Statement of Rep. Brad Miller
Committee on the Judiciary, In support of H.R. 225 – The Emergency Homeownership and Equity Protection Act
January 22, 2008

Chairman Conyers, Ranking Member Smith, members of the Committee, thank you for this opportunity to address pending legislation to empower bankruptcy courts to modify home mortgages, just as bankruptcy courts already can modify every other kind of secured debt. The mortgage industry treats that peculiarity in the law as if it were brought down from Mount Sinai on stone tablets. In fact, it appears to have been just a sloppy compromise in the Senate in 1978, and that nonsensical quirk in the law is now responsible for much of the paralysis in our nation's response to the foreclosure crisis.

We are just beginning to see the effects of the foreclosure crisis.

The Census Bureau estimates that 69.2 percent of American families owned their own homes in the second quarter of 2004, and 67.9 percent owned their own homes in the third quarter of 2008. The number will go much, much lower.

Credit Suisse now estimates that 8.1 million families will lose their homes to foreclosure in the next four years, and the number will rise to 10.2 million families if the recession becomes more severe, a frighteningly real possibility.

In 2006, about 2.5 million families were "underwater," or owed more on their mortgages than their homes were worth. Moody's now estimates that 12 million homeowners are underwater, and the number will rise to 14.6 million by the fall if home values decline another ten percent, as Moody's expects.

Homeowners who owe more on their home than their home is worth are stuck. They can't sell their house and pay off their mortgage, they can't refinance, and they almost certainly can't qualify for any other kind of credit. Even homeowners who can make their current monthly payments have no wiggle room if anything goes wrong, if anyone in the family gets seriously ill, or if anyone loses their job, or if they go through a divorce.

Foreclosures are contributing to the decline in home values, the decline in home values is contributing to the foreclosure crisis, and both are contributing to the decline in the economy. Vacant foreclosed homes are stigmatizing neighborhoods and pushing down home values, and priced-to-sell foreclosed homes are flooding real estate markets around the country. Half of the homes on the market in the Bay Area of California are foreclosures.

Families that lose their homes to foreclosure lose their membership in the middle class, probably forever. Almost all middle-class homeowners are seeing their life's savings evaporate with the collapse in the value of their home. And a homeowner who has seen his home decline in value by 20 or 30 percent is in no hurry to buy a new car.

If ten million families lose their homes to foreclosure in the next four years, nothing else we do to revive the economy is going to work.

Voluntary modifications are not even touching the problem. Three quarters of the voluntary modifications that industry claims are just payment schedules with no reduction in the principal or interest. Half of the modifications in November were forbearance agreements that allowed the homeowner to catch up back payments, and actually resulted in a higher monthly payment than the original mortgage. If a homeowner defaulted on a lower monthly payment, what are the chances the homeowner can make a higher monthly payment?

Industry has one explanation after another for why there are so few real voluntary modifications, but after a while it all just sounds like “the dog ate my homework.”

One explanation that critics of the financial industry offer is that the industry is facing millions of mortgages in default, but they are paralyzed, consumed by the fear that they are not getting as much as possible out of each borrower in default. One witness today criticizes the legislation before this committee as “one size fits all.” Mr. Chairman, with ten million families facing foreclosure, we can’t afford a lot of elaborate, individualized tailoring.

We know exactly what will happen in bankruptcy. It will result in predictable, orderly, sensible modifications. The court will limit the amount of debt secured by the home to the value of the home. Any indebtedness that exceeds the value of the collateral is not really secured anyway, and the court would treat that portion of the debt as unsecured. The court would then set a term and an interest rate of prime plus maybe one percent.

Those terms make perfect sense. It is what industry should already be doing voluntarily.

The legislation does not help homeowners who bought too much house. It only helps homeowners who can afford their house but not their mortgage. It does not help speculators. Mortgages on investment properties can already be modified in bankruptcy.

I spent a lot of time and energy a year ago refuting each argument by the financial industry against this legislation. Many of you remember those arguments. They said their lawyers told them the legislation was unconstitutional and would never survive a court challenge. If their lawyers told them that, they need to get some new lawyers.

But a year ago, many members were reluctant to question what the financial industry said. After all, the financial industry made 40 percent of all corporate profits in 2007, so those guys must be really smart.

If you still think that, go home this weekend and ask the people you represent how much credibility they think the financial industry should have with Congress now.

We’ve spent a year and a half on failed efforts to encourage voluntary modifications. We’ve offered industry carrot after carrot. It is time for a stick. This legislation is the stick.