

110TH CONGRESS
2D SESSION

H. R. 5579

To remove an impediment to troubled debt restructuring on the part of holders of residential mortgage loans, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 11, 2008

Mr. CASTLE (for himself and Mr. KANJORSKI) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To remove an impediment to troubled debt restructuring on the part of holders of residential mortgage loans, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Emergency Mortgage
5 Loan Modification Act of 2008”.

1 **SEC. 2. SAFE HARBOR FOR QUALIFIED LOAN MODIFICA-**
2 **TIONS OR WORKOUT PLANS FOR CERTAIN**
3 **RESIDENTIAL MORTGAGE LOANS.**

4 (a) STANDARD FOR LOAN MODIFICATIONS OR WORK-
5 OUT PLANS.—Absent specific contractual provisions to the
6 contrary—

7 (1) the duty to maximize, or to not adversely
8 affect, the recovery of total proceeds from pooled
9 residential mortgage loans is owed by a servicer of
10 such pooled loans to the securitization vehicle for the
11 benefit of all investors and holders of beneficial in-
12 terests in the pooled loans, in the aggregate, and not
13 to any individual party or group of parties; and

14 (2) a servicer of pooled residential mortgage
15 loans shall be deemed to be acting on behalf of the
16 securitization vehicle in the best interest of all inves-
17 tors and holders of beneficial interests in the pooled
18 loans, in the aggregate, if for a loan that is in pay-
19 ment default under the loan agreement or for which
20 payment default is imminent or reasonably foresee-
21 able, the loan servicer makes reasonable and docu-
22 mented efforts to implement a modification or work-
23 out plan or, if such efforts are unsuccessful or such
24 plan would be infeasible, engages in other loss miti-
25 gation, including accepting a short payment or par-
26 tial discharge of principal, or agreeing to a short

1 sale of the property, to the extent that the servicer
2 reasonably believes the modification or workout plan
3 or other mitigation actions will maximize the net
4 present value to be realized on the loan over that
5 which would be realized through foreclosure.

6 (b) SAFE HARBOR.—Absent specific contractual pro-
7 visions to the contrary, a servicer of a residential mortgage
8 loan that acts in a manner consistent with the duty set
9 forth in subsection (a), shall not be liable for entering into
10 a qualified loan modification or workout plan, to—

11 (1) any person, based on that person’s owner-
12 ship of a residential mortgage loan or any interest
13 in a pool of residential mortgage loans or in securi-
14 ties that distribute payments out of the principal, in-
15 terest and other payments in loans on the pool;

16 (2) any person who is obligated to make pay-
17 ments determined in reference to any loan or any in-
18 terest referred to in paragraph (1); or

19 (3) any person that insures any loan or any in-
20 terest referred to in paragraph (1) under any law or
21 regulation of the United States or any law or regula-
22 tion of any State or political subdivision of any
23 State.

24 (c) RULE OF CONSTRUCTION.—No provision of this
25 section shall be construed as limiting the ability of a

1 servicer to enter into loan modifications or workout plans
2 other than qualified loan modification or workout plans.

3 (d) DEFINITIONS.—For purposes of this section, the
4 following definitions shall apply:

5 (1) QUALIFIED LOAN MODIFICATION OR WORK-
6 OUT PLAN.—The term “qualified loan modification
7 or workout plan” means a modification or plan
8 that—

9 (A) is scheduled to remain in place until
10 the borrower sells or refinances the property, or
11 for at least 5 years from the date of adoption
12 of the plan, whichever is sooner;

13 (B) does not provide for a repayment
14 schedule that results in negative amortization
15 at any time; and

16 (C) does not require the borrower to pay
17 additional points and fees.

18 (2) RESIDENTIAL MORTGAGE LOAN DEFINED.—
19 The term “residential mortgage loan” means a loan
20 that is secured by a lien on an owner-occupied resi-
21 dential dwelling.

22 (3) SECURITIZATION VEHICLE.—The term
23 “securitization vehicle” means a trust, corporation,
24 partnership, limited liability entity, special purpose
25 entity, or other structure that—

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

7 (B) holds such loans.

8 (e) **EFFECTIVE PERIOD.**—This section shall apply
9 only with respect to qualified loan modification or workout
10 plans initiated prior to January 1, 2011.

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