pay. It is the nature of loans.

Mr. Delahunt. When Congress amended chapter 12 and dealt with the issue of the American farmer, who obviously was under considerable stress, did that translate into a significant increase in the rate structure for the American farmer for loans?

Mr. Lungren. I am not familiar with that program. I am familiar with housing.

Mr. Delahunt. I mean when we are talking about the law of economics, I daresay that research would reveal that there was minimal, if any, spike in the interest rate for the American farmer when the Bankruptcy Code was amended in chapter 12.

Mr. Lungren. The only thing I would say is -- again, I am not a farmer, never have been a farmer. But I would say

that is more akin to a business than it is to home ownership, which is something which is very, very different.

Mr. Delahunt. Well, I know that the gentleman understands that the farmer's home, his principal residence was protected with that amendment, including obviously the land that was being operated.

Mr. Lungren. Reclaiming my time, the only point I was trying to make is this. If the gentleman is suggesting that additional risk does not translate into a consideration of how you set the rate when you are going to make a loan based on that risk, I think the gentleman is wrong. If the gentleman says I am overstating what the risk is, then I can understand that argument. But to suggest that there is no relationship between adding a risk in the marketplace with respect to mortgages that is uncertain -- as a matter of fact, uncertainty is probably the greatest risk out there.

Ms. Waters. Will the gentleman yield?

Mr. Lungren. To make a determination as to based on historical models what the risk is going to be, they hedge to make those rates higher.

I will in just a second.

And if what you are saying is that prospective government action to change the dimensions of that contract is not going to lead to a response by the people writing the contract, I just don't agree with that.

Ms. Waters. Would the gentleman yield?

Chairman Conyers. The gentleman's time has expired.

Ms. Waters. Okay. On my own time, Mr. Chairman?

Chairman Conyers. Yes. I yield myself -- I recognize myself at this moment, very, very reluctantly, but only to let my good friend Jim Jordan know why the Conyers-Chabot proposal of a year-and-a-half ago has undergone a change in terms of what is actually happening here. And I appreciate the very clear delineation of the views of the gentleman from California and the gentleman from Massachusetts. But here is the situation.

When we started out, the whole idea of applying a cram-down provision to subprime mortgages, which had a bubble and were the problem, has now expanded to the full market. It now affects mortgages that are not subprime. And so I don't want the gentleman to think that I have undergone some sort of change or that this is contradictory.

Credit Suisse, and I ask unanimous consent to put this in the record, speaks to this whole question of whether there is going to be -- that there will necessarily follow a rise in interest rates. And they compare both of the arguments that have been articulated here. And I think you will find that there is an honest difference of view even among the experts.

I yield to the gentlelady from California.

[The information follows:]

***** INSERT 3-3 *****

Ms. Waters. Thank you very much. Mr. Chairman, I wanted to continue the discussion about risk. What the gentleman does not recognize is who is creating the risk. What the gentleman would have you believe, that the risk is created by those of us who wish to modify a loan because we believe that our constituents or our citizens have been tricked or defrauded or led into loans that really did not make good sense. The risk is created when you put an Alt-A on the market, an Alt-A loan that basically says I will not verify your credit, I will not verify your income. You just pay me big money on the front end and I am going to give you the mortgage. You just created risk. When you put an adjustable rate mortgage on the market and you allow people to get in for a little money and it is going to reset in 6 months or a year or 2 years, you know what the income of that constituent is, of that citizen is. You know that it is not going to increase substantially in 6 months or a year. You just created the risk by writing that mortgage. Whether it is an adjustable rate or an Alt-A loan or an interest only loan, you have products that were put on the market that created the risk. It is not the modification of the loan or making sure that it can go into bankruptcy proceedings. That loan was created by all of those who set -- the physicists and the mathematicians and others who

were creating products by which to make quick money. They created the risk.

All we are trying to do is reduce the risk to the average American citizen who simply wanted to own a home and didn't know what these products were all about. So if you want to talk about risk, that is where the risk comes from, not from modifying the loan.

Mr. Lungren. Would the gentlelady yield?

Ms. Waters. I yield back the balance of my time.

Chairman Conyers. I think it is my time, and I will yield the last 1 minute and 56 seconds to Brad Sherman.

Mr. Sherman. My colleague from Los Angeles argues that the risk is created by the unusual and predatory and subprime loans. It is my understanding that this amendment would limit the bill to exactly those kinds of loans. Whether we should have the bill be so limited in this extraordinary economic circumstance, where even people with great credit who got great loans from great lenders are having trouble, is something that troubles me and I will think about when the vote is called.

I yield back.

Chairman Conyers. I yield back my time.

Ms. Jackson Lee. Mr. Chairman?

Chairman Conyers. Who seeks? Oh, yes, Sheila Jackson Lee is recognized.

Ms. Jackson Lee. Mr. Chairman, I want to speak to the agreement that may have been made by yourself and Mr. Chabot simply to read a statement into the record by conservative economist Mark Zandi, who said that the economy is shutting down. I don't think there is a question of whether or not we can analyze great risk or little risk. We actually have an economy that is not working.

And I appreciate the generosity of Mr. Jordan, who wanted to be sensitive to subprime constituents who would have to have had subprime loans. But we have now reached a point where this is an epidemic. And the real underpinnings of this crisis is these mortgages were sold as securities. Therefore, there is no nexus or connection to the mortgage holder, to the homeowner and the lender. It doesn't exist anymore. There is no way that you can seek to compromise. There are a bunch of servicers hanging out somewhere, as I said earlier in debate. So we don't have the regular order that we may have had 2 years ago, 3 years ago, or 4 years ago. Frankly, the mortgage markets are literally on bended knee. I don't think we can do anything more than to put this bankruptcy bill forward as it is because the circumstances of the previous agreement do not exist. The economists have said the economy is shutting down. We need this for everybody, not just one group of loans, everyone.

I yield back.

Chairman Conyers. I thank the gentlelady. And the Chair will call the roll on the Jordan amendment.

The Clerk. Mr. Conyers.

Chairman Conyers. No.

The Clerk. Mr. Conyers votes no.

Mr. Berman.

Mr. Berman. No.

The Clerk. Mr. Berman votes no.

Mr. Boucher.

[No response.]

The Clerk. Mr. Nadler.

[No response.]

The Clerk. Mr. Scott.

Mr. Scott. No.

The Clerk. Mr. Scott votes no.

Mr. Watt.

[No response.]

The Clerk. Ms. Lofgren.

Ms. Lofgren. No.

The Clerk. Ms. Lofgren votes no.

Ms. Jackson Lee.

Ms. Jackson Lee. No.

The Clerk. Ms. Jackson Lee votes no.

Ms. Waters.

Ms. Waters. No.

The Clerk. Ms. Waters votes no.

Mr. Delahunt.

Mr. Delahunt. No.

The Clerk. Mr. Delahunt votes no.

Mr. Wexler.

Mr. Wexler. No.

The Clerk. Mr. Wexler votes no.

Mr. Cohen.

Mr. Cohen. No.

The Clerk. Mr. Cohen votes no.

Mr. Johnson.

Mr. Johnson. No.

The Clerk. Mr. Johnson votes no.

Mr. Pierluisi.

Mr. Pierluisi. No.

The Clerk. Mr. Pierluisi votes no.

Mr. Gutierrez.

Mr. Gutierrez. No.

The Clerk. Mr. Gutierrez votes no.

Mr. Sherman.

Mr. Sherman. A conflicted no.

The Clerk. Mr. Sherman votes no.

Ms. Baldwin.

Ms. Baldwin. No.

The Clerk. Ms. Baldwin votes no.

Mr. Gonzalez.

Mr. Gonzalez. No.

The Clerk. Mr. Gonzalez votes no.

Mr. Weiner.

[No response.]

The Clerk. Mr. Schiff.

Mr. Schiff. No.

The Clerk. Mr. Schiff votes no.

Ms. Sanchez.

Ms. Sanchez. No.

The Clerk. Ms. Sanchez votes no.

Ms. Wasserman Schultz.

Ms. Wasserman Schultz. No.

The Clerk. Ms. Wasserman Schultz votes no.

Mr. Maffei.

Mr. Maffei. No.

The Clerk. Mr. Maffei votes no.

Mr. Smith.

Mr. Smith. Aye.

The Clerk. Mr. Smith votes aye.

Mr. Goodlatte.

Mr. Goodlatte. Aye.

The Clerk. Mr. Goodlatte votes aye.

Mr. Sensenbrenner.

Mr. Sensenbrenner. Aye.

The Clerk. Mr. Sensenbrenner votes aye.

Mr. Coble.

[No response.]

The Clerk. Mr. Gallegly.

Mr. Gallegly. Aye.

The Clerk. Mr. Gallegly votes aye.

Mr. Lungren.

Mr. Lungren. Aye.

The Clerk. Mr. Lungren votes aye.

Mr. Issa.

[No response.]

The Clerk. Mr. Forbes.

Mr. Forbes. Aye.

The Clerk. Mr. Forbes votes aye.

Mr. King.

Mr. King. Aye.

The Clerk. Mr. King votes aye.

Mr. Franks.

Mr. Franks. Aye.

The Clerk. Mr. Franks votes aye.

Mr. Gohmert.

Mr. Gohmert. Aye.

The Clerk. Mr. Gohmert votes aye.

Mr. Jordan.

Mr. Jordan. Yes.

The Clerk. Mr. Jordan votes yes.

Mr. Poe.

Mr. Poe. Aye.

The Clerk. Mr. Poe votes aye.

Mr. Chaffetz.

Mr. Chaffetz. Aye.

The Clerk. Mr. Chaffetz votes aye.

Mr. Rooney.

Mr. Rooney. Aye.

The Clerk. Mr. Rooney votes aye.

Mr. Harper.

Mr. Harper. Aye.

The Clerk. Mr. Harper votes aye.

Chairman Conyers. Are there other members that would like to report? Mr. Weiner?

Mr. Weiner. No.

The Clerk. Mr. Weiner votes no.

Chairman Conyers. Anyone else? The Clerk will report.

The Clerk. Mr. Chairman, 14 members voted aye, 20 members voted nay.

Chairman Conyers. The amendment fails.

The gentlelady from California is recognized for unanimous consent.

Ms. Lofgren. Thank you, Mr. Chairman. I have worked with others to circulate a letter urging that bankruptcy

mortgage reform be adopted as soon as possible. The letter currently has 154 members, both Republicans and Democrats, who signed. And I would ask unanimous consent that the letter be made part of the record.

Chairman Conyers. Without objection, so ordered. The last amendment, Steve King.

[The information follows:]

***** INSERT 3-4 *****

Mr. King. Thank you, Mr. Chairman. I have an amendment at the desk designated amendment number 2.

Mr. Berman. Reserve a point of order.

Chairman Conyers. A point of order is reserved by the gentleman from California. The Clerk will report the amendment.

The Clerk. Amendment offered by Mr. King of Iowa.

[The information follows:]

***** INSERT 3-5 *****

Mr. King. Mr. Chairman, I ask unanimous consent the amendment be considered as read.

Chairman Conyers. Without objection, so ordered. The gentleman is recognized in support of his amendment.

Mr. King. Thank you, Mr. Chairman. This debate that we are having on bankruptcy, it doesn't reflect upon the reasons that we are in this situation where we are trying to deal with bankruptcies, particularly with regard to mortgages. And I am one who is disappointed at the lack of national dialogue on the reasons that we are in this situation economically. And I have called for a 9/11-type mission to go back and examine where we made mistakes along the way.

Now, short of that, short of that public dialogue, I haven't seen the hearings that had this discussion, but I will submit this. We heard from Mr. Lungren about the faults in Fannie Mae and Freddie Mac. I remember in October 26th of 2005 there was an amendment on the floor that called for the additional regulation of Fannie Mae and Freddie Mac, the capitalization and similar regulations of such, and that was debated down and lost on the floor of the House of Representatives on that day. I regret that. I supported the amendment. And I think Mr. Lungren did as well.

But in any case, that was Fannie Mae and Freddie Mac. This amendment addresses another component of our flaw, and that is the Community Reinvestment Act. The Community Reinvestment Act, which I believe came about in two components, all with good intentions, to encourage that mortgage loans would be made in neighborhoods that didn't have the value of their real estate upheld by the marketplace, and to people who were having difficulty getting mortgage loans. I think the spirit of the Community Reinvestment Act was right, but I think the logic of it was wrong, and the logic being that if you encourage lending institutions, and the language in the Community Reinvestment Act does do that, and the constraint essentially was this, that if lending institutions were to expand or relocate they had to go under bank regulators who were then guided by the principles that are in the Community Reinvestment Act, which essentially scored them according to what kind of loans they were making and what kind of neighborhoods. We had lenders who were redlining, and they draw a red line on a map, usually around an inner city, and drawing a decision they wouldn't loan into that neighborhood.

That is wrong, Mr. Chairman. But so is offering loans to people to meet a goal that are undercapitalized, undervalued, and people who don't have the income to make the loans. I believe the Community Reinvestment Act is one

of the root causes of us being in this subprime mortgage situation and the bad mortgage situation that we have. And my amendment calls for the repeal of the Community Reinvestment Act for those reasons. And it reflects upon this, that Albert Einstein once said that a problem cannot be solved by the same mindset that created it. So here we are with the same mindset on the underlying bill, which essentially sets up cram-down through our mortgage lenders and allows a judge to make a decision that the \$400,000 loan will now be a \$300,000 loan, and a 7 percent loan will now be a 4 percent loan. And by the way, we will extend that out to 40 years because the judge in his judgment would conclude that maybe, maybe the person that had the bad loan could meet those standards.

I think that mindset that is underneath this bill is flawed. And I believe that it was also flawed in Fannie Mae and Freddie Mac, and I think it is also flawed in the Community Reinvestment Act. And so this amendment makes that point, let's not try to solve a problem that we have with the same mindset that created it.

And I would just simply urge adoption of my amendment, and I would yield back the balance of my time.

Chairman Conyers. Does the gentleman from California insist upon his point of order?

Mr. Berman. He does.

Chairman Conyers. The gentleman will state his point of order.

Mr. Berman. Mr. Chairman, this amendment before us deals only with the subject of --

Chairman Conyers. Another bad mike.

Mr. Berman. Basically, this is an amendment dealing with repeal of the Community Reinvestment Act. It is the title 12, the Banking Act. It is not the subject matter of this bill, and it is not the jurisdiction of this committee. I insist on the point of order.

Chairman Conyers. Does the gentleman care to respond?

Mr. King. Thank you, Mr. Chairman. I would say that the argument made by Mr. Berman is utterly compelling, and I would ask unanimous consent to withdraw my amendment.

Chairman Conyers. I thank the gentleman. And that relieves me of the obligation of ruling on the point of order. I thank him very much.

Are there other amendments? Hearing none, the question is now on the manager's substitute, as amended. All those in favor indicate by saying aye. All those opposed indicate by saying no.

Chairman Conyers. The ayes have it. The manager's amendment is agreed to -- as amended, is agreed to. A reporting quorum being present, the question is on reporting the bill, as amended, favorably to the House. All those in

favor say aye. All those opposed say no.

Ms. Lofgren. Mr. Chairman, may I ask for a recorded vote?

Chairman Conyers. Yes, ma'am. The Clerk will call the roll.

The Clerk. Mr. Conyers.

Chairman Conyers. Aye.

The Clerk. Mr. Conyers votes aye.

Mr. Berman.

Mr. Berman. Aye.

The Clerk. Mr. Berman votes aye.

Mr. Boucher.

[No response.]

The Clerk. Mr. Nadler.

[No response.]

The Clerk. Mr. Scott.

Mr. Scott. Aye.

The Clerk. Mr. Scott votes aye.

Mr. Watt.

Mr. Watt. Aye.

The Clerk. Mr. Watt votes aye.

Ms. Lofgren.

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren votes aye.

Ms. Jackson Lee.

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson Lee votes aye.

Ms. Waters.

Ms. Waters. Aye.

The Clerk. Ms. Waters votes aye.

Mr. Delahunt.

Mr. Delahunt. Aye.

The Clerk. Mr. Delahunt votes aye.

Mr. Wexler.

Mr. Wexler. Aye.

The Clerk. Mr. Wexler votes aye.

Mr. Cohen.

Mr. Cohen. Aye.

The Clerk. Mr. Cohen votes aye.

Mr. Johnson.

Mr. Johnson. Aye.

The Clerk. Mr. Johnson votes aye.

Mr. Pierluisi.

Mr. Pierluisi. Aye.

The Clerk. Mr. Pierluisi votes aye.

Mr. Gutierrez.

Mr. Gutierrez. Aye.

The Clerk. Mr. Gutierrez votes aye.

Mr. Sherman.

Mr. Sherman. Aye.

The Clerk. Mr. Sherman votes aye.

Ms. Baldwin.

Ms. Baldwin. Aye.

The Clerk. Ms. Baldwin votes aye.

Mr. Gonzalez.

Mr. Gonzalez. Aye.

The Clerk. Mr. Gonzalez votes aye.

Mr. Weiner.

Mr. Weiner. Aye.

The Clerk. Mr. Weiner votes aye.

Mr. Schiff.

Mr. Schiff. Aye.

The Clerk. Mr. Schiff votes aye.

Ms. Sanchez.

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez votes aye.

Ms. Wasserman Schultz.

Ms. Wasserman Schultz. Aye.

The Clerk. Ms. Wasserman Schultz votes aye.

Mr. Maffei.

Mr. Maffei. Aye.

The Clerk. Mr. Maffei votes aye.

Mr. Smith.

Mr. Smith. No.

The Clerk. Mr. Smith votes no.

Mr. Goodlatte.

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte votes no.

Mr. Sensenbrenner.

Mr. Sensenbrenner. No.

The Clerk. Mr. Sensenbrenner votes no.

Mr. Coble.

[No response.]

The Clerk. Mr. Gallegly.

Mr. Gallegly. No.

The Clerk. Mr. Gallegly votes no.

Mr. Lungren.

Mr. Lungren. No.

The Clerk. Mr. Lungren votes no.

Mr. Issa.

Mr. Issa. No.

The Clerk. Mr. Issa votes no.

Mr. Forbes.

Mr. Forbes. No.

The Clerk. Mr. Forbes votes no.

Mr. King.

Mr. King. No.

The Clerk. Mr. King votes no.

Mr. Franks.

Mr. Franks. No.

The Clerk. Mr. Franks votes no.

Mr. Gohmert.

Mr. Gohmert. No.

The Clerk. Mr. Gohmert votes no.

Mr. Jordan.

Mr. Jordan. No.

The Clerk. Mr. Jordan votes no.

Mr. Poe.

Mr. Poe. No.

The Clerk. Mr. Poe votes no.

Mr. Chaffetz.

Mr. Chaffetz. No.

The Clerk. Mr. Chaffetz votes no.

Mr. Rooney.

Mr. Rooney. No.

The Clerk. Mr. Rooney votes no.

Mr. Harper.

Mr. Harper. No.

The Clerk. Mr. Harper votes no.

Chairman Conyers. The Clerk will report. Or are there others, other members that wish to be recorded?

The Clerk. Mr. Chairman, 21 members voted no, 15 members voted nay.

Chairman Conyers. H.R. 200 is agreed to, and I thank the members for their diligence. Without objection, the

bill will be reported as a single amendment in the nature of a substitute incorporating amendments adopted. And staff is authorized to make technical and conforming changes.

Members will have 2 days to submit views.

And I would yield now to the gentleman from California for a unanimous consent request.

Mr. Lungren. Mr. Chairman, may I ask unanimous consent to have included in the record a U.S. Department of Agriculture study entitled "Do Farmers Need a Separate Chapter in the Bankruptcy Code," which would be apropos of the discussion that I had with the gentleman from Massachusetts.

Chairman Conyers. Without objection, so ordered.

[The information follows:]

***** INSERT 3-6 *****

Chairman Conyers. I thank the committee for its tenacity. And the committee stands adjourned.

[Whereupon, at 5:30 p.m., the committee was adjourned.]