



## **HR 3609 - Summary of Compromise Bill:** ***Permitting Judicial Modification of Home Loans as Alternative to Foreclosure***

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On December 12, 2007, the House Judiciary Committee approved HR 3609, the Home Ownership and Mortgage Equity Protection Act, which would help families avoid foreclosure through judicially-supervised loan modification in Chapter 13 bankruptcy payment plans. The bill would extend to ordinary homeowners' primary residences the protections long in place for family farms, commercial real estate and other property and debts. The bill was reported out of the House Judiciary Committee, after being amended pursuant to a compromise between Committee Chairman John Conyers (D-MI), Subcommittee Chairwoman Linda Sanchez (D-CA) and Rep. Brad Miller (D-NC), and Representative Steve Chabot (R-OH), who had introduced legislation (HR 3778) to address the same issue. The compromise bill tightens the original HR 3609 by limiting relief as follows:

- Relief available only when family lacks sufficient income to pay their mortgage and foreclosure is imminent. A strict means test limits relief to those homeowners whose income is insufficient, after deducting modest living expenses allowed by the IRS, to cover their mortgage obligations. In addition, relief is limited to borrowers who have received notice from their servicer that foreclosure is imminent. Finally, there is a good faith requirement that allows courts to exclude anyone who wrongly makes it through those hurdles. The result of these requirements is that judicial modification will only be available for those loans that would otherwise end in foreclosure. In foreclosure, the lender cannot recover any more than the market value of the home, and typically recovers far less, in a process that typically takes one to two years.
- Judicial discretion limited; favorable loan terms guaranteed. The compromise bill would require courts to set interest rates at a commercially reasonable, market rate – the current 30-year conventional fixed rate plus a reasonable “risk premium.” The bill provides that the principal balance cannot be reduced below the value of the property, and that the term of 30 year loans will be unchanged. It also makes relief available only to those families who have sufficient income to afford their loans as modified.
- Relief available for existing loans only. Applying these changes prospectively would have no negative impact on interest rates – this is because bankruptcy modification would be available only where the home would otherwise be lost to foreclosure, and the risk of foreclosure is already factored into interest rates – but the compromise goes further, and limits the bill’s application to existing loans only. New loans would not be subject to bankruptcy modification. This removes any concerns that could reasonably be raised about the bill’s impact on the cost or availability of credit.
- Bill applies only to loan products federal regulators deem potentially dangerous. Even as to existing loans that will otherwise end in foreclosure, the compromise bill applies only to

those that fall within one of the two categories of loans that the federal regulators have determined to be potentially dangerous: subprime, and “non-traditional” loans (that is, interest-only loans, and payment option ARMs). Conventional fixed-rate or adjustable-rate loans are not eligible.

- Sunrise/Sunset. The bill applies only to loans originated on or after January 1, 2000, and, for these loans, is subject to a seven-year sunset.