112TH CONGRESS
2D SESSION

S. 3085

To provide for the expansion of affordable refinancing of mortgages held by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

IN THE SENATE OF THE UNITED STATES

MAY 10, 2012

Mr. MENENDEZ (for himself, Mrs. BOXER, Mr. REED, Mr. MERKLEY, Ms. STABENOW, Mr. DURBIN, Mr. FRANKEN, Mr. BEGICH, Mrs. FEINSTEIN, Mr. LAUTENBERG, and Mr. SCHUMER) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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A BILL

To provide for the expansion of affordable refinancing of mortgages held by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

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 ''Responsible Homeowner Refinancing Act of 2012''.

SEC. 2. DEFINITIONS.

In this Act—

(1) the term ''current borrower'' means a mortgagor who is current on the subject mortgage at the time of the refinancing, and has had no late payments in the preceding 6 months and not more than 1 late payment in the preceding 12 months;

(2) the term ''eligible mortgage'' means any mortgage that—

(A) is an existing first mortgage that was made for purchase of, or refinancing of another first mortgage on, a 1- to 4-family dwelling, including a condominium or a share in a cooperative ownership housing association, on or before May 31, 2010;

(B) is owned or guaranteed by an enterprise;

(C) with respect to which, the mortgagor is a current borrower; and

(D) includes existing first mortgages with a loan-to-value ratio of less than 80 percent.

(3) the term ''enterprise'' means the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation;

(4) the terms ''FHFA'' and ''Director'' mean the Federal Housing Finance Agency and the Director thereof, respectively;

(5) the terms ‘‘Home Affordable Refinance Program’’ and ‘‘Program’’ mean the Home Affordable Refinance Program, administered by the FHFA and the enterprises as part of the Making Home Affordable initiative announced on March 4, 2009;

(6) the term—

(A) ‘‘LTV’’ means loan-to-value, or the ratio of the amount of the primary mortgage on a property to the value of that property; and

(B) ‘‘CLTV’’ means combined loan-to-value, or the ratio of all mortgage debt on a property to the value of the property;

(7) the term ‘‘junior lien’’ means a mortgage on the same property that is—

(A) used as collateral for the eligible mortgage; and

(B) in a subordinate position in terms of priority and recording status;

(8) the term ‘‘same servicer’’ means a lender that is providing refinancing for a borrower whose loan they already service;

(9) the term ‘‘qualified lender’’ means a lender who is eligible to make refinancing loans under the Program;

(10) the terms ''guarantee fee'' has the same meanings as in section 1327(a) of the Housing and Community Development Act of 1992 (12 U.S.C. 4547(a)); and

(11) the term ''average fees'' means the average contractual fee rate of single-family guaranty arrangements by an enterprise entered into during 2012, plus the recognition of any up-front cash payments over an estimated average life, expressed in terms of basis points, such definition to be interpreted in a manner consistent with the annual report on guarantee fees by the FHFA.

SEC. 3. STREAMLINED REFINANCING CRITERIA.

(a) IN GENERAL.—In carrying out the Home Affordable Refinance Program, each enterprise shall adopt and adhere to the criteria established under this section.

(b) BORROWER ELIGIBILITY.—The enterprises shall include as eligible borrowers in the Home Affordable Refinance Program all current borrowers who have an eligible mortgage and meet those underwriting requirements for eligibility for same servicer refinancing in the Program as of March 1, 2012, except that the enterprises may not disqualify or impose varying rules within the Program for borrowers based on LTV, CLTV, employment status or income.

(c) REPRESENTATIONS AND WARRANTIES.—The enterprises shall not require of any lender providing a loan under the Program any representations or warranties for such a loan—

(1) for the value, marketability, condition, or property type, as evidenced by the appraisal or alternative valuation methods, if that lender complies with the enterprises' required methods and standards for ordering an appraisal under the Program; or

(2) that are not required of same servicers under the Program as of March 1, 2012, whether that loan is manually underwritten or underwritten through an automated system, except that, under no circumstances shall greater representations and warranties be required for a loan that is manually underwritten than for one that is underwritten through an automated system.

(d) PROHIBITION ON UP-FRONT FEES.—In carrying out the Program, the enterprises may not charge the qualified lender any loan level price adjustment, post settlement delivery fee, adverse delivery charge, or other similar up-front fee.

(e) APPRAISALS.—The enterprises shall develop and allow alternative streamlined methods to determine the value of the property for which refinancing is sought through the Program that eliminate the costs to the borrower and lender associated with such determination. Until such time as such method is developed, and when the existing automated valuation models of the enterprises are unable to determine the value of a certain property for which refinancing is sought through the Program, the enterprises shall bear the costs associated with the use of manual appraisal of that property, without passing on such costs to the borrower or lender.

(f) RESUBORDINATION OF JUNIOR LIENS.—

(1) IN GENERAL.—If the holder of a junior lien fails to resubordinate that lien, thereby preventing the refinancing of the eligible mortgage through the Program into a new mortgage, the holder of the junior lien shall be liable for an amount equal to 5.0 percent of the first mortgage balance, unless—

(A) the new mortgage would increase the first mortgage payment;

(B) the new mortgage would increase the loan balance by more than 3 percent or $3,000, whichever is greater;

(C) the new mortgage is an adjustable rate mortgage or has a term exceeding 30 years;

(D) the borrower has violated the due-on-sale clause at any time;

(E) the subordination would put the junior lien at risk of a bankruptcy strip down;

(F) the lender seeking to originate the loan through the Program has a lien on the original loan, or services the loan for a party, that is already in a junior position to the junior lien holder; or

(G) the underlying trust documents for the junior lien, as of March 1, 2012, explicitly prohibit the servicer of the junior lien from impacting the security interest of the notes through resubordination.

(2) FHFA AUTHORITY.—At the discretion of the Director, the FHFA may add to the list of exceptions in paragraph (1) additional exceptions when the Director determines a refinance would significantly increase the risk faced by the junior lien holder, and in which a failure to resubordinate would be justifiable.

(3) ACTIONS BY ENTERPRISES.—Upon submission to an enterprise of documentation by a qualified lender or eligible borrower that the holder of a junior lien has failed to resubordinate its lien, thereby

preventing the refinancing of the eligible mortgage through the Program into a new mortgage, the enterprise shall charge the junior lien holder and recoup the fine described in paragraph (1), as applicable, and shall apply the payment to the balance of the borrower's first mortgage.

(4) LIMITATIONS ON LIABILITIES.—A junior lien holder shall not be liable to the enterprise or to anyone else for the fine described in paragraph (1) if, within 30 days of the enterprise's written determination that a junior lien holder has failed to resubordinate its lien for any reason other than those specified in paragraph (1), that lien holder agrees to resubordinate its lien in compliance with this section.

(g) CARRYOVER OF MORTGAGE INSURANCE.—

(1) IN GENERAL.—If a mortgage insurer backing an eligible mortgage fails to transfer coverage to a new mortgage refinanced through the Program or places additional underwriting criteria or fees beyond those required by the Program as a condition of transfer approval, thereby preventing the refinancing of the eligible mortgage through the Program, that mortgage insurer shall be liable for an

amount equal to 5.0 percent of the first mortgage balance, unless the new mortgage—

(A) would increase the first mortgage payment;

(B) would increase the loan balance by more than 3 percent or $3,000, whichever is greater;

(C) is an adjustable rate mortgage or has a term exceeding 30 years; or

(D) the borrower has violated the due-on-sale clause at any time.

(2) ACTIONS BY ENTERPRISES.—Upon submission to an enterprise of documentation by a qualified lender or eligible borrower that the mortgage insurer has prevented the refinance of an eligible mortgage through the Program into a new mortgage, the enterprise shall charge the mortgage insurer and recoup the fine described in paragraph (1), as applicable, and shall apply the payment to the balance of the borrower's first mortgage.

(3) LIMITATION ON LIABILITY.—A mortgage insurer shall not be liable to the enterprise or to anyone else for the fine described in paragraph (1) if, within 30 days of the enterprise's written determination that a mortgage insurer has prevented the refi-

nancing of an eligible mortgage for any reason other than those specified in paragraph (1), that mortgage insurer agrees to transfer coverage in compliance with this section.

(h) LIMITATION.—Notwithstanding any other provision of law, the enterprises shall not be prevented from purchasing or guaranteeing a mortgage resulting from the refinancing of an eligible mortgage pursuant to this section and subject to all other provisions of this section.

(i) GUARANTEE FEES.—

(1) IN GENERAL.—

(A) AVERAGE FEE.—On each mortgage refinanced under the Program in accordance with this section, the enterprises shall set the average fee required under this Act, as determined by the Director in an amount not less than the average fees imposed in 2012 for such guarantees. The Director shall prohibit an enterprise from offsetting the cost of the fee to the mortgage originators, borrowers, and investors by decreasing other charges, fees, or premiums, or in any other manner.

(B) AUTHORITY TO LIMIT OFFER OF GUARANTEE.—The Director shall prohibit an enterprise from consummating any offer for a guarantee to a lender for mortgage-backed securities, if the guarantee is inconsistent with the requirements of this section.

(2) INFORMATION COLLECTION AND ANALYSIS.—The Director shall require each enterprise to provide to the Director, as part of its annual report submitted to Congress, for loans refinanced under the Program—

(A) a description of changes made to upfront fees and annual fees as part of the guarantee fees negotiated with lenders; and

(B) an assessment of how the changes in the guarantee fees described in subparagraph (A) met the requirements of paragraph (1).

(j) REGULATIONS.—Not later than 30 days after the date of enactment of this Act, the Director shall issue any regulations or guidance necessary to carry out the changes to the Program established under this section, which regulations or guidance shall be put into effect not later than 90 days after the date of enactment of this Act.

(k) TERMINATION.—The requirements of this section shall expire concurrent with the expiration of the Program.

SEC. 4. INFORMATION FOR BORROWERS ON ELIGIBILITY FOR THE PROGRAM.

(a) NOTICE TO BORROWERS.—Not later than 60 days after the date of enactment of this Act, the enterprises shall notify all borrowers with a mortgage owned or guaranteed by an enterprise about the Program and its eligibility criteria, and inform borrowers of the website required under subsection (b).

(b) PUBLIC ACCESS TO ELIGIBILITY CRITERIA.—The Director shall establish, and the enterprises shall display a link on their homepages to, a single website where borrowers may—

(1) determine their potential eligibility for participation in the Program;

(2) see a complete list of and links to participating lenders;

(3) use a mortgage refinance calculator to calculate potential payment savings based on different interest rates; and

(4) obtain tips on refinancing their loan.

SEC. 5. CONSISTENT REFINANCING GUIDELINES REQUIRED.

Not later than 60 days after the date of enactment of this Act, the FHFA shall issue guidance to require the enterprises to make their refinancing guidelines consistent to ease lender compliance requirements, and in particular with respect to loans with less than an 80 percent loan-to-value ratio and closing cost policies of the enterprises, which regulations or guidance shall be put into effect not later than 90 days after the date of enactment of this Act.

SEC. 6. PROGRESS REPORTS.

The Director shall provide to Congress monthly reports on the progress of the Program, and each enterprise shall include and disclose, as part of its filings with the Securities and Exchange Commission on Form 10–Q, Form 10–K, or any successors thereto, detailed information on each enterprise's progress and results in implementing and executing the Program.

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