

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 200**

OFFERED BY _____

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Helping Families Save
3 Their Homes in Bankruptcy Act of 2009”.

4 SEC. 2. ELIGIBILITY FOR RELIEF.

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

7 (1) by adding at the end of subsection (e) the
8 following: “For purposes of this subsection, the com-
9 putation of debts shall not include the secured or
10 unsecured portions of—

11 “(1) debts secured by the debtor’s principal res-
12 idence if the current value of such residence is less
13 than the secured debt limit; or

14 “(2) debts secured or formerly secured by real
15 property that was the debtor’s principal residence
16 that was sold in foreclosure or that the debtor sur-
17 rendered to the creditor if the current value of such

1 real property is less than the secured debt limit.”,
2 and

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

5 “(5) The requirements of paragraph (1) shall not
6 apply in a case under chapter 13 with respect to a debtor
7 who submits to the court a certification that the debtor
8 has received notice that the holder of a claim secured by
9 the debtor’s principal residence may commence a fore-
10 closure on the debtor’s principal residence.”.

11 **SEC. 3. PROHIBITING CLAIMS ARISING FROM VIOLATIONS**
12 **OF THE TRUTH IN LENDING ACT.**

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

15 (1) in paragraph (8) by striking “or” at the
16 end,

17 (2) in paragraph (9) by striking the period at
18 the end and inserting “; or”, and

19 (3) by adding at the end the following:

20 “(10) the claim for a loan secured by a security
21 interest in the debtor’s principal residence is subject
22 to a remedy for rescission under the Truth in Lend-
23 ing Act notwithstanding the prior entry of a fore-
24 closure judgment, except that nothing in this para-

1 graph shall be construed to modify, impair, or super-
2 sede any other right of the debtor.”.

3 **SEC. 4. AUTHORITY TO MODIFY CERTAIN MORTGAGES.**

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

6 (1) in subsection (b)—

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

9 (B) in paragraph (10) by striking “and” at
10 the end, and

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

13 “(11) notwithstanding paragraph (2) and other-
14 wise applicable nonbankruptcy law, with respect to a
15 claim for a loan originated before the effective date
16 of this paragraph and secured by a security interest
17 in the debtor’s principal residence that is the subject
18 of a notice that a foreclosure may be commenced
19 with respect to such loan, modify the rights of the
20 holder of such claim (and the rights of the holder of
21 any claim secured by a subordinate security interest
22 in such residence)—

23 “(A) by providing for payment of the
24 amount of the allowed secured claim as deter-
25 mined under section 506(a)(1);

1 “(B) if any applicable rate of interest is
2 adjustable under the terms of such security in-
3 terest by prohibiting, reducing, or delaying ad-
4 justments to such rate of interest applicable on
5 and after the date of filing of the plan;

6 “(C) by modifying the terms and condi-
7 tions of such loan—

8 “(i) to extend the repayment period
9 for a period that is no longer than the
10 longer of 40 years (reduced by the period
11 for which such loan has been outstanding)
12 or the remaining term of such loan, begin-
13 ning on the date of the order for relief
14 under this chapter; and

15 “(ii) to provide for the payment of in-
16 terest accruing after the date of the order
17 for relief under this chapter at a fixed an-
18 nual rate equal to the currently applicable
19 average prime offer rate as of the date of
20 the order for relief under this chapter, cor-
21 responding to the repayment term deter-
22 mined under the preceding paragraph, as
23 published by the Federal Financial Institu-
24 tions Examination Council in its table enti-

1 tled ‘Average Prime Offer Rates—Fixed’,
2 plus a reasonable premium for risk; and

3 “(D) by providing for payments of such
4 modified loan directly to the holder of the
5 claim; and”, and

6 (2) by adding at the end the following:

7 “(g) A claim may be reduced under subsection
8 (b)(11)(A) only on the condition that if the debtor sells
9 the principal residence securing such claim, before receiv-
10 ing a discharge under this chapter and receives net pro-
11 ceeds from the sale of such residence, then the debtor
12 agrees to pay to such holder—

13 “(1) if such residence is sold in the 1st year oc-
14 ccurring after the effective date of the plan, 80 per-
15 cent of the amount of the difference between the
16 sales price and the amount of such claim (plus costs
17 of sale and improvements), but not to exceed the
18 amount of the allowed secured claim determined as
19 if such claim had not been reduced under such sub-
20 section;

21 “(2) if such residence is sold in the 2d year oc-
22 ccurring after the effective date of the plan, 60 per-
23 cent of the amount of the difference between the
24 sales price and the amount of such claim (plus costs
25 of sale and improvements), but not to exceed the

1 amount of the allowed secured claim determined as
2 if such claim had not been reduced under such sub-
3 section;

4 “(3) if such residence is sold in the 3d year oc-
5 ccurring after the effective date of the plan, 40 per-
6 cent of the amount of the difference between the
7 sales price and the amount of such claim (plus costs
8 of sale and improvements), but not to exceed the
9 amount of the allowed secured claim determined as
10 if such claim had not been reduced under such sub-
11 section; and

12 “(4) if such residence is sold in the 4th year oc-
13 ccurring after the effective date of the plan, 20 per-
14 cent of the amount of the difference between the
15 sales price and the amount of such claim (plus costs
16 of sale and improvements), but not to exceed the
17 amount of the allowed secured claim determined as
18 if such claim had not been reduced under such sub-
19 section.

20 “(h) With respect to a claim of the kind described
21 in subsection (b)(11), the plan may not contain a modi-
22 fication under the authority of subsection (b)(11)—

23 “(1) in a case commenced under this chapter
24 after the expiration of the 15-day period beginning
25 on the effective date of this subsection, unless—

1 “(A) the debtor certifies that the debtor
2 attempted, not less than 15 days before the
3 commencement of the case, to contact the hold-
4 er of such claim (or the entity collecting pay-
5 ments on behalf of such holder) regarding
6 modification of the loan that is the subject of
7 such claim; or

8 “(B) a foreclosure sale is scheduled to
9 occur on a date in the 30-day period beginning
10 on the date the case is commenced; and

11 “(2) in any other case pending under this chap-
12 ter, unless the debtor certifies that the debtor at-
13 tempted to contact the holder of such claim (or the
14 entity collecting payments on behalf of such holder)
15 regarding modification of the loan that is the subject
16 of such claim, before—

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

20 “(B) modifying a plan under section 1323
21 or 1329 to contain a modification under the au-
22 thority of subsection (b)(11).”.

23 **SEC. 5. COMBATING EXCESSIVE FEES.**

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

1 (1) in paragraph (1) by striking “and” at the
2 end,

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

5 (3) by adding at the end the following:

6 “(3) the debtor, the debtor’s property, and
7 property of the estate are not liable for a fee, cost,
8 or charge that is incurred while the case is pending
9 and arises from a debt that is secured by the debt-
10 or’s principal residence except to the extent that—

11 “(A) the holder of the claim for such debt
12 files with the court (annually or, in order to
13 permit filing consistent with clause (ii), at such
14 more frequent periodicity as the court deter-
15 mines necessary) notice of such fee, cost, or
16 charge before the earlier of—

17 “(i) 1 year after such fee, cost, or
18 charge is incurred; or

19 “(ii) 60 days before the closing of the
20 case; and

21 “(B) such fee, cost, or charge—

22 “(i) is lawful under applicable non-
23 bankruptcy law, reasonable, and provided
24 for in the applicable security agreement;
25 and

1 “(ii) is secured by property the value
2 of which is greater than the amount of
3 such claim, including such fee, cost, or
4 charge;

5 “(4) the failure of a party to give notice de-
6 scribed in paragraph (3) shall be deemed a waiver
7 of any claim for fees, costs, or charges described in
8 paragraph (3) for all purposes, and any attempt to
9 collect such fees, costs, or charges shall constitute a
10 violation of section 524(a)(2) or, if the violation oc-
11 curs before the date of discharge, of section 362(a);
12 and

13 “(5) a plan may provide for the waiver of any
14 prepayment penalty on a claim secured by the debt-
15 or’s principal residence.”.

16 **SEC. 6. CONFIRMATION OF PLAN.**

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

19 (1) in paragraph (8) by striking “and” at the
20 end,

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

23 (3) by inserting after paragraph (9) the fol-
24 lowing:

1 “(10) notwithstanding subclause (I) of para-
2 graph (5)(B)(i), the plan provides that the holder of
3 a claim whose rights are modified pursuant to sec-
4 tion 1322(b)(11) retain the lien until the later of—
5 “(A) the payment of such holder’s allowed
6 secured claim; or
7 “(B) discharge under section 1328; and
8 “(11) the plan modifies a claim in accordance
9 with section 1322(b)(11), and the court finds that
10 such modification is in good faith.”.

11 **SEC. 7. DISCHARGE.**

12 Section 1328 of title 11, the United States Code, is
13 amended—

14 (1) in subsection (a)—

15 (A) by inserting “(other than payments to
16 holders of claims whose rights are modified
17 under section 1322(b)(11)” after “paid” the
18 1st place it appears, and

19 (B) in paragraph (1) by inserting “or, to
20 the extent of the unpaid portion of an allowed
21 secured claim, provided for in section
22 1322(b)(11)” after “1322(b)(5)”, and

23 (2) in subsection (c)(1) by inserting “or, to the
24 extent of the unpaid portion of an allowed secured

1 claim, provided for in section 1322(b)(11)” after
2 “1322(b)(5)”.

3 **SEC. 8. RULE OF CONSTRUCTION.**

4 Nothing in this Act or the amendments made by this
5 Act shall be construed to modify any obligation of the Fed-
6 eral Housing Administration, the Veterans Administra-
7 tion, or the Department of Agriculture under a contract
8 that guarantees or insures the payment of any part of a
9 loan secured by a security interest in a principal residence.

10 **SEC. 9. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

11 (a) EFFECTIVE DATE.—Except as provided in sub-
12 section (b), this Act and the amendments made by this
13 Act shall take effect on the date of the enactment of this
14 Act.

15 (b) APPLICATION OF AMENDMENTS.—The amend-
16 ments made by this Act shall apply with respect to cases
17 commenced under title 11 of the United States Code be-
18 fore, on, or after the date of the enactment of this Act.

