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MARKUP OF H.R.3906, EMERGENCY HOME OWNERSHIP AND MORTGAGE EQUITY PROTECTION ACT OF 2007; AND H.R. 3753, FEDERAL JUDICIAL SALARY RESTORATION ACT OF 2007

Wednesday, December 12, 2007

House of Representatives,

Committee on the Judiciary,

Washington, D.C.

The committee met, pursuant to call, at 10:21 a.m., in Room 2141, Rayburn House Office Building, Hon. John Conyers, Jr. [chairman of the committee] presiding.

Present: Representatives Conyers, Berman, Nadler, Scott, Watt, Lofgren, Jackson Lee, Waters, Delahunt, Wexler, Sanchez, Cohen, Sutton, Johnson, Sherman, Baldwin, Weiner, Schiff, Davis, Wasserman Schultz, Ellison, Smith, Sensenbrenner, Coble, Gallegly, Goodlatte, Chabot, Lungren, Cannon, Keller, Issa, Pence, Forbes, King, Feeney, Franks,

Gohmert, and Jordan.

Staff Present: Perry Apelbaum, Staff Director/Chief Counsel; Ted Kalo, General Counsel/Deputy Staff Director; George Slover, Legislative Counsel/Parliamentarian; Anita L. Johnson, Clerk.

Chairman Conyers. The committee will come to order. Good morning and welcome. Without objection, the Chair is authorized to declare a recess.

Before returning to our agenda, this will be our last full committee meeting this year, and I would like to thank every member of our committee for all they have done to make it such a productive year.

The Judiciary Committee contends with some of the most sensitive issues in our government, matters that go to the very heart of the freedoms we cherish and the constitutional and legal structure that supports and protects those freedoms. We have considered and passed dozens of important bills, and we have conducted crucial oversight of the Justice Department and other parts of the executive branch. We have dealt with some inherently contentious issues with high stakes for our democracy, and we have managed to consider them in a friendly and cordial fashion, without any losing sight of their importance, always keeping in mind the best interests of the committee, the House and the people that we are privileged to serve.

I especially appreciate the close working relationship with Lamar Smith, our ranking member, and the continuing support from the chairman emeritus, the gentleman from Wisconsin, for everything that has been done to nurture our

mutual friendship that has not only made being chairman even more enjoyable, but it has been a tremendous practical benefit to our effectiveness as a committee.

I single out the subcommittee chairmen and ranking members for their leadership and support and to every member of this committee for all they have done to help us accomplish so much.

As we wind up this year and look forward to the coming year, I welcome to the ranks as the ranking member of the Subcommittee on Crime, Judge Louie Gohmert, a former trial court jurist and an appeals court judge, and look forward to having the benefit of his knowledge and experience in his new position on the committee.

I also thank Randy Forbes of Virginia for his service as ranking member of the Crime Subcommittee and look forward to his continued contributions and wish him as the best as he assumes his new responsibilities as a subcommittee ranking member of the Armed Services Committee.

Might I invite our newest ranking member -- well, I understand that our ranking member may wish to say a few words, and now I am pleased to recognize Lamar Smith.

Mr. Smith. Thank you, Mr. Chairman. Mr. Chairman, like you, I agree this has been a good year. I can think of a few ways where it might have been a better year, but that is just from my point of view.

And, Mr. Chairman, I also appreciate, as you said, our good working relationship; and I do expect that to continue, and I appreciate how well it has gone in these last 12 months. I also want to point out -- and I mentioned this before, Mr. Chairman -- that it is a credit to you and to every member of this committee, Republican and Democrat alike, and that is by my -- by an analysis done by interns in my office, the Judiciary Committee continues to be the most productive -- continues to be the most productive committee in Congress. We produce more bills that get to the House floor than any other committee.

Now, that does not count bills that are post office bills that are named after other people. I do not count those pieces of legislation. But if you count substantive pieces of legislation, we are the workhorse committee of Congress. And I appreciate your leadership that makes that possible, as well as the diligence of all members on the committee.

Mr. Chairman, you mentioned that Louie Gohmert is the new ranking member of the Crime Subcommittee. We will miss, of course, Randy Forbes, who is a particularly able Member of Congress, but we look forward to Mr. Gohmert filling that position. He has previously been the deputy ranking member on the Crime Subcommittee, so he knows his way as well, and he will be excellent in that position.

Of course, he comes with a background, having served as a judge back home in our State of Texas. He is still one of the few Members of Congress I know that reads every word of every bill. Unfortunately, Mr. Chairman, I have extracted no promise from Mr. Gohmert that he may reduce the number of amendments he might offer. So I expect him to continue to be a hardworking member of that subcommittee, and I am very pleased that he chose to do that.

Thank you, Mr. Chairman, for the opportunity to make some comments, and I will yield back.

Chairman Conyers. I thank the gentleman. Pursuant to notice, I now call up H.R. 3609, the Emergency Home Ownership and Mortgage Equity Protection Act for purposes of markup.

[The information follows:]

******** INSERT 1-1 ********

Chairman Conyers. You will recall when we suspended our last markup, this bill was under consideration and open to amendment. And there was an amendment pending to this bill by the gentleman from Utah, Chris Cannon, the subcommittee ranking member. In the intervening weeks there has been much discussion on how best to proceed. As a result of this discussion with Chris Cannon, Steve Chabot, Linda Sanchez, the subcommittee chair, herself and others, a substantive amendment has been developed which I will offer in a moment to address and hopefully resolve a number of concerns.

Given these developments and since we are about to consider a substitute, he may wish to withdraw his amendment so that we can proceed to consider the substitute and any possible amendments to that.

I yield to the gentleman.

Mr. Cannon. Thank you, Mr. Chairman. Let me just say that I really appreciate the way you have handled this committee. You have continued that grand tradition in which we can disagree without being disagreeable; and it has been a pleasure to work with you this year, although along with the ranking member, I may have wished for a little different outcome on some of our bills.

In light of the fact we do have a new manager's

amendment, I would ask unanimous consent to withdraw the amendment that I have pending.

Chairman Conyers. Without objection, so ordered.

Mr. Cannon. But would like to point out to the Chair that I do have three amendments to the new manager's amendment.

Chairman Conyers. I thank the gentleman, and I now call up the substitute amendment and ask the clerk to report it.

The Clerk. Amendment in the nature of a substitute to H.R. 3609, offered by Mr. Conyers of Michigan.

[The information follows:]

******** INSERT 1-2 ********

The Clerk. Strike all after the enacting clause and insert the following: Section 1. Short Title. This act may be cited as the Emergency Home Ownership and Mortgage Equity Protection Act of 2007.

Section 101 of title --

Voice. Mr. Chairman, I ask unanimous consent that the amendment be considered as read.

Chairman Conyers. Without objection, so ordered, and I will spend a few moments on it.

I would like to take this opportunity to recognize our guest chaplain for the day, who has just left the floor, who is Bishop Earl Wright and his lovely wife from the Detroit, Michigan, area; and they are in the committee room, and I ask them to rise to be accepted and welcomed by the membership.

Thank you very much for joining us.

Members of the committee, it is very important that we recognize that we have a very serious problem involved in the national mortgage meltdown crisis. As a matter of fact, the Bishop and his wife raised that question with me before he went to the floor.

In Detroit and in Michigan we are one of the leaders in the Nation in terms of this mortgage meltdown crisis, and it is important we try to keep it from spiraling out of control

and feeding a broader economic crisis. It is in my belief that on both sides of the aisle all of our Members agree that this is a very important objective.

This bill deals with a critical aspect of the crisis that neither the administration nor Congress has yet successfully addressed, mainly homeowners who are already facing foreclosure, but who could regain their financial footing if only they could restructure their mortgage obligations; and hence, the jurisdiction of this committee comes into play.

This crisis affects virtually every American community in the country. And I would like us to have, as usual, as much of a bipartisan approach to addressing this problem as possible. This is not a Republican problem or a Democratic problem. It faces all Americans in the cities, as well as in the suburbs.

So I have worked at length with the gentleman from Ohio, Steve Chabot, to see if we could achieve this goal. And I am pleased to report we have reached agreement on a proposal, the amendment that I now offer, that provides meaningful relief to homeowners facing foreclosure in a carefully balanced and focused fashion.

What does it do? First, the agreement addresses only the most problematic mortgages, interest-only or negatively amortized or one with excessive interest rates. We know

that predatory lending has played a huge role in some of the problems that have come about, and only mortgages that originated after January 1, 2000, but before the date of enactment.

In addition, the agreement applies to only the most needy and keeps speculators from taking advantage. Only debtors in Chapter 13, who must meet strict eligibility requirements, satisfy the scrutiny of a Chapter 13 trustee and commit to a court-approved repayment plan, that often can be as long as 5 years, are covered. A homeowner must have received a notice of foreclosure and must lack the means, under a strict means test enacted in 2005, to cure all past-due amounts on the mortgage and remain current.

And the court must find that any mortgage modification is made in good faith.

And third, if both the debtor and mortgage satisfy these criteria, the debtor, subject to court approval, may reduce exorbitant mortgage interest rates to rates used for conventional mortgages plus a reasonable premium for risk, thereby avoid onerous prepayment penalties, object to unlawful fees charged by unscrupulous mortgage lenders, extend the mortgage's repayment period up to 30 years reduced by the number of years already paid on the mortgage, and reduce finally the remaining principal owed on the mortgage to the home fair market value.

Many of these provisions would sunset 7 years after the date of enactment. This agreement is supported by the National Bankruptcy Conference representing the interests of all creditors and debtors which represents their interests in a fair bankrupt procedure, as well as the National Association of Federal Credit Unions, the United States Conference of Mayors, the Leadership Conference on Civil Rights and numerous consumer groups.

As noted in a New York Times editorial this Sunday, we can't simply leave it to the mortgage companies to fix this problem on their own. That would be unrealistic and probably naive.

I would go further and say it would not be realistic or fair to place that onus on them. And as Paul Krugman observed earlier this week, our legislation, unlike the proposal from the administration, would actually help working families. And so I urge the careful consideration of this amendment by all the members of the committee.

The Chair now turns to its ranking member, Lamar Smith.

Mr. Smith. Thank you, Mr. Chairman.

Several nonbankruptcy proposals aimed at helping borrowers who have been caught in the subprime crisis are already in the pipeline. These proposals either have not yet been through the Senate or have not yet been given a chance to work. We should give these proposals time to take

effect before we take the dramatic step of rewriting the provision of the Bankruptcy Code that has been on the books for decades.

These alternatives include the framework introduced just last week by Secretary Paulson. This proposal provides relief to up to two-thirds of the 1.8 million subprime adjustable rate mortgage borrowers expecting interest rate resets in the next 2 years. These and other borrowers may also obtain relief through several other steps taken to address the problem, including FHA Secure, which gives the Federal Housing Administration greater flexibility to offer refinancing to homeowners, the mortgage tax relief bill that has already passed the House, legislation modernizing FHA, Freddie Mac and Fannie Mae and legislation appropriating money to fund mortgage counseling programs.

Through each of these proposals it is intended to provide quick relief to affected homeowners. None, including this bill, is perfect. Each proposal has the potential of unintended negative consequences. However, by allowing mortgages on primary residences to be restructured in bankruptcy, this bill is almost certain to cause more harm than good. Giving bankruptcy judges new powers to order the terms of a mortgage will only increase the cost of mortgages for all future borrowers. Congress should not support a proposal which solves one problem while creating

100 of other ones.

In considering solutions to the subprime mortgage crisis, Congress should tread lightly. The long-term negative impact of this legislation clearly outweighs the short-term praise that would be received from an hurried end-of-the-session fix. We must give other proposals a chance to work before considering this bill and other more aggressive measures.

With that in mind, I appreciate the efforts of the chairman and Mr. Chabot to draft a manager's amendment that narrows the scope of the bill. Their efforts do, in fact, improve the bill. However, even these changes do not narrow the scope enough to protect future borrowers.

Last week, the Senate Judiciary Committee held a hearing on legislation similar to this bill. At that hearing, several witnesses agreed that bankruptcy relief was the wrong way to deal with problems facing the mortgage market. These experts, including a Federal bankruptcy judge, a professor of bankruptcy law and an economist, strongly cautioned against mortgage bankruptcy reform.

In part, their warning may stem from the fact that this bill and the bills in the Senate take aim at the primary residence exception. The exception has been on the books in some form since 1898 and in its present form since 1978. It has allowed more and more Americans to live the dream of

home ownership.

If home mortgages can be modified in bankruptcy, it will be far more difficult to obtain mortgages or sell them in the secondary market. Allowing for modification and bankruptcy reduces liquidity and makes it harder for Americans to obtain new mortgages or refinance existing ones. This is the last thing the mortgage market needs.

I am truly sympathetic to subprime borrowers who face foreclosure. I believe that Congress and the administration and the entire financial services industry have a responsibility to provide some relief, and we have done that. Bankruptcy relief, however, will cause interest rates to rise and borrowing terms to become more restrictive.

While attempting to help a few, this bill may hurt many. We must ask ourselves, who will pay the cost of the long-term effects of this legislation? And the answer is clear, current mortgage holders who might otherwise be able to hang on and responsible future borrowers, including first-time home buyers.

This bill and the manager's amendment merely swap today's victims for tomorrow's, while undercutting relief measures already in place. Mr. Chairman let's keep our bankruptcy power dry until we can be sure our shots won't backfire.

Mr. Chairman, I will yield back.

Chairman Conyers. Well, I thank the gentleman.

And I recognize the subcommittee Chair, Linda Sanchez, for her comments.

Ms. Sanchez. Thank you, Mr. Chairman. I want to urge all my colleagues to support the Conyers-Chabot amendment to the Emergency Home Ownership and Mortgage Equity Protection Act. This amendment in the nature of a substitute is a strong bipartisan effort that would make prudent, targeted changes while ensuring that the legislation would still be able to address the worst problems of the mortgage crisis.

And I just want to pause and reassure our ranking member of the full committee that although there are a number of bills that have sought to address this problem, this is one piece of the solution; and I think it is a good one.

I want to particularly thank the chairman and Mr. Chabot for their leadership on this issue. And I am pleased that we are all working together in a bipartisan manner to find relief for those being crushed by the subprime mortgage crisis.

Quite simply, this amendment would target the legislation to subprime and nontraditional loans, thus requiring that the borrowers not only have trouble satisfying their payments, but also being a loan type that is known to be problematic.

The bill also strives to capture those existing subprime and nontraditional loans poised for increased rates and payments by limiting the reach of the bill to loans originating from 2000 until the date of enactment with a 7-year sunset.

Additionally, the amendment creates guidance for setting an interest rate at the baseline market of a 30-year fixed loan plus reasonable risk premium. No bankruptcy judge will be allowed to arbitrarily set the interest rate.

Finally, the Conyers-Chabot amendment has both a good-faith requirement and limitations on a judge's power to modify mortgages to make certain that we are only helping those who are truly in need of help and not those who simply bought too much house.

This amendment in the nature of a substitute is a measured response to the mortgage crisis, which will restore fairness to hardworking American families struggling to save their homes from foreclosure and bankruptcy while ensuring that no one takes unfair advantage of the system.

I strongly support this amendment and I urge my colleagues to support it as well. Let's end the nightmare of the subprime mortgage meltdown, preserve neighborhood home values and protect the American dream of owning a home.

I want to again thank the chairman for his work on this amendment in the nature of a substitute. And I yield back

the balance of my time.

Chairman Conyers. I thank the gentlelady for her insightful examination of this substitute.

I turn now to the cosponsor of it, the gentleman from Ohio, who has worked relentlessly in crafting a solution that brings a considerable number more of us together on this vexing problem.

Steve Chabot, Ohio.

Mr. Chabot. Thank you very much, Mr. Chairman, and I would first of all like to add my name as a cosponsor to your manager's amendment. I understand that procedurally I have to do that. So I would ask that that be --

Chairman Conyers. Without objection.

Mr. Chabot. Thank you.

And I would like to offer my strong support for this manager's amendment. It is a necessary complement to Congress' action a few weeks back on the floor and the administration's response last week to this national crisis.

I would also like to thank you, Mr. Chairman, and the distinguished gentleman from North Carolina, Congressman Miller, and the distinguished gentlewoman from California, Congresswoman Sanchez, for your collective efforts and commitment over the last several months to find a bipartisan response. At this point in this committee, the bipartisanship is, I think, me and the rest of the Democrats

on the committee, but hopefully by the time we get to the floor, there will be some that have an opportunity to look at this very closely and make a choice, which I think will be the right one.

But I have talked to some of my colleagues here. I can't honestly say there is a whole lot of support in this committee on the Republican side right now, but I am cautiously optimistic on the floor it might be a bit different.

But I want to thank you again, particularly, Mr. Chairman, for your leadership on this issue. And I want to thank the ranking member for his gentlemanly way of handling this. And although we are not on the same side at this point, I think he is certainly -- we just differ a bit on this. I think we are all trying to do what we think is the right thing under the circumstances. But I think this is the right balance, this manager's amendment, at this time.

I don't think anyone would disagree that we are in the midst of a crisis and one that is deepening. The impact that subprime mortgages are having on local homeowners and neighborhoods and the housing market and the committee as a whole is staggering.

Statistics that were released by the Center for Responsible Lending, a nonpartisan consumer advocacy

organization, revealed that 7.2 million homeowners nationwide hold $1.3 trillion in subprime home mortgages; 14.4 percent of these homeowners are in default on their mortgage payments. One in five subprime mortgages originating in 2005 and 2006 is expected to end in foreclosure.

Data released last week by the Mortgage Bankers Association paint an equally gloomy picture, revealing that delinquency rates for mortgages are at the highest levels since 1986 and the rate of foreclosure starts and the percentage of loans in the foreclosure process is at the highest ever.

In one of the largest counties in my State of Ohio and actually in my county as well, Hamilton County, more than 2,100 families are projected to lose homes to foreclosure this year because of subprime loans issued in 2005 to 2006. These losses will not just affect the families who have lost their homes to foreclosure, but will impact the value of neighborhood homes as well.

So it is not just the home on that street that is in foreclosure; it is the homes on that block. It affects everybody. It reduces the values of those properties almost exponentially.

It is a real problem for the whole country. We are seeing it most directly in Ohio, as the chairman is in

Michigan, and in California and Florida. But this is something that if something isn't done will spread nationwide all too soon. More than 184,000 homes in Hamilton County will decline in value because of the neighborhood foreclosures, resulting in a lost tax base and more than $220 million in lost revenue to the county.

The Hope Now deal reached last week between the financial and lending industries and administration officials illustrates the heightened concern that many feel for homeowners in dire circumstances. The deal, which would freeze interest rates for adjustable rate mortgages originating between January 1, 2005, and July 31, 2007, and then will reset between January 1, 2008, and July 31 of 2010 is a positive step forward and may help to keep hundreds of thousands of homeowners from defaulting on their mortgage payments.

I have seen numbers as low as 145,000; the administration indicates 1.2 million. So it is certainly a part of the solution but only a part. The manager's amendment that we have put forward today will help those who already find themselves in dire circumstances in the foreclosure process because of a nontraditional or subprime loan and do not have a way out.

The changes made by this amendment are limited in scope and duration to counter the claims that by allowing

bankruptcy judges too much discretion, Congress will be injecting uncertainty into the market, ultimately forcing higher lending costs and higher interest rates. However, the costs of administering a foreclosure proceeding are already high, costing trustee officials approximately $50,000 to administer each proceeding, not to mention the security and upkeep costs that the community and law enforcement must absorb when you have a home in the neighborhood in foreclosure.

The manager's amendment that we are offering this morning will help keep individuals in their homes while at the same time allowing them to pay back their debts, thus eliminating the high cost of foreclosure and the unforeseen costs to the community.

One final point: In 2005, this committee led the effort to reform our bankruptcy laws to ensure that only those who truly needed help received it. I was one of those on this committee who felt very strongly about it and supported that bankruptcy reform. Some were opposed to it, but it did become the law of the land.

These reforms are only just beginning to take hold. I know that many are concerned about the market and I am too. However, I am also worried about keeping the residents of my district and in the State of Ohio in their homes. Enabling families to keep their homes should be the concern of this

committee and should be the concern of Congress; and in fact, keeping people in their homes may ultimately be the medicine the housing market needs to get back on its feet.

I would urge my colleagues to support this amendment and to favorably report H.R. 3906 out of the committee this morning; and I yield back the balance of my time.

Chairman Conyers. I thank the cosponsor of this measure. And I turn now to the chairman of the Constitution Subcommittee and recognize Jerry Nadler of New York.

Mr. Nadler. Thank you, Mr. Chairman. I move to strike the last word.

Chairman Conyers. Without objection.

Mr. Nadler. Thank you, Mr. Chairman.

This legislation is an opportunity for Members to help families who are about to lose their homes, thanks to a terrible combination of declining home values and predatory lending practices in the home mortgage industry.

I want to commend the chairman and some other members for their very hard work on this legislation. While the bill has been somewhat curtailed beyond what would have been my preference, I understand how difficult it has been to build a consensus, especially in the face of substantial opposition from the same creditor interests that forced through the anti-family 2005 bankruptcy law.

That we would be able to report a bill today is an

important step toward protecting distressed families. The bill would allow some financially distressed homeowners to adjust their mortgages on their principal residence in Chapter 13, just as debtors can now do with virtually any other secured debt. Home mortgages are treated as an anomaly in Chapter 13; they are the only secured loans where a debtor must pay the unsecured portion of a secured debt in order to satisfy the lien. This is not true of a vacation home or of a washing machine, only of the family home.

It is not even true of a family farmer's principal residence. Farmers may cram down their mortgages. Chapter 12 of the Bankruptcy Code, passed in response to the farm crisis of the mid-1980s, serves as an example of what can be done to save families in difficult circumstances. Financing for family farms has not dried up as a result of Chapter 12 and Congress made Chapter 12 permanent 2 years ago. That provision of Chapter 12 was applied to existing mortgages and was held not to violate the taking scores of the Constitution. So we have recent experience with this situation.

Why is the home mortgage market allegedly so different from the vacation home market or the home appliance market? The world has not come to an end because debtors are able to cram down other secured loans. The arguments some lenders make, that any protection for families in financial distress

would increase costs for everyone else down the road, is as old as it is unfounded.

Mark Zandi, chief economist and cofounder of Moody's Economy.Com recently told this committee that, quote, "This legislation will not significantly raise the cost of mortgage credit, disrupt secondary markets or lead to substantial abuses. Given that the total cost of foreclosure is much greater than that associated with the Chapter 13 bankruptcy, there is no reason to believe that the cost of mortgage credit across home mortgage products should rise," unquote.

My colleagues would recall that when Congress and this committee were considering the 2005 amendments to the Bankruptcy Code, we were told by the lending industry and by the proponents of the legislation that "bankruptcy abuse" -- and I will put that in quotes -- costs each American family $400 per year in increased borrowing costs and that if we were to pass the bill to eliminate the bankruptcy abuse, then the American families would save $400 a year in borrowing costs.

The lead sponsor, then-chairman of this committee, the gentleman from Wisconsin, told the London Financial Times that, quote, "The responsible thing for credit card issuers to do would be to reduce interest rates because there is less risk. If they don't, they will play into the hands of

the opponents of the bill and would reduce their credibility," closed quote.

Our colleague was right, but as we all know, rates have not come down, customers have not realized any such benefits; the lending industry has, if anything, less credibility today than it did in 1997 or 2005. How many times are we supposed to be snookered by the same old, false, wrong, dishonest argument? If your family actually got the $400 break the industry promised, then by all means, vote against this legislation because it might increase mortgage costs.

I would add that there are structural, economic reasons why we must do this also. Under normal circumstances, it would be in the interest of the mortgagor and mortgagee to renegotiate a nonperforming loan. The last thing the lender needs is a huge inventory of foreclosed houses.

But in recent years, mortgages, including troubled subprime mortgages, have been securitized and sold. These securities are actually owned by investors around the world in places like Europe and China. The loan servicer cannot, as would have been the case with the lender in the past, negotiate with the mortgagor without risking suit from the investors.

In order to keep this crisis from snowballing, in order to prevent the crisis of home values in our communities, we

must create a legal space in which these loans can be rehabilitated. Doing so under the supervision of the bankruptcy court provides one way to accomplish this in the form and has extensive experience in dealing with such matters from a family car to a large corporation. Unless we want the situation to spiral completely out of control, we need to act. We should give American families a break. This bill is necessary and we should pass it immediately. I thank you. I yield back.

Chairman Conyers. I thank the gentleman for his insight and sharp timing as well. And I now turn to the gentleman from Utah, a ranking member of a subcommittee, Chris Cannon for his comments.

Mr. Cannon. Thank you, Mr. Chairman. This has been an emotionally intense issue. People are losing their houses.

Mr. Chabot spoke with some eloquence about those percentages, the numbers out there of people that are in difficult circumstances. And I certainly feel for those people and would hope that this bill wouldn't pass because in fact, I think in fact this bill is going to be counterproductive.

In the first place, it hurts the people who have been lending. And that is -- you know I don't have a great deal of sensitivity there. They are people who take risks and they are professionals. They know what the risks are. But

because of those lenders and the new tools they have come up with in the secondary market, we have a system in America that has allowed a remarkably large number of people to buy houses, and some of those people probably extended themselves. Many of them may have been beguiled by people who wanted to make money off of them, putting them in a situation where they would own a home.

In fact, we have had a series of hearings in the subcommittee on this issue, and in those hearings we have found out that there has been fraud. There has been fraud on mortgage brokers who have wanted to make money on mortgages. There has been fraud, by the way, in the documents that they have submitted, that those brokers have committed fraud. But they have also committed fraud by telling borrowers things that just weren't true about their circumstances.

There has also been fraud by bankers who have wanted to make money. There has also been fraud by appraisers who have appraised property at values which probably were not justified. And those are all things that would be dealt with, I believe, in the criminal process not effectively and not without the intense problems that have been developed by the system.

But doing what we are doing today also has a tendency to hurt another set of people. And I just wanted to make

this clear. There are prudent people who have chosen not to get into the house-buying market. They have rented, they have deferred buying houses in the expectation that the bubble that we have seen develop would flatten out and the prices that have been raised to perhaps extraordinary levels by dishonest appraisers would come back down to earth.

Those people are going to have a harder time buying a house at a reasonable price. But in addition to that, because of the uncertainty that this bill would inject in the market, they are going to face a higher down payment and probably also a higher interest rate in the long term. And so what we do here in the intensity and the emotion, which I recognize, requires some calm and dispassionate thought that would allow us to do things that will not significantly affect the market.

And I would like to just point out that Business Week last month ran an article on capital financing, Hungry for Cash: Startup Capital Grows Scarce, and in here they have a couple of startling statistics. The first is that there is a 20 percent increase in entrepreneurial activity for every 10 percent increase in home value.

Now, we are not just talking about the people who would buy homes and can't buy homes because we inject uncertainty. We are talking about creating an instability in the market that will actually affect the rate at which entrepreneurs

develop jobs.

And with that, Mr. Chairman, I would like to yield to Mr. Feeney for a minute or so.

Chairman Conyers. Without objection.

Mr. Feeney. Well, thank you, Mr. Chairman. I may not be able to finish up and I may seek my own time, but I won't take the full - I think 3, 4 minutes will be enough.

Mr. Chairman, number one, I want to congratulate the committee for working on this compromise. I want to say that the compromise makes a horrendous bill somewhat less bad. But it is still a bad bill.

And this bill proves three axioms of an everyday life in Congress -- since I got here, rather -- under Republican or Democratic leadership. Number one, Congress tends to have two speeds, zero and overreact. Number two, there is no situation so bad that congressional action can't make it worse. And number three, that despite our efforts, Congress can no more repeal the laws of economics than we can repeal the laws of physics.

It would be nice if we could repeal the laws of gravity. But our action today would restrict access to credit. Our action today is going to have fewer buyers eligible to purchase homes. Our action today will mean everybody's residence, whether it is primary or secondary, because there will be fewer buyers and less demand, will be

worth less money; and our action today will both lengthen and deepen the real estate recession that we are already in.

And, Mr. Chairman, I know that we are all sympathetic with the borrowers out there that have gotten into loans that are over their head. I wish we could wave a wand.

But I would point out the administration has acted on this. The Financial Services Committee has taken action to stem the problems in the future. I think combined --

Mr. Chairman, may I ask unanimous consent for an additional minute, and then I think I can wrap up?

Chairman Conyers. Would you seek more time later on?

Mr. Feeney. No.

Chairman Conyers. All right. Then I am happy to grant the gentleman an additional minute.

Mr. Feeney. Well, thank you, Mr. Chairman.

Mr. Chairman, this bill should have gone to the Financial Services Committee, because combined with what the Financial Services Committee is doing, I am afraid that unless you are a cash buyer in America, you will no longer have access to home buying.

The Financial Services Committee has essentially created civil and criminal penalties for mortgage brokers that establish and broker loans in the first place. Additionally, they have set, based on subjective requirements, that the purchasers or securitizers of

mortgage credit can be liable both civilly and criminally. And the subjective tests are things like, it has to be the best available loan.

How do we know what the best available loan is except with 20/20 hindsight? If I take a 15 percent loan out for $100,000 on my home go down to the dog track and hit a 10 to 1 winner, I am a millionaire, and that was a perfectly prudent loan in retrospect. On the other hand, if I borrow money at 6 percent, put it in the stock market and investors get wind of the many tax increases Congress has coming down the pike, and I lose half my value, that was a terrible loan. The tangible benefit is a horrendous subjective standard.

So I ask you this, if you are one of those people out there who is an investor and you have been putting money into markets that allow buyers for the first time to get into homes at very inexpensive rates, you are subject to subjective standards for both civil and criminal penalties, and not only that, but if the borrower doesn't pay, a bankruptcy judge can arbitrarily, in a matter of sympathy with the homeowner, say, we are going to destroy the value of the credit.

Chairman Conyers. I need to interrupt, Mr. Feeney. An agreement is an agreement.

Mr. Feeney. Thank you very much.

Mr. Cannon. Reclaiming my time, Mr. Chairman. Let me point out, this committee does have jurisdiction entirely over this matter.

I yield back.

Chairman Conyers. Thank you.

The Chair now turns to the gentlelady from California, herself a chairman of one of our subcommittees, Zoe Lofgren, California.

Ms. Lofgren. Thank you, Mr. Chairman.

In listening to the discussion today, I think we have lost sight of the fact that this measure, which I support, provides very targeted and limited relief. The bankruptcy, so-called, "reform bill" that we adopted a number of years ago really makes it very, very onerous for individuals to even get into bankruptcy court. The IRS limit on meeting expenses, our late colleague, Henry Hyde, led the fight against that standard because it was too onerous.

We ought to recall, as we discuss this, that no one goes into bankruptcy unless there is no other choice. And even then, many individuals are unable to go into bankruptcy court. So it is with that backdrop that we discuss this measure. I remember during the hearing we had in the subcommittee, recalling the situation of my grandparents in the Great Depression.

They had a little house that they had built. I believe

they told me it cost them $2,000 when they built it. And like so many other Americans, the depression hit them hard. My grandfather was unemployed for 7 years. My grandmother worked for $7 a week at a grocery store. Her mother was blind and disabled and lived with them. And they had a problem meeting their mortgage.

And what happened to them was that the banks came to them; they had repossessed so many homes that the banks didn't want any more homes. And they cut a deal with the banks that if they paid only the interest, that they wouldn't lose their home.

Today, a homeowner couldn't make that deal with the bank because the way we have commoditized mortgages, that kind of relationship no longer exists to mediate even when it is in the interest of the lender. And the alternative we have today actually is, the bankruptcy court to allow for that kind of mediation.

We know that we are facing a catastrophe. A mortgage catastrophe is possible; I don't want to say it is going to happen, but it is possible for our country. And what we have heard from the experts is, ground zero on this begins next March. So I do think it is important not just for the individuals involved -- although, obviously, our hearts go out to people who are in financial trouble -- but for the well-being of the economy of the United States, that we

provide for an opportunity to have the mediation that is necessary to preserve the entire market.

Now, I wanted to speak especially because I had very strong objections to the measure that we were considering prior to the amendment that is before us today because that formula had -- and I don't believe it was intended -- but had a pernicious impact on California and would have made sure that Californians in trouble were not treated as fairly as other Americans.

I am happy to say and to congratulate all of those who worked on this measure, because the measure before us does not discriminate against Californians, which is why I am so happy to be able to support this today.

So I think this is a sound measure. I urge the committee to approve it. There may be other things that the Congress will need to do as this mortgage disaster unfolds, but that will not negate the need to do this.

And with that, Mr. Chairman, I yield back with great thanks.

Chairman Conyers. I thank the gentlelady because she is setting a very important example because we are going to have to get to the amendment process.

And so I ask that the -- that the gentlewoman from Ohio, Betty Sutton, who is being called to the Rules Committee, be yielded that 2 minutes before she takes her

leave.

Ms. Sutton. I thank you, Mr. Chairman.

Chairman Conyers. Without objection, we recognize you for that purpose.

Ms. Sutton. Thank you, Mr. Chairman.

Mr. Chairman, I ask unanimous consent to enter this letter of support I have from the Treasurer of the State of Ohio, Richard Cordray, into today's transcript record. Treasurer Cordray's letter expresses his strong support for H.R. 3609, the Emergency Home Ownership and Mortgage Equity Protection Act of 2007.

[The information follows:]

******** COMMITTEE INSERT ********

Ms. Sutton. And as has been discussed a little bit earlier here today, my home State of Ohio has been particularly hard hit in the current crisis; and I think that this legislation is a critical necessary step in stemming the wave of foreclosures that have had a devastating toll on our neighborhoods and families.

I would like to thank you, Mr. Chairman, as well as subcommittee Chairwoman Sanchez and my colleague from Ohio, Mr. Chabot, for your leadership on this issue.

And with that, I will yield back the balance of my time.

Chairman Conyers. Without objection. And the gentlelady's letter is accepted into the record.

Who seeks recognition?

Darrell Issa is recognized at this point.

Mr. Issa. Thank you, Mr. Chairman. And I move to strike the last word.

Chairman Conyers. Without objection.

Mr. Issa. I rise in opposition to the bill in its current form including the manager's amendment.

We in America have long fought to have our bankruptcy laws be fair. Bankruptcy laws are designed to relieve those who are essentially upside down in their debt so that we do not put an unfair burden on them. However, in the case of

cram-downs, whether they be on commercial, industrial or residential property, we interfere as a matter of practice with the fair interpretation of secured creditors' rights.

I am not rising as a secured creditor. I am rising because it is clear that if you are going to get the optimum proper rate for people, you have to maintain the lowest possible risk. And when we talk about subprimes, they were already high risk.

If, in fact, we allow a $100,000 loan at 6 percent, which is resetting to 7, 8, 10, 12 percent, to simply be, by the matter of stroke of a pen of a bankruptcy judge, made a $70,000 loan at 5 percent -- which this bill, as I interpret it, could do -- what we do is we allow debtors' rights to completely negate the contracts they entered into while keeping the security which they offered up.

I have no objections to finding ways on an interim basis to stay the amount of dollars that need to come out of a homeowner's pocket in return for their staying in their home.

And I join with the gentlelady from California when she said this bill started off terrible for Californians. I appreciate the fact that the supporters have worked diligently to try to improve it relative to Californians.

However, without a material change in the balance of the underlying security, I believe this bill will always be

flawed as to its constitutional fairness. And I am just going to briefly say one last thing and then yield back.

If we presume for a moment that someone were to take advantage under my interpretation of this bill of the cram-down, a year or two later, they enjoy a windfall because these are cyclical markets and that piece of real estate that was $100,000, that was crammed down to the lower $80,000 or $70,000, is now worth $150,000 and they sell it; as far as I can see, they walk away with a windfall, created by a decision of a bankruptcy court.

And the underlying -- and I am hoping I am wrong. I am hoping there is something in there that my staff hasn't been able to help me with -- but that windfall at some future time goes to the homeowner to the detriment of the secured creditor, who is never made whole.

So if it is in the bill, I would like to see it. If it is not in the bill, I would like to add it. And if we can do so, I would like to support it.

I yield back, Mr. Chairman.

Chairman Conyers. I thank the gentleman.

Now the next Californian who would like to weigh in on this is Brad Sherman. He is recognized.

Mr. Sherman. Thank you, Mr. Chairman.

We should remember that America has an amazing home finance system, more amazing in the view we had of it a year

ago than today. But imagine a country where working families get to put 5 or 10 percent down and buy their home. That is unheard of in the rest of the world, the levels of home ownership that we have achieved, unheard of in the rest of the world, unprecedented in the history of the United States; and this kind of lending applied to single-family homes. You couldn't get a 5-percent-down loan, let alone zero percent some of the time on a vacation home or a business loan.

We had an outstanding system for financing homes. The system was underregulated. It failed. We now have a crisis. The first thing we have got to do is make sure that the crisis doesn't repeat itself.

And while Mr. Feeney condemns the bill that came out of the Financial Services Committee, I serve on that committee, I think he mischaracterized that bill. It provides a safe harbor for securitizers and provides new standards to make sure that when loans are made, they are loans that you would expect that borrower to be able to repay.

So we have a good bill to deal with the future. But we have got to also deal with the past in a way that doesn't harm the system. Because I join with Mr. Issa in our concern that in the future we are going to see working families getting loans just a few points above what the Treasury pays for money and with just 5 or 10 or 15 percent

down. And that is why we need a bill today, but we need the narrowest possible bill.

I want to thank the chairman for working with me to narrow this bill already. When we adjourned last month, I had two amendments at the desk. One provided a 7-year sunset and the other provided that this bill would not apply to prime mortgages. Both of those amendments have been incorporated in the manager's amendment, and I thank the chairman for that.

I think there is one other important way to narrow this bill -- and I will not propose the amendment, but I look forward to working with the chairman on it -- and that is in the definition of nontraditional loans. I believe that an interest-only prime loan should not be regarded as one of the bad loans that this bill is focused on.

First, an interest-only prime loan, by definition, was a reasonably good deal for the borrower. The borrower was getting a good interest rate. Second, an interest-only loan is relatively simple. I would say it is even simpler than a regular loan. It is certainly simpler than an adjustable rate mortgage and massively simpler than an adjustable rate mortgage with a teaser rate. Third -- and Zoe just pointed out how her grandparents saved their home; it was with an interest-only, I will call it, prime loan.

And finally, in the first few years of a loan, a

conventional loan and an interest-only loan are almost indistinguishable. So we are going to treat interest-only prime loans one way and regular prime loans the other way. But in your first few months of ownership, what is the difference? You are either paying nothing toward principal or you are paying like $30 towards principal. The first year's amortization of the principal is so slight that to say that it was interest-only or not interest-only is the difference of only a very few dollars.

So I look forward to crafting this bill so that it meets the need in the most narrow possible way.

And I also look forward to hearing from Mr. Issa if there is a way that the lender would participate in any future windfall sale price or sale of the house down the road at a price, because we all hope that real estate bounces up in value, rebounds and even goes on to higher levels and perhaps the lenders should participate in that.

I yield back.

Mr. Chabot. Would the gentleman yield?

Mr. Sherman. I will yield.

Mr. Chabot. I thank the gentleman for yielding.

Just in response to some of the comments that have been made from my side over here, I would just note that one thing we shouldn't forget is that there certainly has been an element of predatory lending in a vast number of these

loans.

There was a relaxation in qualifying people, really aggressive lending practices in a number of instances -- not all, but many of them -- which contributed to this crisis. And for those that are concerned about upsetting, you know, contracts, private contracts and that they should be, you know, sacred documents, which I would generally agree with, we have a sunset provision in this. It only goes back to take care, you know, of that time when the bad things were happening, and it goes out for 7 years and then sunsets.

This is not permanent. It takes care of this problem but it is not the law forever.

I thank the gentleman.

Mr. Sherman. Reclaiming my time, I would also point out that bankruptcy law is the exception to the enforceability of contracts. And so cannot say that our system holds a contract inviolate. We have bankruptcy laws.

I yield back.

Chairman Conyers. The Chair notices that brief remarks have been requested from the gentleman from North Carolina, Alabama, the gentlelady from California. And I would recognize Mel Watt of North Carolina, distinguished member of the committee, for a brief period of time.

Mr. Watt. Thank you, Mr. Chairman. I sense that the Chair wants to move, so I will try to be brief, if I can be

brief.

And I say that somewhat tongue-in-cheek because this is an issue that -- because I sit on both the Judiciary Committee and the Financial Services Committee and because I was one of the two prime cosponsors of the Miller-Watt bill, which was the framework for addressing predatory lending in the Financial Services Committee, there is a long, long history that I have associated with this issue.

The ranking member of the full committee is correct that a number of things are in process that could or might address some aspect of this issue.

First of all, the Fed yesterday reduced its target prime interest rate, whatever it is called, for the second or third or fourth time in an effort to stabilize a market that is in distress, primarily because of the substantial foreclosures. And as the public noted, the market still did not stabilize because the stock market tumbled because they thought the Fed didn't reduce the target interest rate enough.

The administration and the industry have been working on an aspect of this. Secretary Paulson and the industry itself reached some agreements to adjust certain interest rates on certain mortgages, but that is not going to address the issue that is addressed by this bill.

The regulators are writing new rules of the road for

lenders. So they are involved in this. And we hope that at some point there will be a new set of rules that will prevent future fiascoes of the kind that we have experienced in the marketplace. But that does not address the issue that is addressed by this bill.

The Ways and Means Committee is in process of doing a tax provision that when a lender allows somebody to write down the amount of their mortgage, the difference between their original mortgage and the write-down amount is not taxable. So the Ways and Means Committee has been involved in this.

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[11:21 a.m.]

Mr. Watt. The Financial Services Committee has been involved in it, because we have been trying to get the Senate, if they would ever act, to allow FHA to free up more prime money to take out some of these bad loans that should never have been made in the first place. We have been trying to get them to reform Fannie and Freddie to give them more flexibility to take out some of these bad loans that are out there, but none of those things will address the issue that is addressed in this bill. Not the Secretary's agreement with the industry, not the Ways and Means Committee's, not the Fed's action, not the FHA's action. This is where you have your last resort because you are in bankruptcy and you have nowhere else to go.

And none of the things that have been worked out in this process either on the table going forward to prevent future problems from arising or to deal with the issue retrospectively addresses the issue that is addressed in this bill. And I am not sure I understand why, as a last resort in bankruptcy, when you have nowhere else to go, when you tried to negotiate with your lender, when you haven't had enough money or financial wherewithal to refinance your

loan into a better loan, when your back is against the wall, a bankruptcy judge can't exercise some discretion like the kind we are giving them in this bill. I don't understand that.

Mr. Chabot. Would the gentleman yield?

Mr. Watt. I don't have time to yield.

Chairman Conyers. You are out of time, as a matter of fact.

Mr. Watt. Well, he won't let me yield to you.

I will wrap up by saying that this bill, as revised by the manager's amendment, gets it about as close as you can get in many ways, probably not as aggressive as I would like to be, but it addresses, I think, the industry's concerns, and it gives that individual borrower one last chance to bail themselves out of a situation, and I think in that respect we ought to pass it and get on with this.

Chairman Conyers. Well, I thank the gentleman.

A couple of more comments and we will be getting into the amendment process.

Artur Davis, the gentleman from Alabama.

Mr. Davis. Thank you, Mr. Chairman, Mr. Watt's statement was a superb one and also have the added benefit from a Chair's perspective on making some of my comments unnecessary, so I thank him for that. But I do want to make a couple of observations addressing some arguments that have

been made by some of those on the other side of the aisle. I am a strong supporter for this bill, I think, for all the reasons Mr. Watt delineated. It is exactly what we should do. I want to address, first of all, the argument that this was somehow injected risk or uncertainty into the lending market. I think everyone in this room ought be clear on one basic aspect, what is injected risk and uncertainty into the mortgage lending market is the fact that the unconventional mortgage lending market and the secondary market, for a number of years, engaged in a series of highly speculative practices that put debt on people who weren't in the position to absorb it. And frankly, they did it as a matter of strategy. And the gambit did not pay off.

So because their gambit did not pay off we are looking at an incredible spike in foreclosures that are literally placing one out of 62 homes in jeopardy, which is some of the highest rates we have had since the 1930s. So in other words, the industry made a gamble that it could take a lot of high risk people, get them something for nothing literally in some cases and that it wouldn't come back to bite anybody. That injected risk and uncertainty into the market and what happens when you do that? As an industry you run the risk of public sector intervention and that is how we got to this place.

The other argument that is being made on the other side

of the aisle by a number of people as well, these are people who made unwise choices and the government should be in the business of subsidizing unwise choices. It is a curious argument. Because when Mr. Chabot said it needs to be repeated and underscored with some illustration here, let me cite of The Wall Street Journal, a notably conservative source that many people in the industry often approve of. According to the Journal in 2005, 55 percent of subprime loans were given to people who actually weren't eligible or should not have been eligible for subprime loans, who deserved a better deal.

In 2006, instead of getting better, the numbers got worse. Sixty-one percent of subprime loans went to people who were actually eligible for prime loans.

So if there is a moral bad actor that is lurking out here, I don't think it is massive responsibility on the part of consumers or homeowners, it is deliberately risky lending by an industry that was pushing people into a place they didn't have to be. Some of it was flat out fraud as the courts are recognizing. A lot of it was just indifference to good corporate citizenship.

So the final point that I will make, Mr. Watt touched on this and it can't be said enough times today; there are many good things that are being launched to help people who are facing this crisis, you add them all together and there

are still significant gaps. The Paulson initiative doesn't cover anybody in default. If you have a loan that is in default, nothing that you heard the President or Secretary talking about last week will help you. The very good bill that was crafted by the financial services committee and passed by the House is a forward looking bill that creates a better playing field going forward, it doesn't help people who are in distress today.

So the option, Mr. Chairman, I think is a very, very simple one, we can sit here and take the default, do-nothing approach, which will add to the uncertainty of this economy with 57 percent of the country already thinks we are in a recession, they may be wrong, but they think it to drive that fact. So I thank my colleague, Ms. Sanchez, and my friend from the Financial Services Committee, Mr. Miller, for a good, well crafted piece of legislation that we should adopt today.

Chairman Conyers. Thank you, sir.

Before we go into any amendments, I would like to recognize Adam Schiff, but first, Maxine Waters from California.

Ms. Waters. Thank you very much, Mr. Chairman. I want to speak in support of H.R. 3609 the Emergency Home Ownership and Mortgage Equity Protection Act of 2007. I have a key interest in this legislation because of my joint

service on this committee and on financial services. Additionally the subprime crisis has disproportionately impacted my home state. California state credit foreclosure rate of 1 foreclosure filing for every 88 households ranks second highest among all states. The 148,147 foreclosure filings reported in the State during the third quarter reflected a 36 percent increase from the previous quarter, and a near quadrupling of the number reported in the third quarter of 2006. Six of the top ten metropolitan areas in foreclosure filings are in California.

Now, given these facts in my home as Chair of the Housing and Community Opportunity Subcommittee of the Financial Services Committee, I convened at the hearing in Los Angeles on November 30th to examine the progress of market services and other key stakeholders and responding to the crisis within the State. Representative Linda Sanchez joined me, and together we heard wide enactment of H.R. 3609 is urgently needed. Simply put, distressed borrowers are not getting the help they need quickly enough, therefore, many are headed inevitably into bankruptcy.

To provide the one example, Countrywide, which is one of the biggest subprime lenders in the country, testified that it has made 18 million phone calls to borrowers since the beginning of 2007 to discuss the status of resetting loans. Yet, to date, this has yielded fewer than 60,000

workouts, of which only 29,500 constituted loan modifications, the only long term solution for many troubled subprime loans.

While Countrywide did provide evidence at the hearing that their efforts are ramping up, I am hopeful that the Treasury Department initiative with the Hope Now Alliance will speed the rate of loan modifications, we cannot count on such slow moving voluntary efforts to stem the crisis.

Now, while this compromise that you have presented, Mr. Chairman, has been criticized by some of our friends on the opposite side of the aisle, I believe that it is very limited, very targeted, and certainly is the kind of compromise that you would think that everybody could support because I did not previously submit a formal amendment. And if I was not concerned that this delicate compromise would unravel, I would like to amend the language to remove the 7-year sunset and make this fix a permanent one. However, I know how hard you have worked on this, Mr. Chairman, and so I will resist doing that.

I really do believe, however, that we should empower bankruptcy judges to make a real difference today by allowing them to adjust the bankruptcy orders and, more appropriate, to modify home mortgages as a part of the bankruptcy repayment plans.

I am absolutely puzzled by the fact that there is some

resistance to this when, in fact, in the present bankruptcy law, which many of us did not support, this is no more than they can already do with respect to vacation homes and credit card debt. Absent this additional grant of authority, I fear that the economic impact of the home mortgage crisis will spiral beyond even current projections as it has repeatedly done since its onset.

Mr. Chairman and members, I know that some members on both sides of the aisle have modestly described the fact that there may have been some predatory lending. Let me assure you, based on all of the information that we have, there has been a lot of predatory lending. As a matter of fact, would be home buyers were solicited and were given teaser rates, they were given starter rates.

And little did they know that these rates would reset and their mortgages would quadruple. And so even though some people would like to blame the homeowner, we all understand how important it is to realize the American dream of home ownership and how so many people are anxious to realize their dream, and many of them think they can afford these mortgages when they are sought out and solicited by many of the initiators of these loans, including some of our mortgage brokers and reputable financial institutions. We recognize that the yield spread premium that some of the brokers have been receiving was a big incentive for them to

extend these kinds of opportunities.

So I am hopeful we will land on the side of the homeowners here today and land on the side of them being able to have this last opportunity to hold onto their homes.

I would yield back and I thank the chairman for his efforts.

Chairman Conyers. And the Chair appreciates the gentlelady's tempered judgment again, restraining herself to reopen this package. And we finally recognize Adam Schiff.

Mr. Schiff. Thank you, Mr. Chairman. I will be very brief. All of us in our districts have seen our constituents struggling to stay in their homes, it is one of the more heartbreaking things that we have seen during this difficult economic time, and we all want to make sure that we can help them in any way. I think that the predicament we are in is a combination of factors. Certainly some predatory lending practices has played a significant role. In other cases, people undertook loans with the hope that if interest rates rose that they could afford them, but not knowing for sure. In California, we see this quite frequently, because sometimes it is the only way people can get into a house. The costs are so high that these, at the time, attractive loans were the only way they could possibly make it happen.

In some cases, it was a sound decision because they

have the employment to sustain it, and in other cases, they lost their employment afterwards or had their employment downgraded and are now really struggling.

I think the key judgment for us to make with this bill is how do we maximize the relief that we can provide, and at the same time, minimize the risk that what we do today will impair the ability of similar homeowners to obtain a home in the future, put affordable mortgages out of their reach in the future. I think there is a risk in any kind of legislation of this nature that there are unintended consequences.

So I appreciate all the work Mr. Chairman that you and others undertook to try to narrow the bill and by doing so, reduce the risk of adverse consequences.

I think the comments that my colleague from California, Mr. Sherman, made about potential further improvements that can be made vis-a-vis the nontraditional loans are worth our serious consideration. Both here in committee today and as we move forward towards the floor again for the reason that some of these loans were not problematic, they were not predatory, and we want to make sure that they are available in the future for people trying to get into their first home.

So I appreciate all the work the chairman has done and the committee and I hope we will give serious thought to the

further revisions that Mr. Sherman outlined, and I yield back, Mr. Chairman.

Chairman Conyers. I thank the gentleman very much.

Does the gentleman from Utah have an amendment?

Mr. Cannon. I do Mr. Chairman at the desk.

Chairman Conyers. The clerk will report the amendment.

Mr. Cannon. I believe had an is Cannon 001.

The Clerk. Amendment offered by Mr. Cannon to the amendment in the nature of the substitute H.R. 3609, page 4 line 4, strike 7 year and insert 3-year, page 5, line 6 strike --

[The information follows:]

******** INSERT 2-1 ********

Chairman Conyers. Without objection the amendment will be considered as read. And my friend from Utah is recognized in support of his amendment.

Mr. Cannon. Thank you, Mr. Chairman. This amendment would place a reasonable limitation on when the principal can be crammed down under the manager's amendment. The manager's amendment amends the bankruptcy code so that a debtor is allowed to cram the principal owed on his loan down to the current value of his primary residence, the different in the amount of the principal the borrower owes and the value of the house would be converted from a second debt to an unsecured debt that could be discharged in bankruptcy.

My amendment would limit the ability of borrowers to cram down principal, but does allow for cram down if the lender and borrower can come to agreement. Some have argued that if adopted, my amendment would treat the primary residences less favorably than second homes and investment properties, but that is not the case.

Under current law, if the mortgage on the second home or vacation property is crammed down in bankruptcy, an entire amount must be paid down with interest during the Chapter 13 plan, a period that is no longer than 5 years, if a debtor has $500,000 mortgage on a second home or

investment property crammed down to $400,000 in bankruptcy, they would have to repay the entire $400,000 with interest within 5 years.

As a practical matter, a debtor can cram down a mortgage on a second home or investment property where the payment is necessary to pay off, even the cram-down amount over 5-year period would be large. The manager's amendment flips the cram down principal on its head and allows the debtor to pay off the cram-down portion of the home mortgage over a period that can be in excess of 30 years. The manager's amendment is not the equivalent of how bankruptcy law is currently applied to second homes and investment properties.

My amendment requires agreement on cram down, but leaves the bankruptcy judge the ability to modify the interest rate on the loan in order to lower the borrower's payment. And reasonable sunset on this bill. As Ms. Waters noted, there clearly was a lot of predatory lending out here, and probably a great deal of thought. We learned that in our committee hearings, but she shouldn't be puzzled at the 7-year sunset or my 3-year sunset that I am proposing here.

What we are trying to do here is create a context or stability in the market so that as Mr. Schiff and also Mr. Sherman pointed out, we maintain the stability in our

financial markets so people can continue to own homes. So Mr. Chairman I believe this amendment makes enormous sense, it would tend to avoid the unintended consequences that Mr. Schiff spoke about and I urge the support of my amendment and yield back the balance of my time which I note for the Chairman is still in the green light period.

Chairman Conyers. This has never happened before, and I will be eternally grateful to you. It may limit your number of amendments as a reward for your good faith.

The Chair recognizes the gentlelady from California, Linda Sanchez.

Ms. Sanchez. Thank you, Mr. Chairman. I, unfortunately, have to rise in opposition to this amendment. The amendment seeks to do two different things, and I will address the sunset provision first. It is true that the bulk of subprime exploding arm resets are going to occur in the next 18 months, but the loans are going to take a few years to work through the process. At some point, for many families, a 12 percent interest rate becomes impossible to maintain, even though families may struggle and scrimp on other areas of their family budget in order to try to keep up with the increased payments. Over time many families eventually won't be able to keep up. So if there is a 3-year sunset on this provision, many families who are working the hardest to try to avoid bankruptcy, but who

ultimately may end up having to lose their homes and go through the bankruptcy process, they will be the ones that are going to be hurt because a 3-year sunset won't grant them the type of relief that this bill would provide. So I don't think that the 3-year sunset gives enough time for us to address many of the loans that families are going to try to struggle to keep up with, and then ultimately fail to be able to afford.

With respect to why bankruptcy judges should be allowed to reduce the principal on mortgage loans, in some cases, a reduction in the loan principal or cram down is the only way to reduce the monthly payments to a level that a family can afford. While banks typically attempt to avoid reducing the principal owed because it may dramatically change the value of the loan and the secondary loan investors profit streams, it is, nonetheless, economically sensible for the lender to reduce the principal to that fair market value if that is the only way that a homeowner can continue to make payments of principal and interest.

If the fair market value of the home has decreased below the mortgage principal amount, lowering the principal to the fair market value to avoid a foreclosure helps the bank as much as it does the borrower. Since the fair market value is the maximum that a foreclosure sale will produce for the bank anyway, and in foreclosure, there are also

attendant fees that make foreclosure the worst option for the holders of the mortgage. It is estimated that about $50,000 in fees are added on in the foreclosure process.

So from my perspective, it doesn't make sense not to allow bankruptcy judges the discretion to do the cram down if that is going to help these families stay in their homes and continue to make their payments and by the way also generate a profit for the holder of the mortgage. And for those reasons, I urge my colleagues to oppose this amendment, and I yield back the balance of my time and will also note for the chairman's benefit that I am not over my time.

Mr. Cannon. Will the gentlewoman yield so we can wrap this up within your green light time as well?

Ms. Sanchez. I would be happy to yield.

Mr. Cannon. Let me make a couple of comments, as long as there is large agreement expressed in the context of this manager's amendment on what is reasonable, but the gentlelady, Ms. Sanchez, just pointed out that there is incentive by bankers to act in their own interest to solve these problems. What we are doing is putting a sledge hammer in the hands of the borrowers. Maybe they were imprudent when borrowed, maybe they were beguiled by the mortgage broker who wanted to do a deal.

For whatever reason in the current system they have

several options, they can refinance their house depending upon the context and whether they are late. They can work out with the banker or the lender a solution or they can give up the home which they can't afford and go to renting until they can prudently buy a home in the future.

Those things are all important in the context of the opportunity for a new buyer to buy a home at a reasonable price that the market sets, if we jigger the market here too badly money, will disappear, people won't be able to borrow at reasonable rates, interest rates will rise, home prices will continue to rise or they may fall in a plummet. In either case, we have a remarkably important unintended consequence.

Ms. Sanchez. Reclaiming my time. This bill simply gives a discretion to a bankruptcy judge who are experts at valuating property, because they do it all the time, and it is doing what the mortgage industry supposedly is trying to do anyway, and that is modify the loan. It just creates a fair, impartial third part who can figure out what is best option for the homeowner, and I think because cram downs are allowed on other types of properties, vacation homes and investment properties and farms, and there hasn't been a significant tightening of credit in those markets. I just don't buy the argument, Mr. Cannon, and I am sorry to disagree with you, but I don't believe that this

amendment helps to improve --

The Chairman. The Chair recognizes Lamar Smith.

Mr. Smith. Thank you, Mr. Chairman. Mr. Chairman, I want to thank Mr. Cannon for offering this amendment. It reasonably knows the scope of the bill and reduces the cost this bill imposes on future borrowers. Allowing borrowers to cram down the principal owed on their loans will cause lenders to increase the interest rates they charge and to require larger down payments from borrowers. These increased costs will delay, and in some cases, end the dream of homeownership. Those whose dreams will be shattered, we all know, are innocent bystanders in this crisis. We should not hurt them while trying to hurt the others.

Mr. Chairman, I yield to the gentleman from Utah, Mr. Cannon.

Mr. Cannon. Thank you. I would just make a couple of points. We dealt with the difference between second mortgage and second homes and investment properties, they are dramatically different in the way they are dealt with in the bankruptcy court. But the more important point is very simple, I agree with the gentlelady from California, you have judges in bankruptcy court that, generally speaking, are reasonable, and they are going to do fairly reasonable things. But from the point of view of the financial markets, they inject massive uncertainty, and that

uncertainty is going to be reflected in a higher loan rates, higher loan costs, and probably higher down payments, many people will be elbowed out of this market, and if that is the consequence, perhaps an unintended consequence, that I am anxious that we avoid here in this bill today and that is why urge adoption of my amendment, I yield back to the gentleman.

Mr. Issa. Would the gentleman further yield?

Mr. Cannon. Yes, I would yield to the gentleman from California.

Mr. Issa. Not to take any additional time. I join with the gentleman from Utah in support of recognizing that this is a very quickly, nothing personal, but we didn't have a series of hearings on this, this is quick legislation. Bankruptcy --

Ms. Sanchez. Will the gentleman yield?

Mr. Issa. I can't further yield, it is not my time.

Ms. Sanchez. I would just note for the record --

Mr. Issa. No, no. We, in fact, did not take the kind of time, the several Congresses we took under bankruptcy reform to limit to just 3 years before this sun sets is to say to the gentlelady from California and others, we will be here in 3 years when this thing sunsets; if it has worked and is still needed, we will be here. We should do this in a limited way even if we don't because, in fact, this is a

quick bankruptcy reform, not a well thought out one like the one that the chairman and ranking member worked so many years on, I yield back to the ranking member.

Mr. Smith. I yield back.

Chairman Conyers. I thank the gentleman and the ladies for their cooperation. Dan Lungren.

Mr. Lungren. Speaking in support of the amendment, Mr. Chairman I am one of those who supported the bill when it was on the floor from the Financial Services Committee, because I thought it was a responsible approach that was least intrusive to an overall system that has served us well. We have a severe problem facing us now; the question is how do we strike the proper balance? I would suggest that the gentleman from Utah's amendment strikes the property balance. I heard over and over the argument that we are doing nothing more than what the industry wants to do. It is in their interest to do it. We have heard several times recited that it costs $50,000 to go through a foreclosure.

Therefore it is in the interest of the creditor to not allow foreclosure to go forward and to try and work out a deal. That is the premise upon which Mr. Cannon's amendment sits. And it seems to me it makes good sense, it does require the agreement of both sides. Otherwise it seems to me what we are doing is we are not striking a balance but

doing what I would call reforming the system to create, let's take a Mulligan mortgages. It means that the question of imprudence, the question for people not being responsible in terms of making their determination carries no weight. One of the concerns I have is you have two people similarly situated who take out the same mortgage, buy the same house in the same track and we are saying to the one, we are going to reduce your principal to the fair market value because for any number of reasons, maybe it was responsibility, maybe it was actions beyond your ability to control, you now can't pay pursuant to the agreement you entered into.

Therefore we are going to reduce it by a way that really is extreme, which is the cram down, which brings the value of the principal down. And yet the person right next door to you who entered into the same agreement, who bought the same house because he or she is determined can pay are going to pay the value of the principal that they entered into.

Now, I think we have to think about where fairness is there. And I realize you could say, well, there would be harm done to the person who is continuing his payments if they have a foreclosed house next door because the value goes down, that is why we are trying to get a balance here. It seems to me that the gentleman from Utah has struck a balance which allows us to justify both trying to reach some

accommodation here on the one hand.

And on the other hand, trying to say that if we create a system which looks to the outside to be devoid of responsibility when you enter into such an agreement, frankly the market is going to be required to put in greater risk cost which is reflected in the interest payment not only on subprime, but prime mortgages from now on. And that is, as some have said, the unintended consequence, the people that are caught unaware, the collateral damage, if you will, to those people who have not entered into these kinds of agreements for whatever reason.

Lastly, I would just point out that Mr. Cannon from Utah explained how it works with vacation homes and other kinds of investments. What he is attempting to do is to try and bring this through this amendment sort of in balance, so this is more in keeping with how we deal with vacation homes and the other kind of investment that had been mentioned before with respect to bankruptcy courts. So I would hope that maybe we could have some bipartisan approach to Mr. Cannon's amendment. And with that, I yield back the balance of my time.

Chairman Conyers. I thank the gentleman from California.

Mr. Watt. Mr. Chairman.

Chairman Conyers. Mel Watt.

Mr. Watt. Move to strike the last word.

Chairman Conyers. The gentleman is recognized.

Mr. Watt. First of all, on the 3 years versus 7-year part of the amendment, 7 years is arbitrary, 3 years is arbitrary. I don't know that any one of them works magic, the more troubling part of this amendment is the last part of it, which I will submit to my good friend, Mr. Lungren from California, is not going to have really any impact in his State. It is not going to have any impact in my State because both in California and in North Carolina on a first mortgage home mortgage, there is an anti-deficiency statute anyway. So if the property gets foreclosed, sold at whatever the market value is, the lender can't go back against the homeowner for the deficiency anyway.

So the difference here is whether the current borrower has the ability to stay in that residence and save the residence for the person who is in bankruptcy or whether some subsequent purchaser in a foreclosure has the ability to buy that property from under the person who is in bankruptcy and end up owning the property.

I think from my perspective, we ought to give that ability, the ability to retain the home to the person who is in bankruptcy. They have it all along, there is no reason that a third party coming in buying at a foreclosure ought to be buying it at what is, in effect, the same thing as the

cram-down value of the property and benefiting, and in most cases, speculating really because the people who are buying at the foreclosure, are people in the industry who have the ability to hold onto this property for several years and then resell it when it appreciates in value in the future, if not some other homeowner who is going to be standing at a foreclosure sale at the courthouse saying, I am going to buy a piece of property that I am going to move into.

So I take that part of the amendment, really, the equity is with the person who is in bankruptcy, it has been their home all along. I think we should leave this provision of the bill like it is. There are some people who think that 7 years ought to be longer. There are some people who think the 7 years ought to be shorter and it will blow up the deal if there is a deal if we change that, but that is not the real critical issue here. I think the critical issue is the one where the person who is in bankruptcy should have the benefit of a deal that they have made at the market value subject to the reasonable judgment of a bankruptcy judge who is not going to exercise that in an unreasonable manner.

Chairman Conyers. Would the gentleman yield?

Mr. Watt. I yield to the Chair of the full committee, yes.

Chairman Conyers. I want to remind everyone that this

has been deliberately examined by the committee chaired by Linda Sanchez. I am holding here a document from the cofounder of Moody's economy.com, who puts six reasons forward that make it very clear that the amendment before us would run contrary to the premises, the economic premises that we have considered very, very carefully. And so I would like to disabuse anyone of the notion that this was hastily arrived at. We have been working on this for quite a while and we have mainstream economists supporting what we are doing because we are being very careful about it. And so it is my reason for urging that we not accept this amendment, but not lose the spirit of bipartisanship that brings us all here.

Mr. Watt. Mr. Chairman, may I just close with one point? I made the point about North Carolina and California having anti-deficiency statutes, but most of the States in the Union, except for a few have anti-deficiency statutes. So this is not going to have an impact in those States. I yield back.

Chairman Conyers. Are we ready to vote? Is there anybody? Chris Cannon has been involved in this mightily so I can ignore his request for more time.

Anybody else? If not, all those in favor of the Cannon amendment indicate by saying aye, aye. All those opposed indicate by saying no, no. The noes clearly have it.

Mr. Cannon. Mr. Chair, could I ask for a roll call.

Chairman Conyers. Yes, you can. The clerk will call the roll.

The Clerk. Mr. Conyers.

Chairman Conyers. No.

The Clerk. Mr. Conyers votes no.

Mr. Berman.

Mr. Berman. No.

The Clerk. Mr. Berman votes no.

Mr. Boucher.

Mr. Boucher.

[No response.]

The Clerk. Mr. Nadler.

[No response.]

The Clerk. Mr. Scott.

Mr. Scott. No.

The Clerk. Mr. Scott votes no.

Mr. Watt.

Mr. Watt. No.

The Clerk. Mr. Watt votes no.

Ms. Lofgren.

Ms. Lofgren. No.

The Clerk. Ms. Lofgren votes no.

Ms. Jackson Lee.

[No response.]

The Clerk. Ms. Waters.

Ms. Waters. No.

The Clerk. Ms. Waters votes no.

Mr. Delahunt.

[No response.]

The Clerk. Mr. Wexler.

[No response.]

The Clerk. Ms. Sanchez.

Ms. Sanchez. No.

The Clerk. Ms. Sanchez votes no.

Mr. Cohen.

Mr. Cohen. No.

The Clerk. Mr. Cohen votes no.

Mr. Johnson.

Mr. Johnson. No.

The Clerk. Mr. Johnson votes no.

Ms. Sutton.

[No response.]

The Clerk. Mr. Gutierrez.

[No response.]

The Clerk. Mr. Sherman.

[No response.]

The Clerk. Ms. Baldwin.

Ms. Baldwin. No.

The Clerk. Ms. Baldwin votes no.

The Clerk. Mr. Weiner.

Mr. Weiner. No.

The Clerk. Mr. Weiner votes no.

Mr. Schiff.

Mr. Schiff. No.

The Clerk. Mr. Schiff votes no.

Mr. Davis.

Mr. Davis. No.

The Clerk. Mr. Davis votes no.

Ms. Wasserman Schultz.

Ms. Wasserman Schultz. No.

The Clerk. Ms. Wasserman Schultz votes no.

Mr. Ellison.

Mr. Ellison. No.

The Clerk. Mr. Ellison votes no.

Mr. Smith.

Mr. Smith. Aye.

The Clerk. Mr. Smith votes aye.

Mr. Sensenbrenner.

Mr. Sensenbrenner. Aye.

The Clerk. Mr. Sensenbrenner votes aye.

Mr. Coble.

Mr. Coble. Aye.

The Clerk. Mr. Coble votes aye.

Mr. Gallegly.

Mr. Gallegly. Aye.

The Clerk. Mr. Gallegly votes aye.

Mr. Goodlatte.

[No response.]

The Clerk. Mr. Chabot.

Mr. Chabot. No.

The Clerk. Mr. Chabot votes no.

Mr. Lungren.

Mr. Lungren. Aye.

The Clerk. Mr. Lungren votes aye.

Mr. Cannon.

Mr. Cannon. Aye.

The Clerk. Mr. Cannon votes aye.

Mr. Keller.

Mr. Keller. Aye.

The Clerk. Mr. Keller votes aye.

Mr. Issa.

Mr. Issa. Aye.

The Clerk. Mr. Issa votes aye.

Mr. Pence.

Mr. Pence. Aye.

The Clerk. Mr. Pence votes aye.

Mr. Forbes.

[No response.]

The Clerk. Mr. King.

Mr. King. Aye.

The Clerk. Mr. King votes aye.

Mr. Feeney.

Mr. Feeney. Aye.

The Clerk. Mr. Feeney votes aye.

The Clerk. Mr. Franks.

Mr. Franks. Aye.

The Clerk. Mr. Franks votes aye.

Mr. Gohmert.

Mr. Gohmert. Aye.

The Clerk. Mr. Gohmert votes aye.

Mr. Jordan.

Mr. Jordan. Aye.

The Clerk. Mr. Jordan votes aye.

Chairman Conyers. Are there any others who choose to cast a ballot?

Mr. Nadler.

Mr. Nadler. No.

The Clerk. Mr. Nadler votes no.

Chairman Conyers. Any others? The clerk will report.

The Clerk. Mr. Chairman, 14 members voted aye, 17 members voted nay.

Chairman Conyers. The amendment fails.

Is there any other amendment --

Mr. Feeney. I believe I have an amendment at the desk.

Chairman Conyers. Mr. Feeney's amendment will be called up and a point of order is reserved by Ms. Sanchez. The clerk will report.

The Clerk. Amendment offered by Mr. Feeney to the amendment in the nature of the substitute to H.R. 3609, page 11, beginning on line 1 strike "date of enactment of this Act" and insert 30 days after the report required by section 11 is submitted to the Congress. Page 11, line 6 strike date of the enactment of this act and insert effective date of this act. At the end of the bill add the following section 11, GAO --

[The information follows:]

******** INSERT 2-2 ********

Chairman Conyers. I ask unanimous consent the amendment be considered as read, the gentleman is recognized in support of his amendment.

Mr. Feeney. Mr. Chairman, as stated earlier the administration as acted in this regard to the Paulson plan. The House Financial Services committee had a comprehensive bill that has passed out of the House. What this amendment does is to require a GAO study on the effectiveness of the Paulson plan to ameliorate the effects of the subprime mortgage crisis within 180 days enactment of the bill, report back to Congress and then it would delay the implementation of this bill until 30 days after the study was completed to Congress, which would give us time to act.

As we have talked about it somewhat, there is no question that the subprime mortgage crisis has bled into other areas, there has been a lot of suffering by individuals involved. The subprime lending debacle is going forward over, at one point, on an annualized basis, something like $2.7 trillion of loans in the subprime or unusual category were being made. Now it is less than 20 billion, so 95 or 98 percent of the problem has been eviscerated going forward.

I would like to quote Justice Stevens, not known as a bastion of conservative or free market thought when he

explains the rationale for protecting the investors who made residential primary mortgages from the nuances or the arbitrary action of a bankruptcy judge. And here's Justice Stevens, a Nobleman versus American Savings Bank.

At first blush, it seems somewhat strange for the bankruptcy code should provide less protection to an individuals interest in retaining possession of his or her home than of other assets.

The anomaly is, however, explained by the legislative history indicating that favorable treatment of residential mortgages was intended to encourage the flow of capital into the home lending market.

Indeed in testimony in front of our committee mortgage brokers very familiar with matching up borrowers and lenders in the mortgage area say that we can have much as a 2 percent increase if we pass this bill in the average loans made in the marketplace. For example, if you would borrow $300,000 at 6 percent interest today the average per monthly payment would about $1,799. If that goes to 8 percent, the average monthly payment would be $2,201, meaning an annual increase of $4,824.

What we need to do is see the effects of an administrative proposal, what we need to do is to see the effects of the bill that came out of Financial Services before we impose the most radical departure in residential

mortgage bankruptcy law since 1978, and all my amendment would do is to postpone the effectiveness of this bill until after we have given the GAO an ample time, 6 months to study the proposal.

Mr. Cannon. Would the gentleman yield?

Mr. Feeney. I would be happy to yield to the ranking member, Mr. Cannon.

Mr. Cannon. The gentleman has talked about a 2 percent increase on the cost of loans, let me just point out for second homes and investment properties the interest rate is 1 to 1-1/2 percent higher already, so we are not twisting in the dark here, that is not arbitrary, that is not a guess. That is only what current second homes or investment properties are costing, largely because of the bankruptcy difference in treatments between that and the primary residence.

And secondly, you are looking at some uncertainty that comes into the market, so 2 percent interest rate increase may be understating the potential reality and that would keep a lot of people out of the housing market. I yield back.

Chairman Conyers. The gentleman --

Mr. Feeney. I yield back.

Chairman Conyers. The gentleman yields back his time.

Does the gentlelady from California insist on her point

of order?

Ms. Sanchez. Yes, I do.

Chairman Conyers. The gentlelady will state the point of order, please.

Ms. Sanchez. Thank you, Mr. Chairman. I believe that this amendment unfortunately is nongermane to the matter at hand. The Paulson proposal is something that does not effect bankruptcy and the bill before us, H.R. 3609, is exclusively a bill that deals with bankruptcy, so I believe that it is not germane and therefore not appropriate at this time.

Mr. Feeney. Mr. Chairman --

Chairman Conyers. The amendment up there, choose to respond. Mr. Feeney is recognized.

Mr. Feeney. Well, I understand the point and it may even be well taken under some circumstances, but I would suggest this: If an amendment to postpone the effective date of a bill is not germane and the only committee where the bill is being considered, then I would like some advice on what committee I could file an amendment to postpone the effective date so that it would be germane and considered number 1.

Number 2, the objection may be well taken if, in fact, this bill were being considered at one point in the Financial Services Committee, as I have repeatedly asked

for. The arguments are that this bill is merely bankruptcy procedure. That is a little bit like the Government Reform Committee deciding after a hearing that they want to pass a bill making Federal death penalty by drawing and quartering and a guillotine at the end of it without the bill coming to the constitution subcommittee of our committee, Mr. Chairman, to determine whether or not it was constitutionally feasible.

Obviously, bills effect process, but they also effect the substance of law. So my argument has been all along that the expertise in how this bill will affect the housing market is clearly in the Financial Services Committee while the expertise for the procedure is clearly within our jurisdiction. And I would basically say that I would be happy to withdraw my amendment if I could be guaranteed that we would have Financial Services Committee hearings and hear from the Treasury, hear from the various economists, take advantage of the expertise in that committee as should have been done in the first place. Otherwise, I would like to proceed with my amendment.

Chairman Conyers. Well, the gentleman argues a very important point, we only wish that the Finance Committee could agree with you, and I, and the ranking member to hold the hearings that you want. The only problem being is that the bankruptcy code is within the jurisdiction of this

committee and there is nothing wrong with changing the date, but changing the date contingent upon a study that is not germane creates a problem under rule 16, clause 7, the number of related precedents and a consultation with the House parliamentarian just to make sure, leads me to the conclusion that the amendment is unfortunately not germane to the bill. I am sorry to report that.

Is there any other amendment that anyone would like --

Mr. Franks. Mr. Chairman.

Chairman Conyers. Yes, right. The gentleman is recognized for what purpose?

Mr. Franks. Mr. Chairman, I have an amendment at the desk.

Mr. Nadler. Mr. Chairman, I reserve a point of order.

Chairman Conyers. Point of order is reserved by the gentleman from New York, Mr. Nadler. The clerk will report the amendment.

The Clerk. Amendment offered by Mr. Franks to the amendment in the nature of a substitute to H.R. 3609. At the end of the bill, add the following: Section 11 special rules --

[The information follows:]

******** INSERT 2-3 ********

Chairman Conyers. Without objection, the gentleman from Arizona's amendment will be considered as read, he shall be recognized for 5 minutes.

Mr. Franks. First of all, I want to associate myself completely with some of the remarks across the board that Mr. Feeney has made earlier here. I offer this amendment because I am concerned as has been said here a number of times in a rush to do something regarding the subprime mortgage crisis that we are potentially creating an unconstitutional taking of private properties. It is my opinion that we are doing exactly that.

Last week, Judge Bennett testified before the Senate Judiciary Committee regarding the various mortgage bankruptcy bills that are pending before Congress. Among other things, Judge Bennett testified that these bills could create a "forced diminution in value of mortgaged-backed securities of constitutional proportions." This forced diminution of value is important because it means that the holders of these securities may have a valid takings claim under the fifth amendment.

Specifically, Judge Bennett testified that many of these mortgage-backed securities are often divided into instruments that are backed either by the revenue from the interest payments on the mortgages or the payments on the

principal of the mortgages.

Accordingly, modifications to either the interest rate formula or the principal amount on a mortgage as are authorized by this legislation could significantly diminish the value of those assets. The holders of these securities have based their investment backed expectations on the mortgage exemption that has now been the rule of law and the law of the land in one form or another since 1886.

The bill with eliminate that exemption and diminish those investment-backed expectations without just compensation. This is a recipe for a major constitutional problem, and potentially a huge payout of just compensation from the U.S. Treasury.

Judge Bennett is not the only one to foresee this problem, the Supreme Court observed in Louisville Joint Stock Land Bank versus Radford that statutes for the relief of mortgagors when applied to preexisting mortgages that have given rise from time to time to serious constitutional questions.

This amendment does two things, Mr. Chairman, to address these concerns. First, it creates an expedited procedure for resolving the constitutional questions raised by this legislation. Second, it says that if a judge finds that any part of this Act is unconstitutional, then the whole Act is unconstitutional.

The non severability aspect of this is very important in this instance. The gentleman from Ohio, Mr. Chabot, has worked very hard to narrow this legislation, and I commend him greatly for his efforts. Among other things, he has managed to limit this bill to mortgages that exist before the date of enactment.

On the whole, that is obviously very wise. We are reportedly here to resolve the subprime mortgage crisis, not to undo a feature of bankruptcy law that has served homeowners well for generations. Unfortunately, by limiting this bill to existing mortgages, this committee may actually be enhancing the takings cause argument against it.

The managers amendment is a carefully crafted compromise, it fits together. I don't believe that Mr. Chabot want to extend the relief offered by this bill prospectively, and that is what would happen if only the retrospective aspect of it was taken out. Since this would do nothing to help the people in his district who are in foreclosure as a result of loans made within the last 7 years. Therefore, to the extent that a judge finds that one portion of this bill is unconstitutional, the whole bill should be stricken down. I urge my colleagues to join me in support of this amendment.

Mr. Chairman, let me say one of the things that I think we overlook in this crisis is the fact that the only thing

that can really ultimately make people whole are intelligent investors looking at the market and investing their capital back into it to make it whole again. And oftentimes, we think our economy is just based on competition, but Mr. Chairman, it is based on trust, investors, mortgage lenders, all types of people involved in this make their investments based on trusting us not to change the rule of the game. I point out that in 1986, we changed the rules of the game and it created a crisis, it devalued portfolios in savings and loans 40 percent and created a disaster and then the RTC came in and made it even worse. We don't want to see that happen again, I urge my colleagues to support this amendment.

Chairman Conyers. I thank the gentleman.

Does the gentleman from New York insist upon his?

Mr. Nadler. Yes, I do. Mr. Chairman, this amendment sets special rules for judiciary review of constitutional challenges to this bill. The underlying bill deals only with part of the bankruptcy code pertaining to the modification of a loan secured against the debtor's principal residence. This amendment goes far beyond the scope of the underlying bill and is therefore not germane.

Mr. Franks. Mr. Chairman, I am prepared by unanimous consent to take that part of the amendment out. But I would say to you that if indeed it is not germane, to offer an

amendment to offer expedited judicial review of a bill, then where would that be possible? Like Mr. Feeney said earlier, I think it is a terrible precedent that I hope the chairman and the ranking member will talk about this for future consideration. For now, I am willing, by unanimous consent, to take that part of the amendment out that calls for judicial review and just leave the non severability part of the amendment.

Chairman Conyers. Is that a unanimous consent request?

Mr. Franks. Yes, sir.

Chairman Conyers. Is there any objection? If not, that portion --

Mr. Nadler. I retain the objection.

Mr. Franks. Can you make an argument on non severability being nongermane?

Chairman Conyers. Well, I will help you make that decision. I am here to help you.

Mr. Nadler. I will. I am thinking about it for 30 seconds, I think the gentleman is correct, the non severability is germane. I would like to address the -- I withdraw that. I would like to address the amendment then.

Chairman Conyers. Is there further discussion on the point of order? The Chair --

Mr. Nadler. -- the point of order. Oh, right.

Chairman Conyers. All right. The Chair is prepared to

rule, and I want to commend Mr. Franks for his attempt to bring his amendment into --

Mr. Franks. Mr. Chairman, there is a sub ruling before the Chair that we already had the unanimous consent.

Chairman Conyers. We had unanimous consent for you to take the portion out.

Mr. Franks. Is the Chair ruling now?

Chairman Conyers. I am going to make a ruling, I haven't ruled on anything.

Mr. Franks. He is withdrawing his point of order on the severability aspect.

Chairman Conyers. He hasn't withdrawn his point of order. He just allowed you to withdraw the portion that you wanted to ask unanimous consent to withdraw it.

Mr. Franks. Forgive me, Mr. Chairman.

Chairman Conyers. That is all right. I am here to help.

Now, the Chair is fortunately able to report to you that as you have amended the portion of your amendment that was questioned, it is germane and we will proceed with the debate on your amendment.

Mr. Franks. Thank you, Mr. Chairman.

Chairman Conyers. You are welcome.

Mr. Nadler. Point, could the Chair --

Mr. Watt. What part of the amendment is now under

consideration? What has been withdrawn and what is still --

Chairman Conyers. The only part that remains, Mr. Watt, is the non severability clause.

Mr. Watt. That is line 6 through 10 on page 2?

Chairman Conyers. Probably.

Who seeks recognition?

Mr. Nadler. Mr. Chairman.

Chairman Conyers. Mr. Nadler.

Mr. Nadler. Thank you, I move to strike the last word.

Chairman Conyers. The gentleman is recognized.

Mr. Nadler. Mr. Chairman, the only reason that I rise in opposition to what is left of the amendment, the only reason to put in a non severability clause, which is against the normal practice, is if there was serious question of the constitutionality of this bill as Mr. Franks says there is.

Mr. Franks? The only reason for the amendment would be if there is, in fact, a serious question as to the constitutionality of the bill, there is not. I would like to enter into the record a letter from Professor Chemerinsky, who is the professor of Duke Law at Duke Law School on this topic.

Chairman Conyers. Without objection.

[The information follows:]

******** COMMITTEE INSERT ********

Mr. Nadler. Thank you. I want to quote from the letter. It says "the bill as sent impairs no property right because it would permit loan balances to be written down only to the value of the mortgage property but not below that value. The Supreme Court held in Wright versus Union Central Life Insurance Company, 1940 that a creditor is a constitutionally protected property right up to the value of the mortgaged property. However, beyond the value of the mortgaged property, the credit disclaim is a contractual right subject to impairment and bankruptcy without regard to whether the contractual right was created prior to the promulgation of the relevant bankruptcy law provision."

RPTS McKENZIE

DCMN NORMAN

Mr. Nadler. In 1986 Congress enacted Chapter 12 of the bankruptcy code, which we made permanent 2 years ago, to aid family farmers facing foreclosure during a farm crisis. Chapter 12 provides for cram-down of the mortgage to the value of the principal residence for farmers.

All we are doing here in effect is extending Chapter 12 to nonfarmers. Congress applied that rule, as this bill would retroactively, to help the family farmers most in need of relief. It was, however, applied more broadly to all debtors in home mortgages. That retroactive application was upheld by the courts in Travelers Insurance Company v. M. Burlington, 11th Circuit, 1989, in which the court said quote -- Mr. Chairman, the committee is not in order.

Chairman Conyers. Can I have the committee in order please? The gentleman may continue.

Mr. Nadler. The retroactive application was upheld in the 1989 11th Circuit case, Travelers Insurance, in which the court said: It is undisputed that the takings clause of the fifth amendment protects certain of the rights of secured creditors. However, as the court observed -- as observed in Wright v. Union Central Life Insurance Company, quote, "These safeguards are provided to protect the rights

of secured creditors to the extent of the value of the property. There is no constitutional claim of the creditor to more than that," unquote, from the Supreme Court decision. Such a rule is fully consistent with common sense.

"Had Travelers" -- I am still quoting from the circuit court decision -- Had Travelers foreclosed on the farm property, all it could have obtained was the $475,000 stipulated value. Under Chapter 12 the reason Travelers may not recover the remaining amount of their claim was because the claim was undersecured," unquote.

In other words, this is fully constitutional, it has been recognized by Supreme Court decisions, it was recognized by Chapter 12 and every member of this committee, which is mostly Republican, certainly, who voted for the bankruptcy bill in 2005 to make Chapter 12 permanent, made permanent a retroactive cram-down provision for farmers.

And all we are talking about here is a retroactive cram-down provision for nonfarmers. So if that was constitutional and the Supreme Court was right and the 11th Circuit was right, there is no constitutional argument on this.

Ms. Lofgren. Would the gentleman yield?

Mr. Nadler. Yes, I will yield.

Ms. Lofgren. I would just note that Article I, Section

8, grants Congress the powers to establish a uniform rule of laws on the subject of bankruptcies throughout the United States and that these measures go back to the very founding of our Republic. And I would further note that if the author of the amendment's theory is correct, the antideficiency statutes in California, as well as a majority of the States of the United States, would be in unlawful taking, and I don't think that is the case. That would completely open the mortgage and real estate market and throw chaos into the markets. So I thank the gentleman.

Mr. Nadler. I thank the gentlelady.

Reclaiming my time, I would simply point out the law is very clear. It is black-letter law that it is not a taking if you reduce the value of a mortgage in bankruptcy, but not below the secured value of the asset. As long as -- if you don't reduce it below the secured value of the asset, there is no taking. There have been Supreme Court decisions on that. Chapter 12 recognizes that. It has been universally recognized, and therefore this bill has no constitutional question.

I thank you. I yield back.

Chairman Conyers. Is there any further discussion on the amendment?

Mr. Feeney. Mr. Chair, I move to strike the last word.

Chairman Conyers. Haven't you been recognized already?

Mr. Feeney. Not on this one.

Chairman Conyers. All right.

Mr. Feeney. Thank you, Mr. Chairman. I would yield my time to Mr. Franks, because he has been recognized.

Mr. Franks. I thank the Chairman and thank Mr. Feeney.

You know, I just wanted to address some of the comments of the Ranking Member of the Constitution Committee -- I am sorry, the Chairman of the Constitution Committee. Trying to take care of that at some point.

The thing that the gentleman overlooks is it is not just the value of the home that is at issue before the court. The contract itself is property. If that is not true, then our entire security system itself is completely --

Mr. Nadler. Would the gentleman yield?

Mr. Franks, -- off kilter. I will in just a moment.

Mr. Bennett, that I quoted in my comments, said just recently -- he said, It is of extreme importance because the treatment of these commodities, representing mortgage debt repayment streams -- that is the contract itself -- under S. 2136 could for some be a forced diminution in value of constitutional proportions. There is no question that at least that is a valid concern that the court might have. And here is the bottom line: If the gentleman is absolutely convinced that there is no constitutional issue here, then

the nonseverability clause should be of no concern to him, because if it is going to be upheld this will have no effect. But if indeed the court strikes down the retroactive aspect of this, then the only thing this bill will do would be to affect the forward -- the prospective elements of the mortgage industry. And that is not the intent of this bill as I understand. It is to fix what has already happened.

And with that, Mr. Chairman, I yield to the gentleman.

Mr. Nadler. Thank you.

I just want to make a constitutional point. First -- two points. One, all bankruptcy laws, all of them, are designed to change the contractual provisions. That is the whole point of bankruptcy. And contractual provisions are changed for the relief of the debtor to some extent. When a major corporation goes into bankruptcy, union contracts are rewritten or thrown out. All contractual provisions are routinely thrown out.

And the second point I would make is that the Constitution, remember, does not prohibit the Federal Government from impairing the obligations of contract. Only the State governments are prohibited from impairing the contracts. So the Federal Government, it is a perfectly legitimate function, and we do it -- it is the basis of our bankruptcy law and has been for 200 years.

Mr. Franks. Mr. Chairman, just reclaiming my time. I think there is a minute or two left here.

Those that invest in these instruments do so now, knowing of the bankruptcy code, knowing what could possibly happen, and basing some of their actuarials on that very issue. If we go back and change that, then that is something that we have injected into the equation that they did not know. And that can have a dramatic impact on them in a negative way.

And I would just say to you that if we have enough negative impact on those investors, they will walk away from this system and we will see it, I think, reverberate in the commercial paper and potentially have a major impact on this economy.

And with that, I would yield back.

Chairman Conyers. I thank the gentleman so much.

Those that are in support of the amendment, please indicate by saying aye. Thank you.

Those who are opposed to the amendment indicate by saying no.

This is a closer call, and the Chair finds that the noes prevail. Would someone like a recorded vote?

Mr. Franks. Yes, sir.

Chairman Conyers. All right. Recorded vote is requested.

The Clerk. Mr. Conyers.

Chairman Conyers. No.

The Clerk. Mr. Conyers votes no.

Mr. Berman.

Mr. Berman. No.

The Clerk. Mr. Berman votes no.

Mr. Boucher.

[No response.]

The Clerk. Mr. Nadler.

Mr. Nadler. No.

The Clerk. Mr. Nadler votes no.

Mr. Scott.

Mr. Scott. No.

The Clerk. Mr. Scott votes no.

Mr. Watt.

Mr. Watt. No.

The Clerk. Mr. Watt votes no.

Ms. Lofgren.

Ms. Lofgren. No.

The Clerk. Ms. Lofgren votes no.

Ms. Jackson Lee.

Ms. Jackson Lee. No.

The Clerk. Ms. Jackson Lee votes no.

Ms. Waters.

Ms. Waters. No.

The Clerk. Ms. Waters votes no.

Mr. Delahunt.

[No response.]

The Clerk. Mr. Wexler.

[No response.]

The Clerk. Ms. Sanchez.

Ms. Sanchez. No.

The Clerk. Ms. Sanchez votes no.

Mr. Cohen.

[No response.]

The Clerk. Mr. Johnson.

Mr. Johnson. No.

The Clerk. Mr. Johnson votes no.

Ms. Sutton.

[No response.]

The Clerk. Mr. Gutierrez.

[No response.]

The Clerk. Mr. Sherman.

Mr. Sherman. No.

The Clerk. Mr. Sherman votes no.

Ms. Baldwin.

Ms. Baldwin. No.

The Clerk. Ms. Baldwin votes no.

Mr. Wiener.

Mr. Wiener. No.

The Clerk. Mr. Wiener votes no.

Mr. Schiff.

Mr. Schiff. No.

The Clerk. Mr. Schiff votes no.

Mr. Davis. No.

The Clerk. Mr. Davis votes no.

Ms. Wasserman Schultz.

Ms. Wasserman Schultz. No.

The Clerk. Ms. Wasserman Schultz votes no.

Mr. Ellison.

[No response.]

The Clerk. Mr. Smith.

Mr. Smith. Aye.

The Clerk. Mr. Smith votes aye.

Mr. Sensenbrenner.

Mr. Sensenbrenner. Aye.

The Clerk. Mr. Sensenbrenner votes aye.

Mr. Coble.

Mr. Coble. Aye.

The Clerk. Mr. Coble votes aye.

Mr. Gallegly.

[No response.]

The Clerk. Mr. Goodlatte.

Mr. Goodlatte. Aye.

The Clerk. Mr. Goodlatte votes aye.

Mr. Chabot.

Mr. Chabot. No.

The Clerk. Mr. Chabot votes no.

Mr. Lungren.

Mr. Lungren. Aye.

The Clerk. Mr. Lungren votes aye.

Mr. Cannon.

Mr. Cannon. Aye.

The Clerk. Mr. Cannon votes aye.

Mr. Keller. Aye.

The Clerk. Mr. Keller votes aye.

Mr. Issa.

Mr. Issa. Aye.

The Clerk. Mr. Issa votes aye.

Mr. Pence.

Mr. Pence. Aye.

The Clerk. Mr. Pence votes aye.

Mr. Forbes.

[No response.]

The Clerk. Mr. King.

Mr. King. Aye.

The Clerk. Mr. King votes aye.

Mr. Feeney. Aye.

The Clerk. Mr. Feeney votes aye.

Mr. Franks.

Mr. Franks. Aye.

The Clerk. Mr. Franks votes aye.

Mr. Gohmert.

Mr. Gohmert. Aye.

The Clerk. Mr. Gohmert votes aye.

Mr. Jordan.

Mr. Jordan. Yes.

The Clerk. Mr. Jordan votes yes.

Chairman Conyers. Are there members that want to vote? Mr. Ellison.

Mr. Ellison. No.

The Clerk. Mr. Ellison votes no.

Chairman Conyers. Other members?

The Clerk will report.

The Clerk. Mr. Chairman, 14 members voted aye, 18 members voted nay.

Chairman Conyers. The amendment fails.

The Chair recognizes for what hopefully may be the last attempt at an amendment by the gentlelady from Texas, Sheila Jackson Lee.

Mr. Cannon. Mr. Chairman, I reserve a point of order.

Chairman Conyers. A point of order is reserved against the amendment. The Clerk will first perhaps report the amendment.

The Clerk. Amendment to H.R. 3609 offered by

Ms. Jackson Lee of Texas:

At the end of the bill insert the following:

Chairman Conyers. Ask unanimous consent that the amendment be considered as read and recognize the gentlelady.

[The information follows:]

******** INSERT 3-1 ********

Ms. Jackson Lee. Thank you, Mr. Chairman. Absolutely. I thank you for that procedural affirmation. The time that I spent on this committee I had the privilege, or maybe the burden, of addressing questions of bankruptcy and the horrific impact of bankruptcy on the American public. We finally were able to at one point get an understanding that catastrophic illnesses and other unfortunate circumstances cause most Americans to go into bankruptcy court, not a voluntary entry because of their laxness or their irresponsibility.

This is what I believe is one of the underlying principles of the calamity of the increasing foreclosure market and the crisis in the subprime. Certainly a lot of other factors go into it, but clearly a factor of Americans seeking the American dream and therefore utilizing vehicles or modes of finance that might not be suitable to all. This is a principle that I think is suitable to the underlying bill which emphasizes the fact that Americans should have every reasonable effort to obtain the American dream and should be able to pay for their mortgages and stay in their houses.

I would hope as we move forward, Mr. Chairman, that we would be able to, if not pass this amendment at this time, submit this kind of language into the report of this

legislation and to emphasize the value of the ability to pay for a mortgage and have the American dream.

Let me close, if you will, by acknowledging --

Chairman Conyers. Would the gentlelady yield? Could I agree with her to include this language in the report?

Ms. Jackson Lee. I would be delighted. If I could finish this last sentence, I would appreciate it. I thank the gentleman for his generosity.

In the President's offering to solve the subprime market, I believe one of the subsets was that his particular fix would go to those who had not fallen behind in their mortgage payments. That speaks loudly to this language. Those who have fallen behind certainly have every right to seek the American dream and have a reason to have fallen behind because of the unfortunate market.

I thank the Chairman for welcoming this language in the report language. And with that, I would ask unanimous consent to withdraw this amendment, looking forward to detailing it in the report language.

With that, I yield back.

Chairman Conyers. I thank the gentlelady.

Could I announce that there are votes pending on the floor shortly? And we are trying to finish this bill, go to a recess, and come back promptly at 2:00 to finish another very important piece of legislation that has been worked on

by a number of members in the committee.

So if I recognize the gentleman from Utah, could he combine these amendments?

Mr. Cannon. Thank you, Mr. Chairman. I would just ask if we come back at 2:00, could we continue this? I think I could probably combine two amendments into one.

Chairman Conyers. Well, let's do it now.

Mr. Cannon. Then I do have an amendment at the desk and I will just do the one amendment, which is to denominated 002.

Chairman Conyers. Thank you very much. Clerk will report the amendment.

The Clerk. Amendment offered by Mr. Cannon to the amendment in the nature of a substitute to H.R. 3609:

Page 5 line --

Chairman Conyers. Without objection, the amendment will be considered as read.

[The information follows:]

******** INSERT 3-2 ********

Chairman Conyers. The gentleman from North Carolina reserves a point of order. The gentleman from Utah is recognized in support of his amendment.

Mr. Cannon. Thank you, Mr. Chairman. Homeowners rates in this country have risen to nearly 70 percent due in large part to the increased financing provided to lenders by the secondary mortgage market through mortgage-backed securities. In fact, roughly 84 percent of prime rate home mortgages are securitized. Investors have invested in mortgage-backed securities due to the relative security of the investment. These include Freddie Mac and Fannie Mae, mutual funds, pension funds and local and State governments. The Federal Government through the Federal Housing Administration, Ginnie Mae, and other agencies is also significantly involved in the secondary mortgage market.

In a recent Business Week magazine, in fact this week's Business Week magazine, Marty Feldstein is quoted as saying: There is a fundamental problem, which is the lenders are now no longer holding plain vanilla mortgages. Those mortgages have been sliced up, in many ways syndicated, and the holders are all around the world. Are they going to be willing to continue to buy U.S. mortgages and mortgage-backed securities if the government could come along and change the interest rate because it thinks it

would be good for American borrowers? I don't think so. So I worry about what it does to America's creditworthiness in global markets.

This bill introduces a new source of risk for investors, the risk that a bankruptcy court could reduce the secured balance of a mortgage loan. This risk will cause investors either to curtail their investing in these securities or to reprice their risk and thereby increase the cost to borrowers.

We talked about the secondary loans and investment properties as having a 1 to 1.5 percent increase in interest rates. My amendment would place the necessary limitation on the extent to which mortgages that have been packaged and sold as securities can be modified by the bankruptcy court order under this bill. It will also place a reasonable sunset on this bill to further lessen the bill's negative effects. Modification of a loan in a mortgage-backed securities pool is generally governed by a pooling and servicing agreement and federal tax rules. A modification that violates either requires the loan to be purchased out of the pool. This represents a significant cost to the loan servicer, which in some cases may be the Federal Government.

Under my amendment, this cost would be eliminated, as any Chapter 13 loan modification could not violate the terms of a pooling and servicing agreement or change the tax

status of the mortgage-backed security.

I might note that we all -- I am also including, and will not offer an amendment later, the notion that this has a limitation of 3 years in this amendment, as well as before. The Chair was kind enough to mention Mr. Zandi, who is Moody's representative and who testified before our committee. He testified that the 3-year time frame would be appropriate. This is not an arbitrary number. Three years gets us through the period of time that we have suffered. We have accumulated these mortgages that are going to reset. So I would hope that the majority would also vote for this bill because this actually does represent a better time frame for dealing with the issue.

I urge my colleagues to support this important amendment which will help to ensure mortgage-backed securities remain a relatively safe investment vehicle, and that servicers, including the Federal Government, will not have to repurchase at a significant cost loans out of the mortgage-backed securities pool.

And with that, Mr. Chairman, I yield back.

Chairman Conyers. I thank the gentleman from Utah.

Mr. Nadler. Mr. Chairman.

Chairman Conyers. Does the gentleman from North Carolina insist upon his point of order?

Mr. Watt. Chairman, notwithstanding the fact that we

have already voted on the first part of it, I will withdraw my point of order.

Chairman Conyers. Well, thank you so much.

The Chair recognizes the gentlelady from California, the chair of a subcommittee here, Ms. Linda Sanchez.

Ms. Sanchez. Thank you, Mr. Chair.

I just want to start out with, again, the 3-year provision. The witness that had testified at our hearing testified that at minimum they would need 3-year, but that he was not sure how much longer, but that a longer time period is certainly something that would probably be better, if I recall the testimony correctly; not that 3 years was some magical number that would cure the defect of all of these mortgages.

And I have already spoken as to why in the process it is going to take several years for these debtors to wind through the process and potentially declare bankruptcy beyond that 3-year period.

With respect to the pooling agreements, something that I think bears noting is that the debtor isn't even a party to the pooling and servicing agreements. And the restriction here is essentially a requirement that the investment trust must consent. These agreements are exceedingly complex and it is unlikely that anybody could figure out how they affect a particular mortgage.

Judicial modification is most important in cases where the existing contractual provisions stand in the way of voluntary modification. And such a provision would deny modification where it is needed most: those who couldn't get it outside bankruptcy. It would be impossible for debtors to know beforehand whether modification would violate the pooling and service agreements or not. And since it is hard to get an agreement with a servicer, regardless of what the PSA says, the debtor wouldn't know if the agreement was the obstacle or if it was something else. It is often unclear also whether the servicer has the authority under the PSA and could therefore modify without fear of investor lawsuits. And the process of judicial modification provides servicers the cover that they are going to need in order to modify those loans.

And for those reasons, I don't think that this amendment improves the bill, and I would ask my colleagues to oppose, and I would yield back the balance of my time.

Chairman Conyers. Yes. I thank the gentlelady for yielding back her time.

The gentleman from New York was prepared to supplement her argument against the amendment, but he has graciously yielded back his time so that we may be able to bring this matter to a full close before we come back -- recess, vote, and then come back at 2:00.

All those in favor of the Cannon amendment indicate by saying aye.

All those opposed indicate by saying no. The noes have it. Inordinately, the amendment fails.

Mr. Cannon. Could we have a recorded vote on that, Mr. Chairman?

Chairman Conyers. Does the gentleman insist on a recorded vote?

Mr. Cannon. I suspect it would be similar to the last recorded vote that we asked for. So thank you, Mr. Chairman. In the sense of trying to get out of here quickly, I withdraw that request.

Chairman Conyers. I appreciate that so much.

The gentleman's amendment fails and the question now is on the amendment in the nature of a substitute.

All those in favor of that amendment indicate by saying aye.

Those opposed say no.

The ayes have it. And so ordered. A reporting quorum being present, the question is on reporting the bill, as amended, favorably to the House.

Those in favor say aye.

Those opposed say no.

The ayes have it again. And --

Mr. Cannon. Mr. Chairman, on that may I ask for a

recorded vote?

Chairman Conyers. Yes, sir. A recorded vote is ordered. The Clerk will call the roll.

The Clerk. Mr. Chairman.

Chairman Conyers. Aye.

The Clerk. Mr. Chairman votes aye.

The Clerk. Mr. Berman.

Mr. Berman. Aye.

The Clerk. Mr. Berman votes aye.

Mr. Boucher.

[No response.]

The Clerk. Mr. Nadler.

Mr. Nadler. Aye.

The Clerk. Mr. Nadler votes aye.

Mr. Scott.

[No response.]

The Clerk. Mr. Watt.

Mr. Watt. Aye.

The Clerk. Mr. Watt votes aye.

Ms. Lofgren.

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren votes aye.

Ms. Jackson Lee.

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson Lee votes aye.

Ms. Waters.

Ms. Waters. Aye.

The Clerk. Ms. Waters votes aye.

Mr. Delahunt.

[No response.]

The Clerk. Mr. Wexler.

[No response.]

The Clerk. Ms. Sanchez.

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez votes aye.

Mr. Cohen.

[No response.]

The Clerk. Mr. Johnson.

Mr. Johnson. Aye.

The Clerk. Mr. Johnson votes aye.

Ms. Sutton.

[No response.]

The Clerk. Mr. Gutierrez.

[No response.]

The Clerk. Mr. Sherman.

Mr. Sherman. Aye.

The Clerk. Mr. Sherman votes aye.

Ms. Baldwin.

Ms. Baldwin. Aye.

The Clerk. Ms. Baldwin votes aye.

Mr. Wiener.

Mr. Wiener. Aye.

The Clerk. Mr. Wiener votes aye.

Mr. Schiff.

Mr. Schiff. Aye.

The Clerk. Mr. Schiff votes aye.

Mr. Davis.

Mr. Davis. Aye.

The Clerk. Mr. Davis votes aye.

Ms. Wasserman Schultz.

Ms. Wasserman Schultz. Aye.

The Clerk. Ms. Wasserman Schultz votes aye.

Mr. Ellison.

Mr. Ellison. Yes.

The Clerk. Mr. Ellison votes yes.

Mr. Smith.

Mr. Smith. No.

The Clerk. Mr. Smith votes no.

Mr. Sensenbrenner. No.

The Clerk. Mr. Sensenbrenner votes no.

Mr. Coble.

Mr. Coble. No.

The Clerk. Mr. Coble votes no.

Mr. Gallegly.

[No response.]

The Clerk. Mr. Goodlatte.

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte votes no.

Mr. Chabot.

Mr. Chabot. Aye.

The Clerk. Mr. Chabot votes aye.

The Clerk. Mr. Lungren.

Mr. Lungren. No.

The Clerk. Mr. Lungren votes no.

Mr. Cannon.

Mr. Cannon. No.

The Clerk. Mr. Cannon votes no.

Mr. Keller.

Mr. Keller. No.

The Clerk. Mr. Keller votes no.

Mr. Issa.

Mr. Issa. No.

The Clerk. Mr. Issa votes no.

Mr. Pence.

Mr. Pence. No.

The Clerk. Mr. Pence votes no.

Mr. Forbes.

[No response.]

The Clerk. Mr. King.

Mr. King. No.

The Clerk. Mr. King votes no.

Mr. Feeney.

Mr. Feeney. No.

The Clerk. Mr. Feeney votes no.

Mr. Franks.

Mr. Franks. No.

The Clerk. Mr. Franks votes no.

Mr. Gohmert.

Mr. Gohmert. No.

The Clerk. Mr. Gohmert votes no.

Mr. Jordan.

Mr. Jordan. No.

The Clerk. Mr. Jordan votes no.

Chairman Conyers. Are there others -- Mr. Forbes.

Mr. Forbes. No.

The Clerk. Mr. Forbes votes no.

Chairman Conyers. Others who choose to vote? The clerk will report, please.

The Clerk. Mr. Chairman, 17 members voted aye, 15 members voted nay.

Chairman Conyers. And the measure H.R. 3609 is passed. And the majority having voted in favor, the bill, as amended, is reported favorably to the House.

Without objection, e bill will be reported as a single amendment in the nature of a substitute, incorporating

amendments adopted, and staff is authorized to make technical and conforming changes. The Members will have 2 days to submit views.

Please come back at 2:00 p.m. sharp. This is a very important -- last full committee meeting. The committee stands in recess.

[Whereupon, at 12:50 p.m., the committee recessed, to reconvene at 2:00 p.m., the same day.]

[2:12 p.m.]

Chairman Conyers. Good afternoon. The last part of our last meeting for the year. We will begin by calling up, pursuant to notice, H.R. 3753, the Federal Judicial Salary Restoration Act, for purposes of markup. The Clerk will report, please.

The Clerk. H.R. 3753, a bill to increase the pay of Federal judges and for other purposes, be it enacted --

Chairman Conyers. Without objection, the bill will be considered read and open for amendment at any point.

[The information follows:]

******** INSERT 3-3 ********

Chairman Conyers. In recent years, colleagues, an alarming number of judges with lifetime appointments have left the bench, citing financial pressures. Inadequate judicial pay is undermining the quality and independence of that third branch of government. And while salaries of those in positions of equivalent responsibility have in some cases risen dramatically, judges' pay has not even kept pace with inflation. From 1969 to 2006, their real pay declined by almost 25 percent. They were denied annual cost-of-living adjustments in 6 of the last 13 years and have not received a substantial pay increase in over 15 years. So as a result, Federal judges now earn less than many first-year law associates. Needless to say, the salaries of partners in law firms and general counsels of major corporations are almost exponentially higher.

Although service in the Federal judiciary is considered the pinnacle of a legal career, the growing disparity in income between judges and their peers in private practice is damaging the institution's ability to attract the best and brightest lawyers from the full breadth of our society.

So the measure before us provides a much-needed increase in the base salary of judges and repeals the 1981 law requiring affirmative congressional action for cost-of-living increases. The new salary levels are by no

means lavish. They are still far behind what judges could expect to earn in private practice. They merely alleviate some of the current disparity to an extent that it will enable a fair number of who want to stay, or to accept an appointment, feel that they can afford to do so.

So I thank our members of the committee. I noticed that this was an effort that the Chairman Emeritus has been working on for a number of years, Jim Sensenbrenner, the gentleman from Wisconsin. And as recently as last evening, the sustained efforts on the part of Howard Berman and Lamar Smith have led us to an agreement that few would have been able to predict. And I think that this is an excellent sign of the kind of cooperative workmanship that has brought this committee much closer together and indicates that many issues are not really Democratic or Republican issues, but that they are really issues that have to be evaluated from the point of view of how they serve the best interests of a Democratic society in the system that we live under.

So I am very happy to thank the Smith-Berman team for working late into the night to allow us to be as enthusiastic as we are about the measure before us.

[The information follows:]

******** COMMITTEE INSERT ********

Chairman Conyers. I turn now to Lamar Smith, the gentleman from Texas to be recognized.

Mr. Smith. Thank you, Mr. Chairman. I am going to dispense with my statement on the underlying bill but I am prepared to offer an amendment if this is an appropriate time to do so.

Chairman Conyers. It is.

Mr. Smith. In that case, Mr. Chairman, I have an amendment at the desk.

Chairman Conyers. The Clerk will report the amendment.

The Clerk. Amendment to H.R. 3753 offered by Mr. Smith of Texas and Mr. Berman of California:

Page 2, line 5 --

Chairman Conyers. Without objection, the amendment will be considered as read.

[The information follows:]

******** INSERT 3-4 ********

Chairman Conyers. And the gentleman is recognized.

Mr. Smith. Thank you, Mr. Chairman.

Mr. Chairman, first and most importantly, I want to thank you for strongly encouraging us to get together last night. And not only that, for endorsing the result or the work product of a 4-hour-long negotiation process. And I appreciate your forceful insistence that we try to get the job done, and we are here today because of your leadership in that regard. I wouldn't always, Mr. Chairman, describe these types of negotiations as a pleasure. However, I do want to say that it is very reassuring to deal with individuals who are acting in good faith. And that certainly describes the gentleman from California, Mr. Berman. It also describes Jim Duff, a representative of the administrative office of the Judiciary. It was a long session, as I say, but a productive session as well.

What I would like to do very briefly is to describe some of the changes that we came up with and that I will recommend to my colleagues today. First of all, we made a very substantial COLA adjustment based upon -- or extending back to the time when the Article III judges last received an increase in their COLA adjustment. The actual COLA adjustment took place in 1989, but I think the COLA was actually implemented in 1991. And what we did was to go

back then and figure out if the judges had received COLAs from that year what their salary would be today. And the figure we came up with was $218,000 for Federal judges. Other judges will receive a similar increase of 31 percent.

Furthermore, we want to make sure that we don't find ourselves in this position again. So we agreed to a scheduled cost-of-living increase in future years as well.

So that, I think, represents real progress, and I might say I am persuaded, as well as many other members, that the judiciary does need an increase. They have been deprived of any substantial increase or cumulative effect of COLAs over a number of years. And that needs to be rectified.

What we also did was to develop a new rule. The current rule of 80 says that, for example, if a Federal judge has served on the bench for 15 years and is 65 years old, they will retire at their current -- the pension level will be the current salary of the judge. What we did was to come up with another rule, a rule 84 which says that if a Federal judge, for example, stays on the bench for 17 years and is 67 years old, those two numbers totaling 84, they will be able to receive not only the increase in the COLAs but also a commensurate pension as well. And this, I think, is only fair. The increase in years of service really just patterns what we are doing with Social Security as we are gradually increasing the age of retirement to 67 in that

program. And so as I say, that is mirrored by the change we have made for Federal judges.

Another significant change we have made was to require those judges who are on senior status to work and carry a one-third workload instead of the current one-quarter workload. We also made an effort -- and it is not easy to explain -- but we made an effort to try to avoid a situation where judges would receive their full pension and then immediately go out and earn a considerable amount of money. We thought that might be sort of taking advantage of the system a little bit as they sought much greener pastures.

So in that case, what we have done is to say that in the case of judges who leave the bench entirely, that for every $2 they make above their $218,000 in salary, they would lose $1 in pension, down to 33 percent. They would always get a 33 percent pension regardless of the amount they made. But this was a little bit of an incentive just to not have individuals -- and I am sure they wouldn't call it this themselves -- but take advantage of a very generous pension system. So we were able to reach agreement on that.

So, Mr. Chairman, I think the overall result is a good one for those who want to see the judges adequately compensated and want to see them sort of recoup their lost cost-of-living adjustments. I think this is a fair result.

To those who have questions about the cost-of-living

adjustments or the pension, I really think this is also a fair result. And we have come up with something that I hope will be supported by both sides, and, at the same time and most importantly of all, I think it is going to benefit the judiciary and benefit the American people to have these judges more fairly compensated, and, at the same time, to have them work longer and harder. And I think the American people will appreciate what we are trying to do.

With that, Mr. Chairman, I will yield back the balance of my time.

[The information follows:]

******** COMMITTEE INSERT ********

Chairman Conyers. I thank you so much for your description.

Yes, the Chair recognizes Howard Berman.

Mr. Berman. Thank you, Mr. Chairman.

We are now debating the Smith-Berman amendment, as I understand it, yes. I will not use all my time and I want to yield at least a minute of my time to my colleague from California who carried a bill to do much of the same thing in the last session of Congress, Congressman Smith.

First I want to just thank a few people. I particularly want to thank my colleagues, the chairman of the committee who introduced this bill with Dan Lungren and the cosponsors on both sides, and particularly some of our Republican cosponsors, Mr. Pence, Mr. Cannon, Judge Gohmert, State court Judge Gohmert -- there is no conflict of interest here -- and Mr. Feeney as well for cosponsoring this legislation. And I also want to thank all the staff who worked until late last night. But most of all I want to thank our legislative counsel.

I have had occasion -- the good fortune to have legislation that is somehow found within her jurisdiction over many years. Aspects of this amendment are very complicated. On incredibly short notice, Sandy Strokoff has done a fabulous job once again of getting it

together so we could act today. And she has, I think, all of our great appreciation.

Just real quickly, since 1969 U.S. workers' wages have risen nearly 18 percent. The real wages of Federal judges have decreased by 23.9 percent. That is a 41.7 percent gap.

The bill that Chairman Conyers and I and Mr. Lungren and the other cosponsors introduced tried to restore that loss and eliminate that gap. The amendments lower the increase from 41.7 percent to 31 percent. And I don't call it a pay increase, I call it a restoration of a COLA. It is less of a restoration than the original bill, putting the salaries at $218,000. It increases the senior status workload from one-fourth to one-third. Very importantly, it extends the age and service requirement for retiring from the bench, from giving up your judgeship, not going to senior status, but giving up your judgeship, from a so-called rule of 80 to a rule of 84, as the Ranking Members mentioned, shifts the judges to a COLA grant and to the general schedule of Federal employees and then creates -- which is something that was part of what Mr. Smith had wanted to do originally, but not everything you wanted to do originally. This is a compromise. The restoration isn't as much as I would like.

Mr. Smith didn't get all of the reforms he wanted to, the pension reforms. But I think Justice Breyer, I am not

sure which one at our hearing pointed out, the Federal judiciary is not a stepping-stone to a high-paying career. It is supposed to be the capstone of a career. So we have formulated a disincentive in the sense that you don't get that full salary once you leave the bench. If you go and take high-paying jobs, you lose a significant portion of your pension. For every $2 earned, $1 of pension, down to a base of 33 percent. And I think that is a good change. And I congratulate Mr. Smith for pushing for that. That wasn't in our original bill. But I think it is an appropriate improvement in the bill.

And with that, I would like to yield my remaining time to my colleague, Mr. Smith -- Mr. Schiff. Mr. Schiff.

Mr. Schiff. I thank the gentleman for yielding. I don't know whether he was confusing me with Lamar Smith or Adam Smith. But in either case it is a terrible calumny to the Smiths, but it is a compliment to me.

I just want to speak very briefly. I fully support the bill. It is something that I have been advocating for a great many years. As many of my colleagues, we have attracted great people to the bench. We want to keep them. We want to continue attracting great people to the bench. But that has been put in jeopardy. This bill, I think, will be a very positive step forward.

But I particularly wanted to acknowledge and

congratulate Mr. Berman, Mr. Conyers, our full Chairman, and Mr. Smith. I think they have done a great job. And Mr. Smith, I wanted to say for my namesake over there, I think the reforms that you have encouraged in this are very substantial and very positive.

I think the system we have currently encourages an early retirement and a very generous retirement. But it makes it difficult to attract people to the bench in the beginning. We are changing that dynamic, making it easier to attract the people and discouraging them from leaving the bench early. And I think the combination of the increase in salary on the front end with some give-backs on the back end in terms of retirement, given that people live longer, work longer, makes infinite sense. And I think the compromise has a rare attribute of compromises and this is, I think, a much better bill with the compromise.

So I want to congratulate all of you involved. And Mr. Berman, this task was only slightly less difficult than patent reform. And it gives me hope for patent reform. And I yield back, Mr. Chairman.

Mr. Berman. And just if I could have an additional 30 seconds, Mr. Chairman.

Chairman Conyers. Of course.

Mr. Berman. To yield to the Ranking Member.

Mr. Smith. Thank you. I want to thank the gentleman

from California for yielding. Mr. Schiff -- not Mr. Smith but Mr. Schiff -- thank you for your comments as well.

Mr. Chairman, I just wanted to finish up on my description of the amendment by saying that we do expect some technical changes, nonsubstantive but technical changes, just to make sure all the judges are covered in Article III. So I don't want members to think that there might not be a couple words that might be added or changed in that regard.

And finally, Mr. Chairman, I just want to reiterate what I said a while ago. I really appreciate Mr. Berman's attitude. I appreciate his intelligence and his expertise on the issue. And as I say, I do think we came up with a good work product that will benefit the judiciary and the American people.

Mr. Berman. And thank you very much. And just before I yield back, I just want one more time, we wouldn't be here at this point with this compromise if it weren't for -- because there would never have been a bill introduced unless Dan Lungren had been willing to join with the Chairman and with me and some of our other colleagues in putting in a bill. So a particular appreciation to Dan and the others.

I yield back, Mr. Chairman.

Chairman Conyers. The Chairman Emeritus is recognized.

Mr. Sensenbrenner. Mr. Chairman, the Chairman Emeritus

wants to be the skunk at the lawn party. I rise in opposition to the amendment bill.

Chairman Conyers. Did you want to describe the reluctances that possess you this afternoon?

Mr. Sensenbrenner. With pleasure. Mr. Chairman, I think practically everybody in Congress and in the Federal judiciary and those who presently serve and who have served in high positions in the executive branch do so because public service is its own reward. None of us ran for Congress or sought appointment to the bench or accepted a President's invitation to serve in the Cabinet because of the money. Practically everybody would be able to make more money in the private sector than serving in the government. But we have served in the government because public service is its own reward.

This is a 31 percent increase in the pay for Federal judges. It does not pass the smell test. And the reason it doesn't pass the smell test, aside from the fact that it is a big jump when many Americans are really suffering to make ends meet, but it also means that if you serve in one of the three coequal branches of government, you will be paid significantly more than if you serve in the other two coequal branches of government. And in my opinion, this destroys the Federal system and destroys the system of checks and balances that the framers of the Constitution

worked so hard to establish and which has served our country so well.

I guess when I look at the arguments in favor of giving judges a 31 percent pay raise, I have to ask the question: Is the position of Federal judge one of greater responsibility than a member of the President's Cabinet who has responsibility for running a major department of the Federal Government? Or a Member of Congress who has to cast informed votes on the thousands of issues that come before us? And my answer to that question is no. I think the responsibilities are at least equal for Cabinet members and for Members of Congress and United States Senators.

And the second question that I have to ask is: Do Federal judges spend more time on their job than Members of Congress and Cabinet members? And there I can unequivocally say the answer is no. They spend less time on their job, and they are asking for higher compensation.

We have two Federal district judge positions vacant in Wisconsin. And since we don't have a Republican Senator as the senior elected Republican officeholder at the Federal level, I am kind of a gatekeeper for candidates to send to the White House for their consideration. There is no lack of applicants for the job, even though the applicants know that in some cases they would be taking a significant pay cut. And that is because these applicants believe that

public service is its own reward.

Now, there are a couple of other problems with this bill and the amendment. The pension changes that have been described so eloquently by my Ranking Member and Mr. Berman are going to result in some bizarre changes in the pension compensation. And I believe they are unconstitutional as well. There will be a lawsuit as a result of this, alleging that the pension changes reduce the diminution -- the protections of the diminution clause of the Constitution in Article III. But a judge, under this substitute amendment, that is about ready to reach the rule of 84, if they work for 1 more year, get a $53,000 increase in their pension. Not bad if you can get it, but definitely not good for the taxpayers and not a good message to send to the American public that ends up paying this bill.

And my belief is that even with these changes where the rule of 84 is established and there is a sliding scale where the pensions can be reduced by as much as two-thirds, there will be a lawsuit alleging that these changes violate the diminution clause of Article III of the Constitution. And since the judges in the Supreme Court are going to be the ultimate referee, I think I know that the taxpayers are going to lose and the plaintiff is going to win.

Now, I don't see a major exodus of Federal judges as a result of the current pay structure. Retirements to go into

the private sector have gone up from about 4 per year to about 6 per year according to the information that the committee has received. There are 1,200 active and senior Federal judges. And 4 to 6 judges per year bailing because they don't think they are going to get paid enough or aren't getting paid enough I don't think is a reason to go along with what I think is an unconscionable, and, in certain aspects, unconstitutional pay grab. Let's tell the judges public service is its own reward and defeat this bill.

I yield back.

Mr. Nadler. Mr. Chairman?

Chairman Conyers. I don't have any regret that I asked you to expand upon your original position, Mr. Sensenbrenner.

Who seeks recognition? I turn now and yield to the Chairman of the Constitution Committee, Jerry Nadler.

Mr. Nadler. Thank you. Let me just briefly say that I think that although you can get people to serve as judges for what we are paying them now, we do lose quality, and people shouldn't be asked for the huge sacrifices. I support the bill. I think it is high time we did this.

And I yield the balance of my time to the gentleman from California.

Mr. Berman. I thank the gentleman for yielding. I just wanted to say with respect to the diminution clause,

the clause that prohibits lowering the compensation of Federal appoint judges while they are on the bench, I believe the gentleman is quite wrong. The people whose benefits are affected really no longer on the bench. The diminution clause does not protect people who once happened to be Federal judges and who quit a lifetime appointment to take another job. They are no longer covered by that.

So I just respectfully disagree with my friend from Wisconsin's conclusion about that. I guess the Federal courts ultimately will decide that question. And I do point to The Washington Post article today, the other revelations of Federal judges who are, more than ever before, quitting the Federal bench to take other jobs, directly relating it to salary.

Yes, you can get some deeply committed people. And I am sure the judiciary is full with them who are willing to work. That doesn't make it the right level. There used to be some relationship between Federal judges and law professors. That has been thrown totally out of whack by our failure to give these increases. When a law clerk for a Federal judge leaves, and his first job out of law school puts him 20, 30 and 40 percent higher than the Federal judge he had just finished clerking for, there is something out of whack with the system.

Mr. Gohmert. Would the gentleman yield?

Mr. Berman. It is not my time.

Mr. Nadler. I will be happy to yield.

Mr. Gohmert. I just wanted a clarification because the comment was made that if this bill, if put into law, could wait a year, work a year, and then get the full retirement. It is my understanding that going from the rule of 80 to the rule of 84, you would actually have to wait 4 years before you could do that. Is that correct?

Mr. Nadler. I yield to the gentleman.

Mr. Berman. The gentleman is correct. If you want to leave under the rule of 80, you will leave at the current salary. Only if you meet the test of a combination of age 67 and 17 years on the bench will you be eligible.

And then there is a schedule in the bill. If you are 68 -- it is like the rule of 80, only now it is 84. It is not 4 additional years. It is 2 years on one end, age, and years on the other end, service.

Mr. Watt. Would the gentleman yield?

Mr. Nadler. I will yield.

Mr. Watt. Just for the purpose of allowing me to ask Mr. Berman a question to clarify what impact, if any, this has on the linkage that has existed between congressional salaries and judicial salaries.

Mr. Nadler. Reclaiming my time. I yield to the gentleman from California.

Mr. Berman. This -- what was a political linkage is severed by virtue of this legislation. And I am here to tell you, based on my own -- it is an issue that I have an intense interest in; that is, congressional pay. I have never in 24 years seen a decision made by this Congress regarding pay that in any way is implicated by what it means for judges. It is about the politics of this place. It is about the desires.

Mr. Watt. Would the gentleman yield?

Mr. Berman. So I believe we are delinking something which has had no relevance.

Mr. Nadler. I will yield to the gentleman.

Mr. Watt. Just to reask the question again, I understand the passion with which he thinks they should not be linked or have not been linked in the past. I am just trying to figure out what this bill does in practical --

Mr. Nadler. Reclaiming my time. I think it assures -- it will continue not to be linked in reality.

Mr. Berman. The act of the restoration of COLA for the judges to all its impractical effect is a complete delinkage.

Chairman Conyers. The Chair recognizes Howard Coble of North Carolina.

RPTS DEAN

DCMN ROSEN

[2:41 p.m.]

Mr. Coble. Thank you also, Mr. Chairman, for inviting us to the very fine luncheon earlier today. Mr. Chairman, I was going to identify myself as the fly in the ointment, but I think I would more accurately be portrayed as skunk number 2 at the lawn party. I have worked endlessly with Howard Berman and Lamar Smith, and I hold each of these gentlemen in the highest regard, but I am going to probably have to disagree on this one and let me tell you why. I am going to revert, Mr. Chairman, about two decades ago, and probably in this very room, we had a hearing, and I recall a District Court judge was one of the witnesses. And in his testimony, I believe he said he was at the bottom or right at the bottom of his law class in salary earnings, and I said to him, I said, your Honor, you can always go the private sector. And I didn't lace that statement with any sort of sarcasm, Mr. Chairman, but that word was disseminated that Coble is adverse to the Federal judiciary. And I had to go knocking on doors of my friends back home and tell them I still love the Federal judges.

I have good rapport with Federal judges. Federal judges have good rapport with me and I hope that will extend

beyond today's hearing. There are many times that I have had the privilege of addressing the judiciary conference at the Supreme Court, Mr. Chairman and colleagues, and Howard, you and I have been there; Lamar, you and I have been there together as have you, Mr. Chairman, and the chairman emeritus.

I have, without exception, been the beneficiary of the most generous reception. I have never been treated in any way but first rate, and I hold him in a first rate threshold. The gentleman from Wisconsin, in my opinion, put his finger on the pulse when he implied, and I think he said it directly, I can see a preferential result here, members of the Federal judiciary are probably being fed with a bigger spoon than others in the Federal Government.

And then I have problems with that, but I do thank Mr. Berman and Mr. Smith and you, Mr. Chairman, for the work you have done, and I hope I won't be chastised as skunk number 2 at the lawn party too severely, and with that, I yield back my time

Chairman Conyers. I thank the gentleman.

The gentleman from California, Dan Lungren has maintained a unique and rare silence so far.

Mr. Lungren. I thank the chairman, I would like to break that silence for 5 minutes if I might be recognized.

Chairman Conyers. The gentleman is recognized.

Mr. Lungren. I thank the chairman. At the outset, I might say that on most of the issues I find myself in concert with the gentleman from Wisconsin. But when I find him enrolling in the Jerry Brown School of Political Philosophy, I must decline the opportunity.

Mr. Berman. Are you talking about the keynote or in my most recent fund raiser?

Mr. Lungren. I understand that. When he was governor, he said that people who serve ought not to expect pay raises because they receive psychic benefits, or he referred to them as psychic bennies. I tried to have my psychic bennies accepted at the universities I sent my children to in lieu of tuition and it was not successful.

Let's face the real world here, some of my colleagues on the committee may know, it is my belief that Federal judiciary all too often crosses the line with respect to the scope of its legitimate authority. In the 100th Congress, I once again introduced my proposal to allow preemptory challenge for instance to Federal judges some that are not allowed on the State level in California and other States.

I may be the only member of this panel who has been threatened by a Federal judge to follow the judge's dictate or to get my toothbrush ready for my appearance in Federal incarceration facilities. Nevertheless, the issue is clear and distinct, the issue of judiciary pay goes to a core

concern that those of us on both sides of the aisle can agree on, the quality of the judiciary itself.

As the opportunity costs are remaining on the bench rise, we are losing good people to the private sector. This is not a matter of speculation. Those who have left the bench have told us so. For instance, Mike Luttig, who left the bench at age 51 with 14 years experience to become the vice president and general counsel of Boeing. Or Paul Cassell, who resigned at age 48 with 5 years service left to return to the University of Utah law school, or in my hometown or my town that I represent David Levy, who resigned at age 55 with 16 years of service to become the Dean of Duke University Law School.

There is one thing common in all of these examples, each of them mention judiciary salary as a factor in their decision to leave Federal bench. It is not speculative, it is occurring as we are here today. The trend of judges leaving the bench at a relatively young age to seek more lucrative employment elsewhere is worrisome. Service on the Federal bench should not be seen as a stepping stone, I would hope it would be seen as a cap stone to a successful and fulfilling legal career.

In the year 2003, we had the Volcker Commission, they put it this way, judicial salaries are the most egregious example of the failure of Federal compensation policies.

They talked about the fact that Members of Congress are not paid enough; they talked about the fact that members in the executive branch are not paid enough. Then they said, the most egregious example is the heir of judiciary salaries. Chairman Volcker made this following observation in a recent Wall Street Journal Op Ed. "While judges cannot expect to equal the salaries of partners of large law firms, the National Commission determined that their compensation should be comparable to that of law school Deans, senior professors and other non nonprofit leaders." Today, at $165,200, district judge salaries fall more than 50 percent below what many law school Deans or their top professors make.

And consider this, if the salary of District Court judges have increased from their actual salary in 1969 by the same percentage as the total percentage change in American worker wages from '69 to 2006, district judge compensation would be $261,300. That number is consistent with the recommendation of the National Commission on Public Service, that National Commission actually recommended that they be paid I believe $270,000.

The bill before us now with the amendment would bring District Court judges to 218,000. I am sorry that we are going to that, but I understand that is part of an agreement. I think we can easily defend, 233,500.

Listen to this, the chief learning officer at the FDIC makes 257,134 bucks, the chief learning officer for FDIC. However, where we are now would put judges close to the level that they would have been at if their salaries had increased by the same percentages as the overall general schedule pay increases since 1969.

I happen to think these are extremely important points that we ought to consider. No, you are not going to get people at home to applaud you when you walk in a room because you gave Federal judges a raise, they won't applaud you if you ever gave yourself a raise, and frankly, I think we ought to give ourselves a raise more often, but my opinion does not prevail.

Nonetheless, it is the right thing to do. We have heard from judges, I have given you examples. There are other examples out there that some of the best and brightest of those out on the bench are leaving precisely because of the lack of pay. No we are not going to give them the pay they would get if they went to a major law firm, but we may give them the amount of pay where they feel they can stay on the bench and allow their children the opportunity to go to the schools that maybe they went to or that their children aspire to.

Psychic bennies are great, but remember Jerry Brown slept on a mattress on the floor and sat in the back seat of

an old Plymouth, and by the time he left as governor of the State of California, every single member of the cabinet made more money than the governor of California and his successor, my friend, George Dumagan had to live at the Holiday Inn while in Sacramento. Psychic bennies, okay, but let's be realistic.

Mr. Nadler. Will the gentleman yield?

Chairman Conyers. The gentleman is out of time.

Mr. Cohen of Tennessee is recognized briefly.

Mr. Cohen. Thank you, Mr. Chairman. I just want to thank the members for bringing this bill. It is a need for judiciary pay raise to have the best people that we can get.

To alleviate Mr. Lungren's concerns, I was in attendance at Mr. Berman's fundraiser, Governor Brown said that he thought change was the most important thing, he now realizes experience is the most important thing. So I think he would probably be less interested in psychic bennies, especially if the Attorney General who has all these cases before these judges and I suspect we will all change if we are intelligent mature beings as he is.

Chairman Conyers. Thank you. Mel Watt of North Carolina.

Mr. Watt. Thank you, Mr. Chairman. I don't think there is any secret on this committee that I have been one of the people who has been a long time supporter of linking

congressional salaries and judiciary salaries because I have been of the opinion that if we didn't continue to link them, we would never raise Congressional salaries. I have come to the conclusion, however, that our failure to be willing to compensate ourselves adequately shouldn't be used as an excuse not to compensate our judges adequately, and for that reason I am going to support this bill.

I kind of agree with Mr. Lungren, and maybe the Chair emeritus didn't say this, it is time for us to look seriously at our own salaries because I think we are losing good people from the legislative branch because of salaries also, but that is not a reason to hold the judges back, and I think they deserve and warrant more compensation and to keep a good vibrant energetic and skilled judiciary. We have got to make a commitment to compensate them. I just simply wish we had the same attitude toward the legislative branch.

So I will say that perhaps to those who are independently wealthy there is some psychic bennie that goes with service, either in the legislative branch or in the judiciary branch, but you cannot spend it and we need to have a compensation system that allows not only people of historic high means to serve, but those who have not historically been of high means, and so that applies both to the judiciary and legislative branch, everything I said. So

with that having been said, I am going to vote for the bill.

Chairman Conyers. I thank the gentleman so much. And this may be the first step toward his larger consideration.

The question, ladies and gentlemen, is on the --

Mr. Keller. Strike the last word.

Chairman Conyers. Mr. Keller.

Mr. Keller. Thank you, Mr. Chairman. I rise in support of this amendment and the underlying legislation. We are going to increase the pay of Federal judges. I think it is fair to layout the casewide in our record for all to see. For me, the bottom line is that a Federal judge should make more than a first year associate at a New York City law firm. Currently, a first year associate makes 18 percent more than a United States district judge. Let me be specific, a Federal district judge makes $165,200, a first year associate at a New York City large law firm makes $160,000 salary, 35,000 bonus for a total of 195,000, that is according to a recent survey from the national association for law placement.

Now, the first year associate is a 25-year old who enters the courtroom carrying the suitcases and visual aids of the partner who is actually going to try the case. That young man or woman is making more than the Federal judge who presides over that case. When there is an opening for a Federal judgeship in central Florida, I want the most

talented trial lawyer in Orlando to apply. We need to keep and attract the best and the brightest legal minds on the Federal bench.

In The Washington Post today, dated December 12th, 2007, is an editorial where it describes the situation with a judge, Paul Cassell from Utah, who just resigned his prestigious Federal judgeship and wrote a letter to the President of the United States. In that letter he said, "I would be less than completely candid if I did not mention the uncertainty surrounding judicial pay as a factor in my decision, with three talented children approaching college years it has been difficult for my wife and me to make financial plans."

We have heard from some pretty good minds about this issue. We have heard from two Supreme Court justices, Alito and Breyer, at a hearing before this committee on April 19th of this year, I have personally spoken with Chief Justice John Roberts about this issue, and it has been a top priority of his of course to increase judiciary pay, and none other than Paul Volcker as chair of the Volcker Commission, an independent nonpartisan commission on public service said that, "Congress's first priority should be an immediate and substantial increase in judicial salaries.

Clearly, I think the weight of opinion here, notwithstanding those who may object, is that Federal judges

should be paid more than first year associates. We should retain the good judges that we already have and we should attract the best and brightest in the future.

I want to especially thank a few people, I thank Chairman Conyers, Mr. Berman, Mr. Smith, Mr. Lungren and Mr. Pence have all played a key role on this committee of getting the ball into the end zone here. I also think the Federal district judges all throughout the country owe a great debt of gratitude for Chief Justice John Roberts for taking this on, and personally calling folks to let them know how important it is. I get lobbied by a lot of people and all carry importance to me, but hearing directly from the chief justice that this is important to him carries great weight. And so I want to thank you all of you who have played a role in this. I urge my colleagues to vote yes on the amendment, and yes on the underlying legislation, and I will be happy to yield.

Chairman Conyers. Mike Pence, and then Artur Davis, and then we will vote on the amendment.

Mr. Issa. Actually --

Chairman Conyers. Gentleman from Indiana.

Mr. Pence. Thank you, Mr. Chairman, and I will be brief, I know people have afternoon schedules. Thank you for introducing this legislation, the Federal Judicial Salary Restoration Act, bringing it before the committee

today. I also want to thank Congressman Berman and Congressman Dan Lungren for their Yeoman's work on this legislation. I was honored to be an original cosponsor of the bill and worked closely with both of these men.

I especially want to recognize our ranking member, Congressman Smith, who has worked diligently, and at times forcefully, to improve this bill, and I am grateful for his advocacy. I would associate myself with the comments of other members of this committee, I think it may have been Adam Schiff who said it is rare that compromising proves legislation. I believe the Smith amendment is that rare exception. This legislation is significantly improved and I commend the gentleman from Texas for his Yeoman's work.

Quick thought on what we are doing here. I believe it is not just within the power of the Congress to provide for salaries of the Federal judiciary. I believe it is one of our most important duties. It would be Alexander Hamilton who wrote in Federalist paper number 79, "Next to permanency in office, nothing can contribute more to the independence of the judges than a fixed provision for their support."

Of course, the aforementioned diminution clause Article III, section 1 actually guarantees that Federal judges shall not have their compensation diminished during their continuance in office. This is reflective both the historical document and the constitution itself of the

principal of independence here is maintained when the Congress discharges its duty thoughtfully about the compensation of Federal judges. And I believe this legislation today for all of the reasons stated by those in support of the bill is precisely that type of measure.

I was particularly moved that day before this committee that I believe it was Justice Breyer who used a term first used by the Chief Justice himself in his 2006 year end report, that what had been a cap stone of careers through American public life was increasingly in danger of becoming a steppingstone, and that ought not to be.

And so I think what we are doing here is fiscally responsible. These expenditures will be offset from other spending, and I also believe that it is a necessary and appropriate bipartisan measure to strengthen the independence of our judiciary.

One last thank you, in addition to my appreciation for Chief Justice Roberts's personal work on this legislation on behalf of the judiciary branch, I also want to commend the Federal District Court judge from the southern district of Indiana, a mentor and friend to me, Judge Sarah Evans Barker without whose engagement on this issue, I scarcely doubt that I would have been as informed or as involved as I had been.

Chairman Conyers. Thank you.

Mr. Pence. Let me yield back with gratitude.

Chairman Conyers. Could you yield to State Court Judge Gohmert?

Mr. Pence. I would be pleased to yield.

Mr. Gohmert. That is a former judge. Thank you for yielding. I have four quick L's. First of all, linkage, whoever linked up Congress and judges years ago you figured had to have in mind well, gee, we link them, that way we can explain we have to give Congress a raise because we have got to give the judiciary a raise, and we are linked, that hasn't worked out that way. What it has done is penalized the judges.

Second L is Luttig, Michael Luttig is from my hometown, he is one of the brilliant intellects legally in this country, he has a young family, he sacrificed for many years, but at some point, the sacrifice is too much.

Third L, liberals, for my conservative friends who are concerned about giving the pay raise to judges, let me point out it is easier to get liberals who are not making much of anything, they are working for the government to apply for these judgeships, but if it is a conservative out there making a great living and making a payroll, then we need to raise the pay a little bit. And that is not as tongue in cheek as you might think.

And fourth --

Mr. Berman. Mr. Gohmert, we are trying to pass this.

Mr. Gohmert. Fourth is the loss of quality, and it is not those just those leaving the bench, it is those quality individuals who are forced to make a choice between sacrificing for their country and sacrificing for their family, and this will make it easier and give us better quality and more closely properly compensate, even though it doesn't give them what they need. And thanks to Chief Justice Roberts who has been pushing this for over the year and Justice Scalia, who I spoke to 2 days ago, and to Mr. Berman, and the Republican and Democrats who have worked on this, thank you.

Chairman Conyers. Friends of the Democratic Caucus is competing with us at this point, I reluctantly ask the rest of my friends I would have recognized to put their statements in the record.

The questions on the amendment of Smith and Berman, all those in favor say aye, aye. Opposed no, no. The ayes have it. And we now turn to the bill as amended and the question of reporting it favorably to the House. Those in favor say aye, aye; those opposed no, no. The ayes have it. A roll call is required. The clerk will call the roll.

The Clerk. Mr. Chairman.

Chairman Conyers. Aye.

The Clerk. Mr. Chairman votes aye.

Mr. Berman.

Mr. Berman. Aye.

The Clerk. Mr. Berman votes aye.

Mr. Boucher.

[No response.]

The Clerk. Mr. Nadler.

Mr. Nadler. Aye.

The Clerk. Mr. Nadler votes aye.

The Clerk. Mr. Scott.

Mr. Scott. Aye.

The Clerk. Mr. Scott votes aye.

Mr. Watt.

Mr. Watt. Aye.

The Clerk. Mr. Watt votes aye.

Ms. Lofgren.

Ms. Lofgren. Aye.

The Clerk. Ms. Lofgren votes aye.

Ms. Jackson Lee.

Ms. Jackson Lee. Aye.

The Clerk. Ms. Jackson Lee votes aye.

Ms. Waters.

Ms. Waters. Aye.

The Clerk. Ms. Waters votes aye.

Mr. Delahunt.

Mr. Delahunt. Aye.

The Clerk. Mr. Delahunt votes aye.

Mr. Wexler.

[No response.]

The Clerk. Ms. Sanchez.

Ms. Sanchez. Aye.

The Clerk. Ms. Sanchez votes aye.

Mr. Cohen.

Mr. Cohen. Aye.

The Clerk. Mr. Cohen votes aye.

Mr. Johnson.

Mr. Johnson. Aye.

The Clerk. Mr. Johnson votes aye.

Ms. Sutton.

[No response.]

The Clerk. Mr. Gutierrez.

[No response.]

The Clerk. Mr. Sherman.

[No response.]

The Clerk. Ms. Baldwin.

Ms. Baldwin. Aye.

The Clerk. Ms. Baldwin votes aye.

The Clerk. Mr. Weiner.

[No response.]

The Clerk. Mr. Schiff.

Mr. Schiff. Aye.

The Clerk. Mr. Schiff votes aye.

Mr. Davis.

Mr. Davis. Aye.

The Clerk. Mr. Davis votes aye.

Ms. Wasserman Schultz.

Ms. Wasserman Schultz. Aye.

The Clerk. Ms. Wasserman Schultz votes aye.

Mr. Ellison.

Mr. Ellison. Aye.

The Clerk. Mr. Ellison votes aye.

Mr. Smith.

Mr. Smith. Aye.

The Clerk. Mr. Smith votes aye.

Mr. Sensenbrenner.

Mr. Sensenbrenner. No.

The Clerk. Mr. Sensenbrenner votes no.

Mr. Coble.

Mr. Coble. No.

The Clerk. Mr. Coble votes no.

Mr. Gallegly.

Mr. Gallegly. Aye.

The Clerk. Mr. Gallegly votes aye.

Mr. Goodlatte.

Mr. Goodlatte. No.

The Clerk. Mr. Goodlatte votes no.

Mr. Chabot.

Mr. Chabot. No.

The Clerk. Mr. Chabot votes no.

Mr. Lungren.

Mr. Lungren. Aye.

The Clerk. Mr. Lungren votes aye.

Mr. Cannon.

Mr. Cannon. Aye.

The Clerk. Mr. Cannon votes aye.

Mr. Keller.

Mr. Keller. Aye.

The Clerk. Mr. Keller votes aye.

Mr. Issa.

Mr. Issa. Aye.

The Clerk. Mr. Issa votes aye.

Mr. Pence.

Mr. Pence. Aye.

The Clerk. Mr. Pence votes aye.

Mr. Forbes.

Mr. Forbes. No.

The Clerk. Mr. Forbes votes no.

Mr. King.

[No response.]

The Clerk. Mr. Feeney.

Mr. Feeney. Aye.

The Clerk. Mr. Feeney votes aye.

Mr. Franks.

Mr. Franks. Aye.

The Clerk. Mr. Franks votes aye.

Mr. Gohmert.

Mr. Gohmert. Aye.

The Clerk. Mr. Gohmert votes aye.

Mr. Jordan.

[No response.]

Chairman Conyers. Are there any who have not voted?

Mr. Wexler?

Mr. Wexler. Aye.

The Clerk. Mr. Wexler votes aye.

Chairman Conyers. Are there others? The clerk will report.

The Clerk. Mr. Chairman 28 members voted aye, 5 members voted nay.

Chairman Conyers. The bill is reported H.R. 3753. My congratulations. And without objection, the bill will be reported as a single amendment in the nature of a substitute incorporating amendments adopted. The staff is authorized to make technical changes. Members will have 2 days to submit views. There being no further business for the committee, the full committee this year, seasons greetings and the meeting is adjourned.

[The information follows:]

******* INSERT 4-1 ********

[Whereupon, at 3:07 p.m., the committee was adjourned.]