

112TH CONGRESS
2D SESSION

H. R. 5940

To establish pilot programs to encourage the use of shared appreciation mortgage modifications, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 8, 2012

Mr. PETERS (for himself, Mr. CAMPBELL, and Mr. ELLISON) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To establish pilot programs to encourage the use of shared appreciation mortgage modifications, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Preserving American
5 Homeownership Act of 2012”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds the following:

8 (1) The stability of the economy, housing mar-
9 ket, and neighborhoods of the United States depends

1 upon reducing the number of foreclosures in the
2 United States.

3 (2) Homeowners struggling to make payments
4 on homes with mortgages that are deeply under-
5 water are some of the most at risk of foreclosure.

6 (3) A properly carried out principal modifica-
7 tion program will preserve the assets of the govern-
8 ment-sponsored mortgage enterprises assets and re-
9 duce taxpayer losses, consistent with the mission of
10 the Federal Housing Finance Agency as the enter-
11 prises' conservator, and will help foster a more resil-
12 ient national housing market.

13 **SEC. 3. SHARED APPRECIATION MORTGAGE MODIFICATION**
14 **PILOT PROGRAMS.**

15 (a) DEFINITIONS.—In this section—

16 (1) the term “capital improvement” means a
17 home improvement described in table 4 of Publica-
18 tion 530 of the Internal Revenue Service, or any
19 successor thereto;

20 (2) the term “covered mortgage” means a
21 mortgage—

22 (A) that is—

23 (i) sold to the Federal National Mort-
24 gage Association, the Government National

1 Mortgage Association, or the Federal
2 Home Loan Mortgage Corporation; or

3 (ii) insured under title II of the Na-
4 tional Housing Act (12 U.S.C. 1707 et
5 seq.);

6 (B) that is secured by real property that is
7 the primary residence of a homeowner;

8 (C) that has an outstanding principal bal-
9 ance of an amount that is greater than the ap-
10 praised value of the real property securing the
11 mortgage, on or about the date on which the
12 homeowner is approved to participate in the
13 pilot program under subsection (b);

14 (D) with respect to which the homeowner
15 is, both as of the date of the enactment of this
16 Act and as of the date of the modification
17 under a pilot program under subsection (b)—

18 (i) not fewer than 60 days delinquent;

19 or

20 (ii) at risk of imminent default; and

21 (E) of a homeowner who has a documented
22 financial hardship that prevents or will prevent
23 the homeowner from making mortgage pay-
24 ments;

1 (3) the term “Director” means the Director of
2 the Federal Housing Finance Agency;

3 (4) the term “enterprise” has the same mean-
4 ing as in section 1303 of the Federal Housing En-
5 terprises Financial Safety and Soundness Act of
6 1992 (12 U.S.C. 4502);

7 (5) the term “homeowner” means the mort-
8 gagor under a covered mortgage;

9 (6) the term “investor” means—

10 (A) the mortgagee under a covered mort-
11 gage; or

12 (B) in the case of a covered mortgage that
13 collateralizes an asset-backed security, as de-
14 fined in section 3(a) of the Securities Exchange
15 Act of 1934 (15 U.S.C. 78c(a)), the trustee for
16 the asset-backed security;

17 (7) the term “pilot program” means a pilot pro-
18 gram established under subsection (b); and

19 (8) the term “shared appreciation mortgage
20 modification” means a modification of a covered
21 mortgage in accordance with subsection (c).

22 (b) PILOT PROGRAMS ESTABLISHED.—The Director
23 of the Federal Housing Finance Agency and the Federal
24 Housing Commissioner, in consultation with the Secretary
25 of the Treasury, shall each establish a pilot program to

1 encourage, through assistance provided under the Home
2 Affordable Modification Program under the Making Home
3 Affordable initiative of the Secretary of the Treasury, the
4 use of shared appreciation mortgage modifications that
5 are designed to return greater cash flow to investors than
6 other loss-mitigation activities, including foreclosure, and
7 result in positive net present value for the investor.

8 (c) SHARED APPRECIATION MORTGAGE MODIFICA-
9 TION.—For purposes of the pilot program, a shared appre-
10 ciation mortgage modification shall—

11 (1) reduce the loan-to-value ratio of a covered
12 mortgage—

13 (A) to 115 percent immediately upon such
14 modification, by immediately reducing the
15 amount of principal under the covered mortgage
16 accordingly; and

17 (B) to 95 percent within 3 years, by reduc-
18 ing the amount of principal under the covered
19 mortgage by $\frac{1}{3}$ at the end of each year for 3
20 years;

21 (2) reduce the interest rate for a covered mort-
22 gage, if a reduction of principal under paragraph (1)
23 would not result in a reduced monthly payment that
24 is affordable to the homeowner;

1 (3) reduce the amount of any periodic payment
2 required to be made by the homeowner, so that the
3 amount payable by the homeowner is equal to the
4 amount that would be payable by the homeowner if,
5 on the date on which the shared appreciation mort-
6 gage modification takes effect—

7 (A) all reductions of the amount of prin-
8 cipal under paragraph (1) had been made; and

9 (B) any reduction in the interest rate
10 under paragraph (2) for which the covered
11 mortgage is eligible had been made;

12 (4) require the homeowner to pay to the inves-
13 tor after refinancing or selling the real property se-
14 curing a covered mortgage a percentage of the
15 amount of any increase (not to exceed 50 percent of
16 such increase) in the value of the real property dur-
17 ing the period beginning on the date on which the
18 homeowner was approved to participate in the pilot
19 program and ending on the date of the refinancing
20 or sale that is equal to the percentage by which the
21 investor reduced the amount of principal under the
22 covered mortgage under paragraph (1); and

23 (5) result in a positive net present value for the
24 investor after taking into account the principal re-

duction under paragraph (1) and, if necessary, any interest rate reduction under paragraph (2).

(d) DETERMINATION OF VALUE OF HOME.—

(1) IN GENERAL.—For purposes of this section, the value of real property securing a covered mortgage shall be determined by a licensed appraiser who is independent of and does not otherwise do business with the homeowner, servicer, investor, or an affiliate of the homeowner, servicer, or investor, except that, where available, such value may be determined using a reliable estimate of value provided by an automated valuation model of an enterprise.

(2) TIME FOR DETERMINATION.—The value of real property securing a covered mortgage shall be determined on a date that is as close as practicable to the date on which a homeowner begins to participate in a pilot program.

(3) COST.—

(A) RESPONSIBILITY FOR COST.—

(i) INITIAL COST.—The investor shall pay the cost of an appraisal or other determination of value under paragraph (1).

(ii) DEDUCTION FROM HOMEOWNER SHARE.—At the option of the investor, the cost of an appraisal or other determination

1 of value under paragraph (1) may be
2 added to the amount paid by the home-
3 owner to the investor under subsection
4 (c)(4).

5 (B) REASONABLENESS OF COST.—The
6 cost of an appraisal or other determination of
7 value under paragraph (1) shall be reasonable,
8 as determined by the Director and the Federal
9 Housing Commissioner.

10 (4) SECOND APPRAISAL.—At the time of refi-
11 nancing or sale of real property securing a covered
12 mortgage, the investor may request a second ap-
13 praisal of the value of the real property, at the ex-
14 pense of the investor, by a licensed appraiser who is
15 independent of and does not otherwise do business
16 with the homeowner, servicer, investor, or an affil-
17 iate of the homeowner, servicer, or investor, if the
18 investor believes that the sale price or claimed value
19 at the time of the refinancing is not an accurate re-
20 flection of the fair market value of the real property.

21 (e) ELIGIBILITY FOR REDUCTION OF PRINCIPAL.—
22 Each pilot program shall provide that a homeowner is not
23 eligible for a reduction in the amount of principal under
24 a covered mortgage under a shared appreciation mortgage

1 modification if, after the homeowner begins participating
2 in the pilot program, the homeowner—

3 (1)(A) is delinquent on more than 3 payments
4 under the shared appreciation mortgage modification
5 during any of the 3 successive 1-year periods begin-
6 ning on the date on which the shared appreciation
7 mortgage modification is made; and

8 (B) fails to be current with all payments de-
9 scribed in paragraph (1) before the end of each 1-
10 year period described in paragraph (1); or

11 (2) obtains a mortgage, loan, or credit, or in-
12 curs any other debt, that creates any additional lien
13 on the residence that is subject to the covered mort-
14 gage for which the shared appreciation mortgage
15 modification or for which such residence is used as
16 collateral.

17 The Director shall require, as a condition for participation
18 in a pilot program by a homeowner, that the homeowner
19 enter into such agreements as the Director considers nec-
20 essary to ensure compliance with this subsection.

21 (f) NOTIFICATION.—

22 (1) IN GENERAL.—Each pilot program shall re-
23 quire that the servicer of a covered mortgage trans-
24 mit to each homeowner participating in the pilot
25 program written notice, in clear and simple lan-

1 guage, of how to maintain and submit any docu-
2 mentation of capital improvements that is necessary
3 to ensure that the shares of any increase in the
4 value of the real property securing the covered mort-
5 gage to which the investor and the homeowner are
6 entitled are determined accurately.

7 (2) TIMING.—The pilot program shall require
8 that a servicer provide the notice described in para-
9 graph (1)—

10 (A) before the homeowner accepts a shared
11 appreciation mortgage modification; and

12 (B) before the homeowner sells or refi-
13 nances the real property securing the covered
14 mortgage.

15 (g) PARTICIPATION BY SERVICERS.—The Director
16 shall require each enterprise to require that any servicer
17 of a covered mortgage in which the enterprise is an inves-
18 tor participate in the pilot program of the Federal Hous-
19 ing Finance Agency by offering shared appreciation mort-
20 gage modifications to a random and statistically signifi-
21 cant sampling of homeowners with covered mortgages.

22 (h) MORTGAGE INSURANCE.—The Director shall—

23 (1) provide that an enterprise may negotiate re-
24 garding a shared appreciation mortgage modification
25 of a covered mortgage with any provider of mortgage

1 insurance for a mortgage on the property subject to
2 the covered mortgage; and

3 (2) allow advance claim agreements with re-
4 spect to such mortgage insurance policies.

5 (i) MAINTENANCE OF LIEN STATUS.—A shared ap-
6 preciation mortgage modification of a covered mortgage
7 under a pilot program under this section shall not impair
8 the priority status of liens on the residence that is subject
9 to the mortgage.

10 (j) STUDIES AND REPORTS.—The Director and the
11 Federal Housing Commissioner shall—

12 (1) conduct annual studies of the pilot pro-
13 grams of the Federal Housing Finance Agency and
14 the Federal Housing Administration, respectively;
15 and

16 (2) submit a report to the Congress containing
17 the results of each study at the end of each of the
18 3 successive 1-year periods beginning on the date on
19 which the pilot program is established.

20 (k) TERMINATION.—On and after the date that is 2
21 years after the date of enactment of this Act, the Director
22 and the Federal Housing Commissioner may not enter
23 into any agreement under the pilot program with respect
24 to a shared appreciation mortgage modification.

○