

Public Education Outreach

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**Helping Homeowners Keep Their Homes,
and Lenders Keep Their Loans!™**

**Homeowner's Guide to Loan Workouts!
800-770-0797 Extension 701**

13 Homeowner Solutions to Default and Foreclosure!™

By Richard Ivar Rydstrom, J.D. Law, Bachelor of Science in Public Accounting, LL.M. Taxation

Attorney Rydstrom was published by the 110th Congress, House Ways & Means Committee in hearings held by Chairman Charles Rangel on the State of the Economy and Challenges Facing the Middle Class, Homeownership & Retirement. Go to www.Help4ThePeople.Com for links to the Official Congressional Statement, and the Public Educational Outreach Booklet entitled 13 Homeowner Solutions to Default & Foreclosure. Mr. Rydstrom also founded www.HotNeutral.com to act as a specialized *neutral* representative, equalizing the bargaining power between the lenders and homeowners in mortgage loan workouts in order to:

[Help Homeowners Keep Their Homes, and Lenders Keep Their Loans™](#)

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Help4ThePeople™ Service Hotline Information Line: 800-770-0797 Extension 701

NOTICE:

The lending industry has indicated that it wants borrowers to know that it is willing to workout creative solutions to mortgage payment default and foreclosure problems!

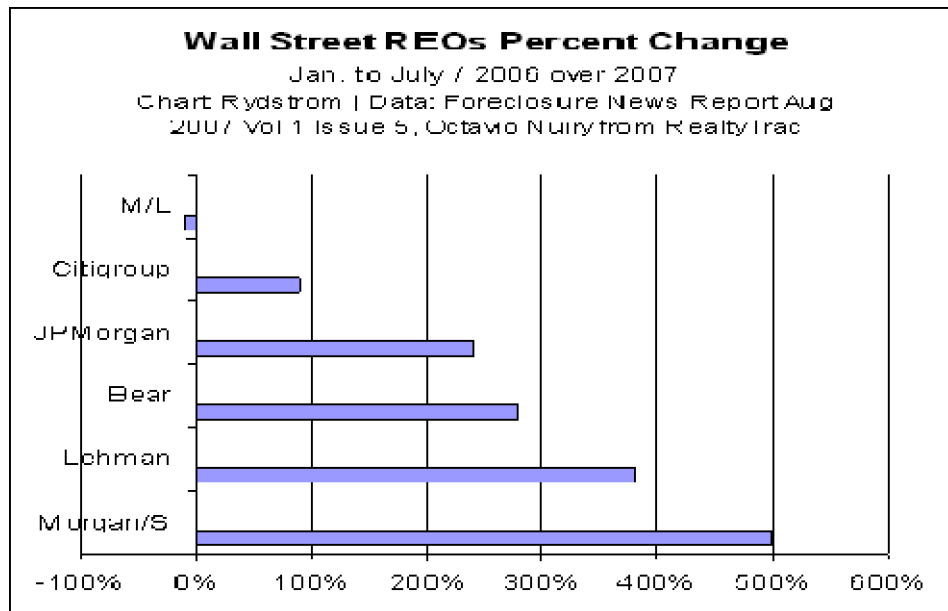
INHERENT PROBLEM & WARNING:

The borrower has less expert knowledge of potential loan workout deal structures, is in financial trouble and acts with **less bargaining power**. This often causes the borrower to accept a loan workout deal that he/she either cannot afford, or does not understand. For example only, most deals wherein the lender forgives certain amounts of debt due on the loan(s), are subject to (1) **income tax** due the I.R.S. as "Forgiveness of Debt" income, and (2) personal liability for the "**deficiency**" of the forgiven loan balance – which most lenders will demand or sue to collect as a "deficiency judgment" within one year thereafter. These and many other items are negotiable with the lender, with great limitations on the I.R.S. potential liability. We will discuss these items in the body of the report below.

Congress understands that borrowers don't want to talk to their lender (servicer) or the lender's foreclosure attorney. Embarrassment to *conflict of interest*, are real reasons that cement the communication divide. In part for this reason, approved HUD consultants and select attorneys are offering to act as a neutral representative between the borrower and the lender, or give credit counseling advice. HotNeutral.com founded by the author, offers specialized loan workout solutions for the lender and the borrower who waive

conflicts of interest. Using this guide booklet will assist you in understanding some of the potential options available to distressed homeowners. Avoiding the lender will only result in foreclosure, loss of your home, loss of your good credit, and a potential deficiency and tax liability or judgment.

On the other hand, desire and willingness alone will usually not suffice to fashion a loan workout solution. The lender will require a detailed explanation of the borrower's financial ability (or inability) to repay the loan. Most, *but not all*, loan workouts, require the borrower to pay and makeup the default or foreclosure costs, attorney fees, including late fees and associated principal and interest due and other costs. However, lenders will increasingly agree to compromise as the inventory of real estate owned (REO) by the lenders increases, day by day. In addition to recent (2007) great loan losses, two bankrupt Bear Stearns Funds, over 137 lenders out of business, or operating in a very limited capacity, a credit crunch and a liquidity crisis under way, lenders and investment banks are forced to take back property that they are not setup to resell. As many people can't currently get loans to buy foreclosures, or refinance out of a loan, REOs owned by Wall Street investment banks are rising at an alarming rate. Notice the chart indicating the rate of change from 2006 to 2007 for REOs of Bear Stearns, Citigroup, JP Morgan Chase, Merrill Lynch, Morgan Stanley, and Lehman Brothers. The rate of firms taking back ownership of property has jumped as high as 497%.



You or your attorney, or HUD representative should and must call your lender and embark on a plan to resolve your financial woes. Although many lenders use different names, the department that you call is usually called the:

LOSS MITIGATION DEPARTMENT

If you can't get to the correct department or person, try the other names or departments for guidance, usually called:

LOAN MODIFICATION DEPARTMENT

LOAN WORKOUT DEPARTMENT

FORECLOSURE DEPARTMENT

BANKRUPTCY DEPARTMENT

ASSUMPTION DEPARTMENT

COLLECTION DEPARTMENT

DELINQUENCY DEPARTMENT

Warning: before you call, write or send anything, remember, the lender, loan servicer and foreclosure attorney are working to “collect a debt” under federal and state law. As such they will record and use everything you say or write against you to achieve the collection of that alleged (full) debt. Although the lender appears willing to consider a loan workout, if the deal is not approved by various interested parties (lender, servicer, mortgage insurer (if any), investor, FHA/HUD, VA, etc.) it will be revoked, and the evidence gathered by the lender will be used against you and your interest. You need to know what your choices are so you can assess your strategy to success.

Before we review the loan workout list, consider the value of incorporating the following ideas or concepts in your negotiations, **loan workout agreements**, new loans or refinance loans, as a safe harbor or as added protection.

TID™ -- Truly Intelligent Disclosures™ --

TID™ is a suitability disclosure with a waiver (plus). It protects the banks as well as the borrowers (and investors). TID™ is a numeric summary sign-off sheet with a recap of the present offered loan deal, with easy read summary payment scenario forecasts for the pre-reset date, the reset date, and or at 3, 5, 10 year, and balloon periods, as appropriate. The form also accounts for the choice between PMI insurance vs. the 80/20 Piggy Back options with tax assumptions as well. It also discloses the minimum approved interest rate against the broker yield-spread rate – charged to the borrower. It amends the HUD-1 and Good Faith Estimate form and process. TID™ was created by Attorney Rydstrom and published by the 110th Congress on the problems and solutions facing the middle class, homeownership and retirement. We don't need more disclosures for disclosure sake. We don't need new restrictive laws. We need less of both. However, we do need truly intelligent disclosures. The borrower must be truly informed. Lenders must define the duty owed as a profession and satisfy it (objectively), or Congress must act to do so. The head-in-the-sand defense doesn't work. Just check the multimillion dollar litigation awards thus far with the predatory lending lawsuits. TID™ is a defining moment in the industry. Click <http://waysandmeans.house.gov/hearings.asp?formmode=view&id=5617> or www.TIDwaiver.com for more on TID.

SHILO™ -- Safe Harbor Intelligent Loan Options™ --

SHILO™ - Safe Harbor Intelligent Loan Options™ are preset and upfront contractual safe harbor minimum intelligent loan options. SHILO™ is “contractual safe harbor” loan option provisions placed in the loan origination, refinance and **loan workout documents upfront**. It removes “uncertainty” in the marketplace and in each loan agreement. It enhances the borrower's bargaining position. It protects the lenders, banks, investors, insurers and the borrowers. It will remove a margin of “extremes” in the foreclosure marketplace and results in more stable market prices – with a lessening of extreme asset devaluation. SHILO™ was created by Attorney Rydstrom and published by the 110th Congress on the problems and solutions facing the middle class, homeownership and retirement. We don't need more laws when we can use SHILO™ - which will reduce defaults and foreclosures contractually. This will protect the lender and industry as well as the borrower. The residential loan transaction itself must have a truly reliable risk/price barometer for the borrower, lender, insurer, Wall Street securitizer, servicer, investor and

the government sponsored entities (SPE). The risk/pricing must not be corrupt or abused. Performance and risk of non-performance of loans must be better measurable, more predictable and without the possibility of great negative market fluctuations that threaten the stability and growth of the economy and homeownership. Pre-defined 'contractual' default and foreclosure 'safe harbor' loan option provisions can preclude certain downside risk. It allows for better use of non-cash burdened mortgage insurance and creates new mortgage insurance Wall Street (tradable) funds that better support the market risk and liquidity. Click <http://waysandmeans.house.gov/hearings.asp?formmode=view&id=5617> or www.safeharborintelligentloanoptions.com for more on SHILO.

13 Homeowner Solutions to Default & Foreclosure!

Set One: Hotlines & Overview to Loan Workouts:

Lenders want borrowers to know that they are willing to work out solutions to defaults and foreclosures. The first step is to contact the lender or loan servicer at their **Loss Mitigation Department** and obtain an “affordability” or needs interview. First, you need to determine what you can or cannot afford, and whether you want to stay in your home or move out. The realistic answers to these questions will govern your choices and solutions. You should review all potential loan workout options, and come up with a tentative strategy, before you call the lender (servicer), and also call an approved **HUD** counselor or hotline:

1 888 995 HOPE (Homeownership Preservation Foundation)

NeighborWorks® America can be reached at 202-220-2360

HotNeutral™ - Neutral rep/attorney, www.hotneutral.com: 1-877-WIN4YOU

Help4ThePeople™ Service Hotline Information Line: 800-770-0797 ext701

Pre-recorded list of 13 Solution for Loan Workouts

Money Management - nonprofit credit-counseling agencies:

Auriton Solutions: (888) 562-4557

Consumer Credit Counseling Services of Atlanta: 1-800-251-CCCS (2227)

Consumer Credit Counseling Services of San Francisco: 1-800-777-7526

Novadebt: 1-800-99-BILLS

Springboard Nonprofit Consumer Credit Management: 1-877-WISEPLAN

If Refinance Loans Are Available (July 2007 Update):

1. Pre-Foreclosure Loan Refinance – (SHILO™ Solution) - You would refinance to avoid resets, or “unaffordable” payments, etc. Currently loan “eligibility” is based upon new federal regulations requiring the “fully adjusted indexed interest rate”, not the teaser rate. Lack of equity as a result of the devaluation in home prices has restricted borrowers’ options. This could result in many borrowers failing to qualify for the refinance option. But if the borrower can qualify, this may be the most immediate solution. However, if the type of loan and terms including any adjustments or resets simply postpone the resulting inability to pay, then this may not be a solution at all. Brokers and lenders must also now document that any loan they give you has a “net tangible benefit”. Refinancing may not be possible for many borrowers in the current real estate market because:

- (1) the market price or value may have fallen to a point where your equity is insufficient to qualify for a refinance,
- (2) the fully indexed interest rate may reveal an inability to qualify, and/or
- (3) the revised or eliminated loan programs are more stringent than when you obtained the loan your are attempting to refinance, precluding you from qualifying with the available loan programs.

Key issues of concern for a refinance depend upon:

- A. Amount of Income and/or or Assets (whether you can document it or not),
- B. Credit score and credit report (high scores can place you in easy qualifying loan programs)
- C. Value or appraisal of home (a high valuation will result in more equity to allow you to qualify in more loan programs)
- D. Amount of home equity (depending upon the requirements of the particular loan program you are seeking)
- E. Amount of Cash for upfront loan fees

- F. Availability of easy qualifying loan programs (loan programs change all the time; you need a broker who can shop many differing programs to meet your unique situation; if you have negative default marks on your credit, you may need a lender who has a loan program that will give you a second chance)

If you succeed in a refinance, the default or foreclosure will be cured or null and void.

This solution should be preset by contract as a safe harbor intelligent loan option (**SHILO™**) afforded all borrowers in their loan documents at loan origination, refinance or at loan workout.

2. Short Refinance – (SHILO™ Solution) - A short refinance would allow a refinance to a new affordable loan, at a loan amount less than the current loan

balance owed. This would require the lender(s) to agree to refinance your loan to another loan to an amount less than the amount due on the defaulted or troubled loan.

There are many reasons that a lender might agree to do same, all of which will require you to prove that you could afford the new loan, as opposed to the troubled loan, probably for reasons beyond your control or fault. The goal is to refinance to avoid loss in asset devaluation and pending resets, etc. This would allow homeowners to stay in homes, create part of the ‘equity’ that was lost in the massive home devaluation and obtain “eligibility” and “affordability”. This solution should be preset by contract as a safe harbor intelligent loan option (**SHILO™**) afforded all borrowers in their loan documents at loan origination, refinance or at loan workout. See **Delays and Problems With Short Sales and Short Refinance** below.

If Resale Market is Available: (July 2007 update):

3. Pre-Foreclosure Sale – If you can’t refinance your home for any reason, you should consider selling it. However, this option may not be possible if the market price is below the loan amount, unless you do a **short sale**. The resale market is currently limited. It’s a

buyer's market, but many buyers can't get loans. Houses are not selling at levels expected in a good economy. The key question is:

CAN YOU SELL THE HOME FOR THE AMOUNT DUE ON THE LOAN OR MORE?

If you can sell the home at market or above the amount due on the loan plus a profit-equity, then this option may be right for many borrowers. If so, you should strongly consider doing so, to avoid the negative credit history of a foreclosure (and potential for a deficiency judgment and IRS forgiveness if debt income tax).

Take & Toll Agreement: If you inform your lender that you are trying to sell your home, or have your home listed with a real estate professional, the lender may be willing to take the foreclosure sale off calendar and toll the timeline pending its sale for a certain period of time (Take & Toll). At the end of the agreed period, the lender will have the right to immediately start up the remaining time on the foreclosure clock and move to sell the home at foreclosure without restarting the foreclosure notice clock over again. Some lenders have differing rules about when they allow certain solutions or not. Some lenders or loans (i.e.: federally insured mortgages) may require that you meet HUD appraisal requirements, are at least 2 months behind in payments (delinquent), and expect to be able to sell the home within 3-5 months.

If you can't sell the home for at least the amount of the loan and any related default or late fees and costs, then you need to consider the following options. See **Pre-Foreclosure Short Sale** below. Also See **Delays and Problems With Short Sales and Short Refinance** below.

Other Devices (July 2007 Update): SHILO™ Type Solutions

4. Extension of Adjustable Rate Loan Reset Dates or Terms- Extending the adjustable loan reset dates will help delay the current or expected increase in monthly payments. However, this is not a long term solution. **This is an interim loan measure (ILM) only.** It may only delay the "unaffordable". As a result of the recent subprime meltdown, lenders and servicers have indicated at trade conferences that most will be willing to extend or toll the dates that the loan terms are scheduled to reset at higher

interest rates resulting in higher monthly payments, or dates requiring certain additions to loan balances whereupon payments are calculated. This should be an easy thing to accomplish, but lenders are creating the rules as we go, so negotiate strongly to achieve a workable result. Certain major servicers, including Litton have indicated that merely extending “reset” dates is not a solution at all, but a deferral of the inevitable default or foreclosure. This author agrees. It was suggested at industry conferences that lenders, servicers and investors agree to more substantial changes to achieve a realistic workable and affordable result. This solution should be preset by contract as a safe harbor intelligent loan option (**SHILO™**) afforded all borrowers in their loan documents at loan origination, refinance or at loan workout.

5. Lump Sum Cash Payment Loan Reinstatement - This is a typical loan workout or loss mitigation solution. It requires the borrower to have available “cash” to makeup past arrearages and associated costs. This is not a doable solution for most borrowers after they are in trouble, or after loan resets. Many borrowers in trouble, without sufficient knowledge or bargaining power, will borrow from family members to get the makeup payment, make the deal, only to renege because they truly cannot afford to carry that loan burden as cast. If you can raise or pay a cash lump sum on a date certain in the near future of the amount of the past due payment amounts along with late fees, attorney fees, and associated costs, then you may be able to work out a **Reinstatement Agreement**. If you can meet the key requirements, a Reinstatement will be an easy way to achieve a loan workout. REASONING: You will need to explain why you got behind in the first place and why you will be able to pay in the near future. This solution should be preset

by contract as a safe harbor intelligent loan option (**SHILO™**) afforded all borrowers in their loan documents at loan origination, refinance or at loan workout.

6. Repayment Installment Plan - Maybe the most common solution is to agree to repay the amounts in default over time or in installments while you also pay your regularly scheduled payments. This is commonly called a **Repayment Plan Agreement**.

REASONING: Past Short-Term Hardship/Hardship is Now Over: The lender will not agree to this if your financial situation is unstable or reveals that you can't afford to make such payments. You will need to show the lender the reasons why you got into short-term financial trouble, and why you are no longer in financial trouble. You will need to show the lender that your financial situation is such that you can afford to pay the amounts due under this agreement. The lender may agree that: (1) 20-50% of past due amounts be paid upon signing of the agreement, and (2) the remaining past due amounts be paid over a time certain to consummate with your current ability to pay same, for example, over 6-24 months, and (3) the regularly scheduled payments also be paid timely. This is an interim loan measure (ILM) only. This solution should be preset by contract as a safe harbor intelligent loan option (**SHILO™**) afforded all borrowers in their loan documents at loan origination, refinance or at loan workout.

7. 'Loan Modification' to New Loan Note Agreement - The borrower can currently afford to make regularly scheduled payments but can't afford past due amounts.

REASONING: CAN AFFORD PAYMENTS/CAN'T AFFORD PAST DUE

AMOUNTS: Loan modifications are all about negotiations, especially in this newly troubling real estate climate (2007-2010). The borrower should seek to have the lender add all past due payments, interest and associated costs and fee amounts to the principal balance of the loan, and reset same to a new "affordable" amortization schedule. You may find it advantageous to negotiate the longest amortization period possible to lower your monthly payments. For example, *Amortization Term*: (i.e. 30, 40, 50 years); *Interest Only* (Fixed for at least 5-10 years); *Graduated Payment Plan* (GPP) (agreeing to pay no

or low payments in the early months, rising in direct relationship to what the borrower can “afford” in later periods). The borrower should expect to execute a new loan note and related loan documents, and receive a positive or neutral credit reporting of the current or prior loan and note agreement, resulting in a new loan note and agreement. When in doubt, make sure this in writing in plain language. For example, confirm that no negative marks will be recorded on “credit report”. This solution should be preset by contract as a safe harbor intelligent loan option (**SHILO™**) afforded all borrowers in their loan documents at loan origination, refinance or at loan workout.

8. Loan Forbearance - Forbearance means time-out! Stop the lawsuits! Stop the foreclosure sale! Stop my payments! **Lenders will consider a forbearance agreement to give you a time out from making payments or full payments for a limited time period allowing you to regroup.**

REASONING: Buy Time/Regroup: The borrower will have to agree to another option to bring the loan current when that **forbearance period expires**. *Repayment or Reinstatement* may be the agreed option to resolve the situation. Borrower’s should only negotiate and agree to a plan that is doable, workable and affordable. If a hardship will result in a temporary or short term payment problem, the borrower will need to prove to the lender the reasons for such hardship and the reasons for recovery from such short term hardship. Lenders may agree to combine the **Forbearance** with other solutions options as well. For example, it is common to use the forbearance agreement with a **Reinstatement** or a **Repayment Plan**. The question is always:

CAN YOU BRING THE ACCOUNT FULLY CURRENT, WHEN, WHY & HOW?

In the current climate, the borrower will need to ask for what is needed, not only for what they think the lender will allow. If one needs Forbearance for certain reasons with an exit option other than Reinstatement or Repayment Plan, then it should be sought and

negotiated. Borrowers should only negotiate and agree on a plan that is doable, workable, and “affordable”! Otherwise, a very capable foreclosure and litigating attorney will be at the borrower’s doorstep in due time. This solution should be preset by contract as a safe harbor intelligent loan option (**SHILO™**) afforded all borrowers in their loan documents at loan origination, refinance or at loan workout.

9. FHA HUD Partial Claim – (SHILO™: FHA HUD – FMII™ Partial Claims) -

Certain types of loans have certain prescribed procedures that may help or hinder your success. For example, if you have an FHA insured loan, you may be entitled to money for payments from HUD (Department of Housing and Urban Development). This program is called the FHA HUD **Partial Claim Program**. This program will afford the borrower with a payment from the FHA Insurance Fund.

HUD REQUIREMENTS: You must be

- A. at least 4 months but no more than 12 months delinquent on your regularly scheduled loan payments,
- B. be financially stable and able to make fully amortized payments thereafter,
- C. you must execute a new HUD promissory note you must accept a lien against your home of such amounts as a HUD loan, without interest and due when you transfer, sell, or cease use as your home

This solution should be preset by contract as a safe harbor intelligent loan option (**SHILO™**) afforded all borrowers in their loan documents at loan origination, refinance or at loan workout regardless if it is a federally backed mortgage or not. **FMII™ - Foreclosure Mortgage Insurance Investment Funds™** can act alone or in partnership with government funds.

10. “Pre-Foreclosure Short Sale” for less than mortgage amount due – (SHILO™)

Short Sale: Can’t Afford: Can’t Sell on MLS: Move Out: Save Good Credit:

In the event the borrower wants to move out, and has found a third party buyer that will

only offer an amount less than the amount of the loan balance, a Short Sale, may be the answer. The borrower will have to make a series of written representations to the lender in a Short Sale Package, including a Financial, Medical or Legal Excuse Hardship Letter with supporting documentation on (1) the borrower, (2) the home and (3) real estate market, including: bank statements, repair estimates, three to four months failed listing results (from the “multiple listing service”), rebuttal price opinions, purchase contracts, HUD-1 or settlement statement, proof of funds or prequalification letter from buyer’s bank, etc. The lender will also attempt to establish a fair market price for the house. The price the lender will propose is called the Broker’s Price Opinion (BPO). It will usually differ greatly from the price that the borrower expects to sell the home as based upon the seller’s experience of at least 3 months of failed sales. This reconciliation of the fair market price will cause great delays and drag the process on for months (and months). Notwithstanding, this stage will lend it self to buying a ‘short sale’ at a price below the amount due on the mortgages and usually 20-40% below market. This will also require the lender(s) to agree to take less than the amounts due, which will require 1-4 months of negotiations. However, it is critical to understand that, although laws are pending in Congress, the homeowner presently may be subject to (1) **income tax on the amount of forgiveness of debt**, and/or (2) a **deficiency liability** for the difference between the sale proceeds and the mortgage balance outstanding, plus costs and fees. In California, the lender may not seek a Deficiency Judgment on a non-judicial foreclosure; likewise the borrower has no Rights of Redemption therefrom, however a short sale is not a non-judicial foreclosure. It behooves both the buyer and the short seller to **negotiate the waiver** of both the **deficiency judgment** and the **income tax (1099 reporting) liability**. An attorney should be consulted by the buyer and seller to avoid unwanted results. You need to make a hard decision about this possibility before accepting a short sale, or negotiate with the lender that it will not report a 1099 on these amounts for reasons of the characterization of the agreement is such that none is required.

Special Note: Taxation of “Forgiveness of Debt”:

Forgiveness from the Forgiveness - of Mortgage Debt Income Tax!

Proposed legislation in the House, officially titled "The Mortgage Cancellation Tax Relief Act of 2007" (H.R. 1876), was introduced April 2007; and S. 1394: Mortgage Cancellation Relief Act of 2007 was introduced in the Senate on May 15, 2007. (**See attached the two pending proposals in Congress**)

The bill when law would authorize forgiveness from the forgiveness of mortgage debt income taxation in certain circumstances. There is bi-partisan support for these proposals and law is expected from Congress on this issue. The proposals' effective dates are the date of enactment or the date the President signs the legislation. At this time it will not be retroactive.

Generally in a short sale, your tax liability is not based on the difference between the *fair market value* and the outstanding mortgage. In a foreclosure your tax liability is not the difference between your mortgage and the *foreclosure-sale amount*. Taxes are based on the difference between your BASIS in the property (your tax basis or purchase price plus improvements, less depreciation and deferred gains carried over from previous deferred sales) and the amount you owe on it at the time of the short sale or foreclosure. So, if you owe less than your BASIS, you may not owe any tax; no matter what the fair market value. If you owe more than your BASIS, you will be taxed on a foreclosure or short sale.

This solution should be preset by contract as a safe harbor intelligent loan option (**SHILO™**) afforded all borrowers in their loan documents at loan origination, refinance or at loan workout. See **Delays and Problems With Short Sales and Short Refinance** below.

11. Deed In Lieu of Foreclosure –

HAND IN KEYS EARLY: WALK AWAY CLEAN: STOP FORECLOSURE PROCEEDINGS: CAN'T MAKE PAYMENTS: CAN'T SELL BUT TRIED: WANT OUT: WANT TO SAVE CREDIT SOMEWHAT: EARLY BIRD PRE-FORECLOSURE SOLUTION!

If you can't afford the payments on the loan and need to get out, contact the lender and offer a deed in lieu of foreclosure. The borrower is seeking an immediate release from the loan and all indebtedness, and cessation of the foreclosure proceedings. This potentially will save the lender much money, time and hassle from pursuing the foreclosure remedy against the borrower. Credit will typically show a negative mark from this situation, but much less serious than a foreclosure. Like in a short sale, the borrower will have to show that he/she attempted to sell the home but could not. Unlike the short sale, he/she might only have tried for 30 days or so. Different lenders will have different requirements ranging from you must offer the deed in lieu 30-60 days prior to the foreclosure sale date, the property must be vacant, and an exterior and interior appraisal must meet their requirements. This solution should be preset by contract as a safe harbor intelligent loan option (SHILO™) afforded all borrowers in their loan documents at loan origination, refinance or at loan workout.

12. Reverse Mortgage (for Seniors) – Seniors need to understand that they may seek a reverse mortgage that would replace their current loan requiring monthly current payments with a Reverse Mortgage that would NOT require current monthly payments. The reverse mortgage is paid off when the property is transferred or sold, or at death. Reverse mortgages are generally legitimate and should be considered by seniors with all of the other factors unique to each borrower, and his or her estate, succession and life insurance plans. This solution should be preset by contract as a safe harbor intelligent loan option (SHILO™) afforded all borrowers in their loan documents at loan origination, refinance or at loan workout.

13. Defenses to foreclosure and bankruptcy -

FAIR NOTICE AND DEFENSES TO FORECLOSURE: Borrowers have legal rights independent of the solutions offered herein. Borrowers are always advised to contact their own attorney experienced in this area of the law. Borrowers may resort to bankruptcy protections, which may or may not save the home. Borrowers may also have legal claims against lenders, servicers, brokers, or Wall Street firms for predatory lending, fraud, RICO, misrepresentation, negligent product development, breach of good faith duties,

breach of warranty of fitness for a particular purpose, breach of Federal or State laws, among many other causes of action. Each and all of which, may or may not have merit for a particular borrower.

- a. **THIRD PARTY HELP: Public Education and Outreach -- The HOMEOWNERS GUIDE TO AVOIDING DEFAULT & FORECLOSURE™** is available on www.help4thepeople.org. If the industry does not make an unprecedented public educational campaign to change the public negative perception of the possibilities of solving a default or foreclosure, the problem and its inherent risks will continue to grow. There are also third party organizations that help homeowners such as Neighbor Works™ (<http://www.nw.org/network/home.asp>), HUD (U.S. Department of Housing and Urban Development (HUD) (<http://www.hud.gov>), Standards (www.homeownershipstandards.com), Help4ThePeople.Org at www.help4thepeople.org , Attorney and Lender Neutral Help at www.hotneutral.com, etc.

Special Note: Short Sale & Short Refinance:

Comments for Congress:

DELAYS & PROBLEMS WITH 'SHORT SALES' & 'SHORT REFINANCE'

The current loan workout system is riddled with delays and inefficiency.

Something that could take a few weeks, usually takes months (2-4 or more).

Examples of the delays include, but are not limited to:

- A. **Broker's Price Opinion (BPO):** The lender will also attempt to establish a fair market price for the house. The price the lender will propose is called the Broker's Price Opinion (BPO). It will usually differ greatly from the price that the borrower expects to sell the home. **Automated** (Rebuttal) Broker

Price Opinions (BPO) on Valuation or AVN (Automated Valuation Networks) should be used. This will allow everyone to expedite preset criteria that will result in expedited loan workout solutions.

- B. **Lender Intake Systems Are Overloaded:** Lenders and servicers must upgrade their automated computer intake systems to better ‘track’ each case and its file materials. All documents received by any clerk at any time, should be found on the computer system at all times. Presently, lenders usually say the file was ‘assigned’ to a particular clerk, but in reality, every time you call them, you are handed off to another person, and then ‘reassigned’ to another clerk, who can’t find your file materials. This *game of tag* goes on for 1-2 months alone, and then the 2-4 month deal period begins.
- C. **Workout Deal Terms Disingenuous/Against Public Policy:** Lenders want it both ways. They want all options open, even when committing to a particular deal. Lenders overreach and it creates **impractical or ‘unconscionable’** deal terms. For example:
- a. **Deficiency Liability: Law & Contracts Must Be Amended:** When a borrower can’t afford to pay the mortgage timely, why would the lender believe he/she can pay the loan balance deficiency? Of course the borrower in this circumstance cannot afford the forgiven loan balance amount, if he or she could it would have been done to ‘reinstate’ and ‘modify’ the loan to become “cash-affordable”. Many lenders will agree to a ‘short sale’ with the ‘condition’ that “*Lender will retain the note on this loan. The customer shall be responsible for the deficiency remaining on the balance. All terms of the original note shall remain in force.*” Now the borrower is compelled to accept the offer due to his or her circumstance, and accept the ‘threat’ that the lender may (or may not) come after him/her within

one year for the deficiency amount, usually by the lender filing a lawsuit seeking to obtain a 'deficiency judgment'. The threat of this 'contingent liability' precludes the borrower from moving on with his or her life and providing for their family. This type of deal making is '**unconscionable**' in terms of '**public policy**'.

i. **At-Law Solution To Enforce Public Policy & Contract**

Principles: If lenders are to accept a lesser sum than due on a mortgage (for mutually beneficial purposes), then the lender should not be allowed – at law – to condition the agreement (at its very heart) by requiring that the borrower remain liable for the *very same thing* disposed of in the deal (the deficiency liability).

b. **Income Tax Liability: IRS Law Must Be Amended.** When a borrower can't afford to pay the mortgage timely, why would the lender **and the IRS** believe he/she can afford to pay the *phantom* income tax due on the **forgiveness of debt** based in part on the loan balance deficiency amount? Of course the borrower in this circumstance cannot afford the income tax due on the **forgiveness of debt**, if he or she could, this resource would have been used to 'reinstate' and 'modify' the loan to "cash-affordable" terms. Many lenders will agree to a 'short sale' with the 'condition' that lender will send out a 1099 tax notice reporting to the IRS. Now the borrower is compelled to accept the offer due to his or her circumstance, and accept the 'threat' that the IRS will come after him or her for income taxes due (if any) for forgiveness of debt, based in part on the very thing disposed of in the short sale, the

c. deficiency loan balance. The threat and reality of this ‘IRS contingent liability’ precludes the borrower from moving on with his or her life and providing for his/her family. This type of deal making is ‘**unconscionable’ in terms of ‘public policy’**.

i. **The Internal Revenue Code must be amended.** (Attached)

d. **Lender Overreaching: We agree but, if we Screw Up, You’re**

Liable, Not Us: Many lenders agree to a short sale with the condition that *“In the event the above property should go through foreclosure sale prior to our offer date stated above, this agreement will become null and void, thus the offer will be rescinded.”* This really means, we agree to this short sale agreement, but if we can’t correct our internal system and stop the foreclosure attorneys, then you lose, because we do not want to be responsible for our duties under this short sale agreement.

i. **Congress should preclude such conditions as against public policy.**

e. **Avoid Delays with SHILO™ - Investor and/or Insurers**

Agreement: Many lenders agree to short sales (and other loan workout devices) but condition or delay such agreements based upon the legal need to obtain agreement from their investors and/or the mortgage insurers, if any. This creates more uncertainty in the system as a whole and causes delays per file. Investors and or insurers *should be compelled to preset conditions for approved loan workout terms upfront* in their investor agreements and or insurance agreements.

f. **SHILO™** - Safe Harbor Intelligent Loan Options™ - are preset and upfront contractual Safe Harbor Minimum Intelligent Loan Options. SHILO™ is “contractual safe harbor” loan option provisions placed in the loan origination, refinance and loan workout documents upfront. It removes delay and “uncertainty” in the marketplace. SHILO should be included in junior liens and loan documents as well.

1. Congress should require preset conditions of loan workout type devices and safe harbors in all residential loan documents.

g. **Lender Overreaching: Must “List” House With Realtor: But Realtor Can’t Be Paid:** Lenders agree to loan workouts and short sales and short refinances, but condition the deal upon the requirement that the property was listed by a realtor on the market for at least 3-4 months. However, once the deal is accepted, the ‘short’ contract states “*Realtors commission not to exceed \$0.*” So the borrower has the impossible task of ‘listing’ the home with a realtor, but getting the realtor to waive all commission. Try calling 10 multiple listing realtors and see how many will agree to that!

i. Congress must make laws to allow payment to realtors of up to 3% or some other percentage or amount, so the system can work.

h. Lender Overreaching - Fictional Legal Loophole re

Relocation Money:

RE: SHORT SALES AND FORECLOSURE PROCEEDS

I know. Well, the reality is the seller is broke. The seller needs money to move and start over. Many times there are children left without a roof over their head. This will cause societal problems which will harm the economy as well. The lenders prohibit the seller from receiving any monies in the transaction. So what happens? The system creates and relies upon a *fictional legal loophole*: The Buyer pays the Seller by purchasing artwork, stoves and heirlooms for usually \$1,000-\$15,000, documented by a *Bill of Sale*. Stop the fiction. Stop forcing people to take vulnerable legal positions in order to protect the lender's interest, and legal uncertainty.

i. **Congress should pass a law allowing the Seller to receive money from the proceeds of the deal for (1) relocation and fresh start, and/or (2) partial equity reimbursement, in certain circumstances.** Amounts for relocation might be for “necessary or appropriate moving, relocating, and living expenses”, and an amount for “partial equity reimbursement” might be a (very low) percentage of the excess sale proceeds received, if any, in certain circumstances to reimburse the seller for material contributions to improve the condition, value and salability of the home. These methods will (1) allow a mechanism to pay the seller *legally* so he/she can start anew in society, and (2) motivate sellers to keep their homes in top shape; that will help the sales valuations generally and help to resist deep discount pricing, which hurts everyone, ultimately.

Special Note: Taxes on Short Sales:

TAXES ON SHORT SALES AND FORECLOSURES

Reprint of IRS PUBLICATION 523: “Other Dispositions” Other Dispositions –

The following rules apply to foreclosures and repossessions, abandonments, trades, and transfers to a spouse.

Foreclosure or repossession. If your home was foreclosed on or repossessed, you have a sale. You figure the gain or loss from the sale in generally the same way as gain or loss from any sale. But the selling price of your home used to figure the amount of your gain or loss depends, in part, on whether you were personally liable for repaying the debt secured by the home, as shown in the following chart.

IF you were...	THEN your selling price includes...
not personally liable for the debt	the full amount of debt canceled by the foreclosure or repossession.
personally liable for the debt	the amount of canceled debt up to the home's fair market value. You may also have ordinary income, as explained next.

Ordinary income. If you were personally liable for the canceled debt, you may have ordinary income in addition to any gain or loss. If the canceled debt is more than the home's fair market value, you have ordinary income equal to the difference. Report that income on Form 1040, line 21, or on Form 1040NR, line 21. However, the income from cancellation of debt is not taxed to you if the cancellation is intended as a gift, or if you are insolvent or bankrupt. For more information on insolvency or bankruptcy, see Publication 908, Bankruptcy Tax Guide.

Form 1099-A and Form 1099-C. Generally, you will receive Form 1099-A, Acquisition or Abandonment of Secured Property, from your lender. This form will have the information you need to determine the amount of your gain or loss and any ordinary income from cancellation of debt. If your debt is canceled, you may receive Form 1099-C, Cancellation of Debt.

More information. If part of your home is used for business or rental purposes, see *Foreclosures and Repossessions* in chapter 1 of Publication 544 for more information. Publication 544 has examples of how to figure gain or loss on a foreclosure or repossession.

Abandonment. If you abandon your home, you may have ordinary income. If the abandoned home secures a debt for which you are personally liable and the debt is canceled, you have ordinary income equal to the amount of canceled debt.

If the home is secured by a loan and the lender knows the home has been abandoned, the lender should send you Form 1099-A or Form 1099-C. See *Foreclosure or repossession*, earlier, for information about those forms. If the home is later foreclosed on or repossessed, gain or loss is figured as explained in that discussion. **Trading homes.** If you trade your old home for another home, treat the trade as a sale and a purchase.

Example.

You owned and lived in a home with an adjusted basis of \$41,000. A real estate dealer accepted your old home as a trade-in and allowed you \$50,000 toward a new home priced at \$80,000. This is treated as a sale of your old home for \$50,000 with a gain of \$9,000 (\$50,000 - \$41,000).

If the dealer had allowed you \$27,000 and assumed your unpaid mortgage of \$23,000 on your old home, your sales price would still be \$50,000 (the \$27,000 trade-in allowed plus the \$23,000 mortgage assumed).

Transfer to spouse. If you transfer your home to your spouse, or to your former spouse incident to your divorce, you generally have no gain or loss (unless the *Exception*, discussed next, applies). This is true even if you receive cash or other consideration for the home. Therefore, the rules explained in this publication do not apply.

If you owned your home jointly with your spouse and transfer your interest in the home to your spouse, or to your former spouse incident to your divorce, the same rule applies. You have no gain or loss.

Exception. These transfer rules do not apply if your spouse or former spouse is a nonresident alien. In that case, you generally will have a gain or loss.

More information. See *Property Settlements* in Publication 504, *Divorced or Separated Individuals*, if you need more information.

Determining Basis

You need to know your basis in your home to determine any gain or loss when you sell it. Your basis in your home is determined by how you got the home. Your basis is its cost if you bought it or built it. If you got it in some other way (inheritance, gift, etc.), its basis is either its fair market value when you got it or the adjusted basis of the person you got it from.

While you owned your home, you may have made adjustments (increases or decreases) to your home's basis. The result of these adjustments is your home's adjusted basis, which is used to figure gain or loss on the sale of your home.

To figure your adjusted basis, you can use *Worksheet 1*, shown later. Filled-in examples of that worksheet are included in the *Comprehensive Examples*, later.

Cost As Basis

The cost of property is the amount you pay for it in cash, debt obligations, other property, or services.

Purchase. If you buy your home, your basis is its cost to you. This includes the purchase price and certain settlement or closing costs. Generally, your purchase price includes your down payment and any debt, such as a first or second mortgage or notes you gave the seller in payment for the home. If you build, or contract to build, a new home, your purchase price can include costs of construction, as discussed later.

Seller-paid points. If the person who sold you your home paid points on your loan, you may have to reduce your home's basis by the amount of the points as shown in the following chart.

IF you bought your home...	THEN reduce your home's basis by the seller-paid points...
after 1990 but before April 4, 1994	only if you deducted them as home mortgage interest in the year paid.
after April 3, 1994	even if you did not deduct them.

If you must reduce your basis by seller-paid points and you use *Worksheet 1* to figure your adjusted basis, enter the seller-paid points on line 2 of the worksheet (unless you used the seller-paid points to reduce the amount on line 1).

Settlement fees or closing costs. When you bought your home, you may have paid settlement fees or closing costs in addition to the contract price of the property. You can include in your basis some of the settlement fees and closing costs you paid for buying the home. You cannot include in your basis the fees and costs for getting a mortgage loan. A fee paid for buying the home is any fee you would have had to pay even if you paid cash for the home (that is, without the need for financing).

Settlement fees do not include amounts placed in escrow for the future payment of items such as taxes and insurance.

Some of the settlement fees or closing costs that you can include in your basis are:

1. Abstract fees (abstract of title fees),
2. Charges for installing utility services,
3. Legal fees (including fees for the title search and preparing the sales contract and deed),
4. Recording fees,
5. Survey fees,
6. Transfer or stamp taxes,
7. Owner's title insurance, and
8. Any amounts the seller owes that you agree to pay, such as:
 - a. Certain real estate taxes (discussed later),
 - b. Back interest,
 - c. Recording or mortgage fees,
 - d. Charges for improvements or repairs, and
 - e. Sales commissions.

Some settlement fees and closing costs you cannot include in your basis are:

1. Fire insurance premiums,
2. Rent for occupancy of the house before closing,
3. Charges for utilities or other services related to occupancy of the house before closing,
4. Any fee or cost that you deducted as a moving expense (allowed for certain fees and costs before 1994),
5. Charges connected with getting a mortgage loan, such as:
 - a. Mortgage insurance premiums (including funding fees connected with loans guaranteed by the Department of Veterans Affairs),
 - b. Loan assumption fees,
 - c. Cost of a credit report,
 - d. Fee for an appraisal required by a lender, and
6. Fees for refinancing a mortgage.

Real estate taxes. Real estate taxes for the year you bought your home may affect your basis, as shown in the following chart.

IF...	AND...	THEN the taxes...
you pay taxes that the seller owed on the home (the taxes up to the date of sale)	the seller does <i>not</i> reimburse you	are added to the basis of your home.
	the seller reimburses you	do not affect the basis of your home.
the seller paid taxes for you (the taxes beginning on the date of sale)	you do <i>not</i> reimburse the seller	are subtracted from the basis of your home.
	you reimburse the seller	do not affect the basis of your home.

H.R. 1876: Mortgage Cancellation Relief Act of 2007

HR 1876 IH

110th CONGRESS
1st Session
H. R. 1876

To amend the Internal Revenue Code of 1986 to exclude from gross income of individual taxpayers discharges of indebtedness attributable to certain forgiven residential mortgage obligations.

IN THE HOUSE OF REPRESENTATIVES
April 17, 2007

Mr. ANDREWS (for himself and Mr. LEWIS of Kentucky) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to exclude from gross income of individual taxpayers discharges of indebtedness attributable to certain forgiven residential mortgage obligations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Mortgage Cancellation Relief Act of 2007'.

SEC. 2. EXCLUSION FROM GROSS INCOME FOR CERTAIN FORGIVEN MORTGAGE OBLIGATIONS.

(a) In General- Paragraph (1) of section 108(a) of the Internal Revenue Code of 1986 (relating to exclusion from gross income) is amended by striking 'or' at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting ', or', and by inserting after subparagraph (D) the following new subparagraph:

'(E) in the case of an individual, the indebtedness discharged is qualified residential indebtedness.'

(b) Qualified Residential Indebtedness Shortfall- Section 108 of such Code (relating to discharge of indebtedness) is amended by adding at the end the following new subsection:

`(h) Qualified Residential Indebtedness-

`(1) LIMITATIONS- The amount excluded under subparagraph (E) of subsection (a)(1) with respect to any qualified residential indebtedness shall not exceed the excess (if any) of--

`(A) the outstanding principal amount of such indebtedness (immediately before the discharge), over

`(B) the sum of--

`(i) the amount realized from the sale of the real property securing such indebtedness reduced by the cost of such sale, plus

`(ii) the outstanding principal amount of any other indebtedness secured by such property.

`(2) QUALIFIED RESIDENTIAL INDEBTEDNESS-

`(A) IN GENERAL- The term `qualified residential indebtedness' means indebtedness which--

`(i) was incurred or assumed by the taxpayer in connection with real property used as a residence and is secured by such real property,

`(ii) is incurred or assumed to acquire, construct, reconstruct, or substantially improve such real property, and

`(iii) with respect to which such taxpayer makes an election to have this paragraph apply.

`(B) REFINANCED INDEBTEDNESS- Such term shall include indebtedness resulting from the refinancing of indebtedness under subparagraph (A)(ii), but only to the extent the refinanced indebtedness does not exceed the amount of the indebtedness being refinanced.

`(C) EXCEPTIONS- Such term shall not include qualified farm indebtedness or qualified real property business indebtedness.'

(c) Conforming Amendments-

(1) Paragraph (2) of section 108(a) of such Code is amended--

(A) in subparagraph (A) by striking `and (D)' and inserting `(D), and (E)', and

(B) by amending subparagraph (B) to read as follows:

“(B) INSOLVENCY EXCLUSION TAKES PRECEDENCE OVER QUALIFIED FARM EXCLUSION; QUALIFIED REAL PROPERTY BUSINESS EXCLUSION; AND QUALIFIED RESIDENTIAL INDEBTEDNESS EXCLUSION- Subparagraphs (C), (D), and (E) of paragraph (1) shall not apply to a discharge to the extent the taxpayer is insolvent.”.

(2) Paragraph (1) of section 108(b) of such Code is amended by striking “or (C)” and inserting “(C), or (E)”.

(3) Subsection (d) of section 121 of such Code is amended by adding at the end the following new paragraph:

“(12) SPECIAL RULE RELATING TO DISCHARGE OF INDEBTEDNESS- The amount of gain which (but for this paragraph) would be excluded from gross income under subsection (a) with respect to a principal residence shall be reduced by the amount excluded from gross income under section 108(a)(1)(E) with respect to such residence.”.

(d) Effective Date- The amendments made by this section shall apply to discharges after the date of the enactment of this Act.

S. 1394: Mortgage Cancellation Relief Act of 2007

S 1394 IS

110th CONGRESS
1st Session
S. 1394

To amend the Internal Revenue Code of 1986, to exclude from gross income of individual taxpayers discharges of indebtedness attributable to certain forgiven residential mortgage obligations.

IN THE SENATE OF THE UNITED STATES
May 15, 2007

Ms. STABENOW (for herself, Mr. VOINOVICH, Mr. KERRY, Mr. LEVIN, and Ms. SNOWE) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986, to exclude from gross income of individual taxpayers discharges of indebtedness attributable to certain forgiven residential mortgage obligations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Mortgage Cancellation Relief Act of 2007'.

SEC. 2. EXCLUSION FROM GROSS INCOME FOR CERTAIN FORGIVEN MORTGAGE OBLIGATIONS.

(a) In General- Paragraph (1) of section 108(a) of the Internal Revenue Code of 1986 (relating to exclusion from gross income), is amended by striking 'or' at the end of subparagraph (C), by striking the period at the end of subparagraph (D) and inserting ', or', and by inserting after subparagraph (D) the following new subparagraph:

'(E) in the case of an individual, the indebtedness discharged is qualified residential indebtedness.'

(b) Qualified Residential Indebtedness Shortfall- Section 108 of such Code (relating to discharge of indebtedness) is amended by adding at the end the following new subsection:

`(h) Qualified Residential Indebtedness-

`(1) LIMITATIONS- The amount excluded under subparagraph (E) of subsection (a)(1) with respect to any qualified residential indebtedness shall not exceed the excess (if any) of--

`(A) the outstanding principal amount of such indebtedness (immediately before the discharge), over

`(B) the sum of--

`(i) the amount realized from the sale of the real property securing such indebtedness reduced by the cost of such sale, plus

`(ii) the outstanding principal amount of any other indebtedness secured by such property.

`(2) QUALIFIED RESIDENTIAL INDEBTEDNESS-

`(A) IN GENERAL- The term `qualified residential indebtedness' means indebtedness which--

`(i) was incurred or assumed by the taxpayer in connection with real property used as a residence and is secured by such real property,

`(ii) is incurred or assumed to acquire, construct, reconstruct, or substantially improve such real property, and

`(iii) with respect to which such taxpayer makes an election to have this paragraph apply.

`(B) REFINANCED INDEBTEDNESS- Such term shall include indebtedness resulting from the refinancing of indebtedness under subparagraph (A)(ii), but only to the extent the refinanced indebtedness does not exceed the amount of the indebtedness being refinanced.

`(C) EXCEPTIONS- Such term shall not include qualified farm indebtedness or qualified real property business indebtedness.'.

(c) Conforming Amendments-

(1) Paragraph (2) of section 108(a) of such Code is amended--

(A) in subparagraph (A) by striking `and (D)' and inserting `(D), and (E)', and

(B) by amending subparagraph (B) to read as follows:

“(B) INSOLVENCY EXCLUSION TAKES PRECEDENCE OVER QUALIFIED FARM EXCLUSION; QUALIFIED REAL PROPERTY BUSINESS EXCLUSION; AND QUALIFIED RESIDENTIAL INDEBTEDNESS EXCLUSION- Subparagraphs (C), (D), and (E) of paragraph (1) shall not apply to a discharge to the extent the taxpayer is insolvent.”.

(2) Paragraph (1) of section 108(b) of such Code is amended by striking “or (C)” and inserting “(C), or (E)”.

(3) Subsection (d) of section 121 of such Code is amended by adding at the end the following new paragraph:

“(12) SPECIAL RULE RELATING TO DISCHARGE OF INDEBTEDNESS- The amount of gain which (but for this paragraph) would be excluded from gross income under subsection (a) with respect to a principal residence shall be reduced by the amount excluded from gross income under section 108(a)(1)(E) with respect to such residence.”.

(d) Effective Date- The amendments made by this section shall apply to discharges after the date of the enactment of this Act.