



## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

February 9, 2009

### **H.R. 788**

#### **A bill to provide safe harbor for mortgage servicers who engage in specified mortgage loan modifications, and for other purposes**

*As ordered reported by the House Committee on Financial Services  
on February 4, 2009*

H.R. 788 would protect mortgage servicers from legal liability if they perform loan modifications according to specific criteria established under the legislation. The federal government could realize additional receipts if enacting this legislation results in additional modifications of federally insured loans or loans held or securitized by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation. (CBO considers the financial activities of those organizations to be components of the federal budget.) Other problems, however, such as the complex nature of modifying loans within mortgage securities, would likely continue to impede loan modifications following enactment of this legislation. CBO estimates that on balance, enacting the bill would probably not result in a significant number of additional modifications and thus would not have a significant impact on the federal budget.

Residential mortgages are often pooled together and sold to investors as securities. The pools of loans are overseen by mortgage servicers, who have a fiduciary responsibility to maximize returns to the investors. Many pooling and servicing agreements give servicers authority to modify the terms of securitized loans if that action is in the interest of maximizing the value of the loan pool, but some agreements are more restrictive. Pooling and servicing agreements can be amended with the consent of investors. However, not all investors in mortgage-backed securities share losses equally, which may limit servicers' ability to obtain permission to modify the terms of loans to ensure maximum value for all investors.

H.R. 788 contains intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). The bill would prevent governmental and private-sector entities that invest in pooled residential mortgages from seeking damages from servicers on the grounds that they violated their duty to maximize the value of the

loans. The bill also would require certain mortgage servicers to provide reports to the Secretary of the Treasury and would preempt some state laws. CBO estimates that the costs of the intergovernmental and private-sector mandates would be small and would fall below the annual thresholds established in UMRA (\$69 million for intergovernmental mandates and \$139 million for private-sector mandates in 2009, adjusted annually for inflation).

The CBO staff contact for this estimate is Susanne S. Mehlman. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.