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114TH CONGRESS
1ST SESSION

H. R. 3519

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

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 16, 2015

Mr. ELLISON introduced the following bill; which was referred to the Committee on Financial Services

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A BILL

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

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 ''Preserving American Homeownership Act of 2015''.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The stability of the economy, housing market, and neighborhoods of the United States depends

upon reducing the number of foreclosures in the United States.

(2) Homeowners struggling to make payments on homes with mortgages that are deeply underwater are some of the most at risk of foreclosure.

(3) A properly carried out principal modification program will preserve the assets of the Government-sponsored mortgage enterprises assets and reduce taxpayer losses, consistent with the mission of the Federal Housing Finance Agency as the enterprises' conservator, and will help foster a more resilient national housing market.

SEC. 3. SHARED APPRECIATION MORTGAGE MODIFICATION PILOT PROGRAMS.

(a) DEFINITIONS.—In this section—

(1) the term ''capital improvement'' means a home improvement described in table 4 of Publication 530 of the Internal Revenue Service, or any successor thereto;

(2) the term ''covered mortgage'' means a mortgage—

(A) that is—

(i) sold to the Federal National Mortgage Association, the Government National

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

(ii) insured under title II of the National Housing Act (12 U.S.C. 1707 et seq.);

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

(C) that has an outstanding principal balance of an amount that is greater than the appraised value of the real property securing the mortgage, on or about the date on which the homeowner is approved to participate in the pilot program under subsection (b);

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

(i) not fewer than 60 days delinquent; or

(ii) at risk of imminent default; and

(E) of a homeowner who has a documented financial hardship that prevents or will prevent the homeowner from making mortgage payments;

(3) the term ‘‘Director’’ means the Director of the Federal Housing Finance Agency;

(4) the term ‘‘enterprise’’ has the same meaning as in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502);

(5) the term ‘‘homeowner’’ means the mortgagor under a covered mortgage;

(6) the term ‘‘investor’’ means—

(A) the mortgagee under a covered mortgage; or

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

(7) the term ‘‘pilot program’’ means a pilot program established under subsection (b); and

(8) the term ‘‘shared appreciation mortgage modification’’ means a modification of a covered mortgage in accordance with subsection (c).

(b) PILOT PROGRAMS ESTABLISHED.—The Director of the Federal Housing Finance Agency and the Federal Housing Commissioner, in consultation with the Secretary of the Treasury, shall each establish a pilot program to encourage, through assistance provided under the Home Affordable Modification Program under the Making Home Affordable initiative of the Secretary of the Treasury, the use of shared appreciation mortgage modifications that are designed to return greater cash flow to investors than other loss-mitigation activities, including foreclosure, and result in positive net present value for the investor.

(c) SHARED APPRECIATION MORTGAGE MODIFICATION.—For purposes of the pilot program, a shared appreciation mortgage modification shall—

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

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

(B) to 95 percent within 3 years, by reducing the amount of principal under the covered mortgage by ⅓ at the end of each year for 3 years;

(2) reduce the interest rate for a covered mortgage, if a reduction of principal under paragraph (1) would not result in a reduced monthly payment that is affordable to the homeowner;

(3) reduce the amount of any periodic payment required to be made by the homeowner, so that the amount payable by the homeowner is equal to the amount that would be payable by the homeowner if, on the date on which the shared appreciation mortgage modification takes effect—

(A) all reductions of the amount of principal under paragraph (1) had been made; and

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

(4) require the homeowner to pay to the investor after refinancing or selling the real property securing a covered mortgage a percentage of the amount of any increase (not to exceed 50 percent of such increase) in the value of the real property during the period beginning on the date on which the homeowner was approved to participate in the pilot program and ending on the date of the refinancing or sale that is equal to the percentage by which the investor reduced the amount of principal under the covered mortgage under paragraph (1); and

(5) result in a positive net present value for the 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 of value under paragraph (1) may be added to the amount paid by the homeowner to the investor under subsection (c)(4).

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

(4) SECOND APPRAISAL.—At the time of refinancing or sale of real property securing a covered mortgage, the investor may request a second appraisal of the value of the real property, at the expense of the investor, 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, if the investor believes that the sale price or claimed value at the time of the refinancing is not an accurate reflection of the fair market value of the real property.

(e) ELIGIBILITY FOR REDUCTION OF PRINCIPAL.—Each pilot program shall provide that a homeowner is not eligible for a reduction in the amount of principal under a covered mortgage under a shared appreciation mortgage modification if, after the homeowner begins participating in the pilot program, the homeowner—

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

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

(2) obtains a mortgage, loan, or credit, or incurs any other debt, that creates any additional lien on the residence that is subject to the covered mortgage for which the shared appreciation mortgage modification or for which such residence is used as collateral.

The Director shall require, as a condition for participation in a pilot program by a homeowner, that the homeowner enter into such agreements as the Director considers necessary to ensure compliance with this subsection.

(f) NOTIFICATION.—

(1) IN GENERAL.—Each pilot program shall require that the servicer of a covered mortgage transmit to each homeowner participating in the pilot program written notice, in clear and simple lan-

guage, of how to maintain and submit any documentation of capital improvements that is necessary to ensure that the shares of any increase in the value of the real property securing the covered mortgage to which the investor and the homeowner are entitled are determined accurately.

(2) TIMING.—The pilot program shall require that a servicer provide the notice described in paragraph (1)—

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

(B) before the homeowner sells or refinances the real property securing the covered mortgage.

(g) PARTICIPATION BY SERVICERS.—The Director shall require each enterprise to require that any servicer of a covered mortgage in which the enterprise is an investor participate in the pilot program of the Federal Housing Finance Agency by offering shared appreciation mortgage modifications to a random and statistically significant sampling of homeowners with covered mortgages.

(h) MORTGAGE INSURANCE.—The Director shall—

(1) provide that an enterprise may negotiate regarding a shared appreciation mortgage modification of a covered mortgage with any provider of mortgage

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

(2) allow advance claim agreements with respect to such mortgage insurance policies.

(i) MAINTENANCE OF LIEN STATUS.—A shared appreciation mortgage modification of a covered mortgage under a pilot program under this section shall not impair the priority status of liens on the residence that is subject to the mortgage.

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

(1) conduct annual studies of the pilot programs of the Federal Housing Finance Agency and the Federal Housing Administration, respectively; and

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

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

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