

## **Mortgage and Securities Stabilization, Recovery and Modification Program Act of 2009**

Purpose of Bill: To reduce foreclosures and stabilize housing and securities prices by establishing a program for nonconforming securitized mortgages [and conforming securitized mortgages backed by Fannie Mae and Freddie Mac?] that transfers responsibility for mortgage modifications and foreclosure decisions from servicers to government-designated, community-based trustees, and removes any restrictions on those modification and foreclosure decisions found in private pooling and servicing agreements.

The bill would include the following provisions:

- ! Mortgages Covered by this Program: Covered mortgages include nonconforming [and conforming?] mortgages (including subprime, Alt-A, and jumbos) securitized before date of enactment of this bill.
- ! Transfer/Expansion of Modification/Foreclosure Decision Rights; Changes to Securitization Documents:
  - " Notwithstanding any contract provision to the contrary governing any pool of securitized mortgages covered by this program, all rights to modify and make decisions on whether to foreclose on mortgages will be transferred from the designated servicer (or equivalent party) to the trustee designated by the Office of Mortgage Modification (OMM) established by this bill.
    - The authority to make modification and foreclosure decisions will be transferred away from the servicers to OMM as of the date of enactment of this bill. OMM will then transfer this authority to a designed trustee as soon as possible after the bill's enactment.
  - " Once transferred, the trustees will have full power to modify mortgages and to make foreclosure decisions according to the standards discussed in this bill, notwithstanding any contract provision to the contrary governing any pool of securitized mortgages covered by this program, including (but not limited to):
    - any restrictions on the number or type or terms of modifications
    - any prerequisite to modification that mortgages be currently delinquent or in default
    - any need to get permission from any third party (such as a trustee or holders of mortgage-backed securities)
    - any requirements that the modifications or foreclosures be done to maximize the value of a particular securitized pool of mortgages as a

whole (as opposed to maximizing the value of an individual mortgage)

- " Once a mortgage is returned to the pool, notwithstanding any contract provision to the contrary governing any pool of securitized mortgages covered by this program, all servicers of such pools (or equivalent parties) must follow the directions of the trustees and OMM concerning modification and foreclosure.
- " Nothing in this act is intended to modify other rights and responsibilities of servicers of pools of securitized mortgages covered by this program, including:
  - rights to fees
  - responsibilities to collect mortgage payments from homeowners (as modified by the trustees)
  - responsibilities to distribute payments to bondholders in accordance with their contracts
  - responsibilities to carry out foreclosures (when directed by the trustees)
  - [what about the right to sell mortgages out of the pool?]
- " Except to the extent that the bondholders are bound by the decisions of the trustees concerning modifications and foreclosures and the effect of those decisions on their payment streams, nothing in this bill affects the rights of bondholders to receive payments in accordance with the securitization contracts.

! Establishment and Responsibilities of Office of Mortgage Modification (OMM):

- " An Office of Mortgage Modification (OMM) will be established to oversee the program. OMM will be located in an existing agency (e.g. HUD, FDIC, Treasury, FHLBB) to save costs.
- " OMM will collect all necessary mortgage information from servicers and servicers of covered mortgages. Servicers of covered mortgages will be required to provide this information.
- " OMM will keep track of which pools the covered mortgages are in but will not pass that information on to the trustees who will rework them, and will establish procedures and take all reasonable and necessary steps to make sure information does not get passed on or acquired by the trustees.
- " Similarly, OMM will keep track of which mortgages are assigned to which trustees, but will not pass on that information to the servicers to whom the

mortgages will eventually be returned to the holders of securities associated with those mortgages. OMM will establish procedures and take all reasonable and necessary steps to make sure information does not get passed on or acquired by the servicers or securities holders.

" OMM responsibilities will include:

- dividing the US into appropriate regions
- identifying community banks and credit unions and taking applications from these organizations to serve as trustees (If feasible, selection of trustees should be done through regular government contracting bidding procedures. If that would process delay program implementation too long, this bill needs to create an exception.)
- hiring and overseeing (and, if necessary, replacing) trustees in each region who would be responsible for reworking/foreclosure decisions and will be paid by OMM.
- establishing standards and procedures for trustee decisions
- collecting reworking or foreclosure decisions from trustees and passing such information on to servicers for implementation of trustee decisions
- maintaining data on the performance of trustees for purposes of monitoring.
- auditing servicer and trustee compliance with the provisions of this act
- collecting information from servicers about all payments made pursuant to modifications made under this plan
- notifying trustees of all payments made by homeowners and any problems reported by servicers to OMM, such as default or delinquency for appropriate action

" OMM will have the authority to enforce the provisions of this act by appropriate action.

! Eligibility to Serve as and Responsibilities of Government Mortgage Trustees:

" Community banks, credit unions, other similar institutions, or individuals with comparable experience in local mortgage markets will be eligible to serve as trustees.

- " Effort will be made to insure that trustees include a fair representation of minority-owned and women-owned institutions.
  
- " Interested institutions must submit an application that includes:
  - relevant experience
  - a staffing plan for hiring and assigning personnel
  - budget proposal
  - disclosure of any ownership of or interest in any mortgage-backed securities by the institution or its personnel (or their close relatives). Conflicts of interest would not necessarily be disqualifying but the institution would have to propose an acceptable plan for mitigating any conflict (e.g. screening).
  
- " Responsibilities of trustees will include
  - getting current appraisals of covered mortgage properties and maintaining documents of these appraisals
  - acquiring, securing, and maintaining sufficient documentation relevant to homeowners' ability to make sustained repayments
  - evaluating mortgage files sent to them by OMM and deciding which mortgages they should attempt to modify under the established standards
  - taking pro-active steps to locate and make in-person contact (including knocking on doors if necessary) with homeowners holding covered mortgages that the trustees determine are appropriate for modification efforts
  - making all reasonable efforts to create, negotiate, and achieve agreement on modification plans in accordance with the standards detailed in this bill
  - reporting modification, foreclosure, or no-action decisions to OMM
  - for the duration of this act, monitoring payments by homeowners pursuant to approved modification plans
  - taking prompt action upon notice from OMM to respond to delinquencies or defaults occurring under approved modification plans

- providing homeowners contact information for designated loan officers so that homeowners can contact that person with any difficulties or change in circumstances
- " Trustees must take steps to ensure that personnel and operations dedicated to the program are screened off from regular operations.
- " Trustees must make their offices available for spot audits of their trustee operations by appropriate government officials.
- " Trustees will be treated as independent government contractors, not government employees for purposes of other law.
- " Trustee decisions concerning modification and foreclosure are not appealable by servicers or holders of mortgage-backed securities for covered mortgages.
- " Trustees must take steps and establish procedures to ensure that they do not acquire any information relevant to securities (or CDS or other derivatives) connected with any covered mortgage. Trustees must report to OMM any improper information they acquire. Any attempt by servicers or securities holders to contact trustees or provide them with improper information or directly or indirectly to interfere with trustee activities will be criminally prosecuted.

! Standards for Modifications of Loans:

- " OMM will establish criteria that trustees must follow in making modification and foreclosure decisions. These criteria will include presumptions based on mortgage debt to income ratios determined by OMM.
- " The basic standard for modification will be that the expected payments from the homeowner pursuant to the modification must exceed the expected recovery from a foreclosure proceeding. The homeowner must reasonably be expected to be able to make and sustain these payments.
- " The standards will be consistent with the overall goals of keeping the homeowners in their homes to the extent possible, and, where possible, converting nonconforming mortgages into conforming mortgages
- " The standards will include a provision stating that the homeowner need not be currently delinquent or in default to qualify for a modification.
- " The standards will include a requirement that homeowners must demonstrate the ability to make and sustain payments required under a modification plan.

- " The standards will include a presumption that the modification will include reduction in principal when the homeowner has negative equity in the house (appraised value of the house is less than the outstanding mortgage) and holds a subprime or Alt-A mortgage.
- " The standards will describe acceptable forms of modifications, including
  - reduction in interest
  - deferral of principal
  - extended time for payment
  - reduction in principal.
- " The standards will include a provision that requires a trustee who finds that any loan is not in reasonable risk of defaulting to designate the mortgage as “No Action Required” and return the file to OMM for return to the pool.
- " The standards will include a presumption that any mortgage that becomes delinquent between the date of enactment [introduction?] of this bill and 6 months [?] after the date of enactment will not qualify for mortgage modification. The presumption may be overcome if the homeowner demonstrates a significant change in financial circumstances during that time period (e.g. job loss, major illness).
- " Trustees may propose revisions to the modification standards either generally or to be applied in specific locations. OMM must approve any changes in standards.

! Congressional and Administrative Oversight:

- " OMM will keep statistics and data and will prepare [quarterly] reports to be submitted to the GAO and Congress. These reports will include not only data supplied by the trustees, but also background data on different regions so that meaningful comparisons can be made among trustees to identify both insufficient and unjustifiable or excessive modifications or re-default rates.
- " Efforts to improve performance: Within the first year of the program, the methods and structures of the best performing trustees will be assessed to develop a best practices list, to be implemented by trustees going forward.
- " The GAO and Comptroller will produce quarterly reports to Congress [see TARP].

- " Spot audits of OMM, trustee offices, [and servicers?] will be conducted by [FDIC?]
- " Transparency: OMM will maintain a public website where all reports will be published.
- " Ombudsman: OMM will designate an Ombudsman who will handle any complaints from homeowners or servicers. The Ombudsman will prepare separate reports to Congress.
- ! Termination of Program: The right of trustees under this program to make decisions on modification or foreclosure will terminate no later than three years after the date of enactment of this bill, unless re-authorized by Congress. [Other functions and responsibilities under the program will continue until all covered mortgages are resolved by payment in full, transfer, default and/or foreclosure, unless Congress provides otherwise by appropriate legislation.]
- ! Establishment of Task Force for Regulation of Future Mortgage and Other Private Securitizations:
  - " A Task Force will be established to consider regulations to govern the securitizations of mortgages, with an emphasis on promoting efficient loan modification and foreclosure decisions, increasing transparency and oversight, clarifying fiduciary duties of agents of entities holding securitized assets, and preventing excessive leverage throughout the system.
  - " The Task Force will also consider regulations of credit default swaps (CDS), with an emphasis on eliminating the ability to “overinsure” assets and increasing transparency and oversight.
  - " [If new mortgage securitizations are created after the date of enactment of this bill and before Congress enacts new regulation, the task force/OMM should make a recommendation to Congress about whether it is advisable to expand the mortgages covered by this bill.]
- ! Funding for Program: [identify funding source and how money gets appropriated to OMM for hiring of trustees.]
- ! Effect on Other Law [and accounting standards?]
  - " Nothing in this act shall affect any previously existing tax status (i.e. REMIC) for entities holding securitized mortgages.

- " Nothing in this act is intended to affect any accounting treatment of securitized mortgages or the entities holding them (FAS 140).
- " The bill shall include any additional provisions necessary to preserve the tax and accounting treatment of securitized mortgage pools.

! Immunity:

- " Servicers of securitized pools of covered mortgages will be immune from liability only for transferring mortgages rights to OMM/trustees and accepting the modification/foreclosure decisions made by trustees under the program.
- " Servicers remain legally responsible for any actions or omissions taken before the enactment of this bill or for any actions not required by this bill.
- " Trustees will be immune from private suits in connection with decisions made in connection with the program [or immune to the extent that government contractors or other government agents are immune?]