

**AMENDMENT TO THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 3837
OFFERED BY MS. WATERS OF CALIFORNIA**

Page 22, after line 7, insert the following new section:

1 SEC. 106. DUTY TO ENGAGE IN LOSS MITIGATION.

2 (a) IN GENERAL.—Upon default of any federally re-
3 lated mortgage, a mortgagee shall engage in reasonable
4 loss mitigation activities for the purpose of providing an
5 alternative to foreclosure.

6 (b) DEFENSE TO FORECLOSURE.—A mortgagee’s
7 failure to comply with the requirements of subsection (a)
8 constitutes a defense to the foreclosure.

9 (c) LOSS MITIGATION ACTIVITIES.—

10 (1) DEFINITION.—For purposes of this section,
11 the term “loss mitigation activities” means activities
12 that minimize the potential losses to a homeowner or
13 investor that may result from—

14 (A) a homeowner’s inability to pay the
15 mortgage payments due on a home loan; and

16 (B) any subsequent foreclosure action.

17 (2) ALTERNATIVE TO FORECLOSURE.—Loss
18 mitigation activities provide alternatives to fore-

1 closure whenever possible and reasonably ensure the
2 long-term affordability of any mortgage retained
3 pursuant to such activities.

4 (3) PROCESS OF MITIGATION.—

5 (A) IN GENERAL.—Loss mitigation activi-
6 ties involve reasonably analyzing the borrower's
7 financial situation, evaluating the property
8 value of the property to be mortgaged, and as-
9 ssuming the feasibility of measures including—

10 (i) waiver of any late payment charge
11 or, if applicable, penalty interest;

12 (ii) forbearance pursuant to a written
13 agreement between the borrower and the
14 servicer providing for a temporary reduc-
15 tion in monthly payments followed by a re-
16 amortization and new repayment schedule
17 including the arrearage;

18 (iii) waiver, modification, or variation
19 of any term of a mortgage, including modi-
20 fications that change the mortgage rate,
21 forgive the payment of principal or inter-
22 est, extend the final maturity date of such
23 mortgage, or begin to include an escrow
24 for taxes and insurance;

1 (iv) acceptance of payment from the
2 homeowner of an amount less than the
3 stated principal balance in final satisfac-
4 tion of such mortgage;

5 (v) assumption;

6 (vi) pre-foreclosure sale; and

7 (vii) deed in lieu of foreclosure.

8 (B) PRIORITY.—Activities described in
9 subclauses (v), (vi), and (vii) of subparagraph
10 (A) shall only be pursued after a reasonable
11 evaluation of the feasibility of activities de-
12 scribed in subclause (i), (ii), (iii), and (iv) of
13 such subparagraph, based upon the home-
14 owner's circumstances.