# US Senate rejects anti-foreclosure measure opposed by banks

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In a vote that demonstrates the veto power exercised by Wall Street on US government policy, the Senate on Thursday rejected a measure that would have allowed bankruptcy judges to modify the terms of mortgages to help distressed homeowners avoid foreclosure. The legislation would have enabled bankruptcy courts to lower the outstanding principal as well as interest rates on some home loans.

The provision, put forward as an amendment to a broader housing bill backed by the Obama administration, was defeated in a 45 to 51 vote, with 12 Democrats joining all of the Republican senators in voting "no." According to Democratic leaders in the Senate, the provision would have enabled 1.7 million homeowners to remain in their homes. This is only a small fraction of the estimated 8 million Americans who will be forced out of their homes by the banks over the next several years.

The measure was already watered down and compromised by concessions to banks and mortgage companies made in the course of weeks of negotiations between its chief sponsor, Illinois Senator Richard Durbin, and JPMorgan Chase, Bank of America and Wells Fargo. Nevertheless, it was adamantly opposed by the banking industry, which lobbied intensively against its passage.

The opposition of the banks secured "no" votes from Democrats Max Baucus and Jon Tester of Montana, Michael Bennett of Colorado, Robert Byrd of West Virginia, Thomas Carper of Delaware, Byron Dorgan of North Dakota, Tim Johnson of South Dakota, Mary Landrieu of Louisiana, Blanche Lincoln and Mark Pryor of Arkansas, Ben Nelson of Nebraska, and Arlen Specter of Pennsylvania.

Obama had declared his support for what is known in Washington circles as the "cramdown" provision when he announced his "Homeowner Affordability and Stability Plan" in February. That plan, presented as a boon to homeowners hit by declining home values, the loss of their jobs, and adjustable mortgage rates that had shot up, was, in fact, tailored to serve the interests of the banks, mortgage servicers and big investors.

It did not require firms to lower the principal on mortgages and made their participation in a government-subsidized scheme to lower monthly mortgage payments entirely voluntary. It offered lucrative fees and other incentives, paid for out of taxpayer funds, to companies that agreed to lower interest payments on certain home loans.

At the time, Obama touted congressional passage of the cramdown provision as the "stick" that would accompany his plan's "carrots" to the banking industry. This was based on the premise that banks would find it more profitable to agree to lower interest rates on home loans that might otherwise be reduced in value by bankruptcy judges.

In the face of fierce opposition from the American Bankers Association and other industry lobbying groups, Obama first supported modifications to the original bill brought forward in House of Representatives that were demanded by the banks. The House in March passed watered-down cramdown legislation by a vote of 234-191, along party lines.

The banks remained opposed and shifted their efforts to kill the measure to the Senate. At that point, the Obama administration caved in and tacitly dropped its support for the provision.

As the Washington-based Web site *The Hill* noted on Thursday, "Treasury Secretary Timothy Geithner gave the bill lukewarm support in congressional testimony." The *New York Times* on May 1 wrote, "President

Obama sought the cramdown provision during the election, although the White House has done virtually nothing to move it through Congress."

Pennsylvania Senator Specter's "no" vote had particular political significance. Two days before, he had announced that after nearly 30 years as a Republican senator he was leaving the GOP and becoming a Democrat. He acknowledged that his primary motive was the likelihood that he would be defeated in next year's Republican state primary election. Obama hailed his move, invited him to the White House on Wednesday and announced that he would support Specter in Pennsylvania's 2010 Democratic primary vote.

The same day as his White House reception, Specter voted against the administration's budget and the following day voted against the mortgage cramdown amendment to the housing bill.

Thursday's vote marked the second time in 2 years that the Senate has blocked passage of the home mortgage modification measure. Current laws barring bankruptcy judges from altering home loan provisions specifically target working families as opposed to wealthy owners of multiple homes or investment properties. Bankruptcy judges are allowed to make changes for second homes or investment real estate, but not for primary residences.

Prior to the Senate vote on the mortgage modification measure, Senator Durbin declared, "At some point the senators in this chamber will decide the bankers shouldn't write the agenda for the United States Senate." This was little more than political posturing by a long-time defender of the financial elite, but it contained an acknowledgement of the class interests that dominate Congress.

Stripped of the mortgage cramdown "stick," all that remains in Obama's "Homeowner Affordability and Stability Plan," which the Senate is expected to pass next week, are a series of "carrots" for the banks.

One provision inserted into the bill at the bidding of the banks will reduce a proposed premium owed by the banks to the Federal Deposit Insurance Corporation, in return for hundreds of billions of dollars in FDIC guarantees on the banks' bond issuances, by more than 50 percent. This will save the banks an estimated $7.7 billion.

A second provision will make permanent the temporary increase in bank deposits guaranteed by the FDIC to $250,000 from $100,000.

The bill also includes a safe harbor provision for mortgage servicers—firms that manage loans for investors and lenders—from lawsuits related to loan modifications. This provision, in fact, will provide legal protection for banks that have engaged in lending practices that skirt or violate the law.

The *Washington Post* reported Thursday that John Taylor, president of the National Community Reinvestment Coalition, sent a letter to lawmakers April 29 complaining that the safe harbor provision could "create a loophole whereby banks escape serious liability for their predatory lending and fraudulent loan originations."