

113TH CONGRESS  
2D SESSION

# S. 2854

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

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 18, 2014

Mr. MENENDEZ (for himself, Ms. WARREN, Mr. REED, and Mr. BLUMENTHAL) 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 establish pilot programs to encourage the use of shared equity 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 2014”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) High national, regional, or local foreclosure  
9 rates destabilize the economy, housing market, and  
10 neighborhoods of the United States.

1           (2) Shared equity mortgage modifications can  
2           provide alternatives to foreclosures that benefit both  
3           underwater homeowners and mortgage investors.

4 **SEC. 3. SHARED EQUITY MORTGAGE MODIFICATION PILOT**  
5 **PROGRAMS.**

6           (a) DEFINITIONS.—In this section—

7           (1) the term “covered mortgage” means a  
8           mortgage—

9           (A) that is—

10                   (i) purchased by, guaranteed by, or  
11                   otherwise sold to the Federal National  
12                   Mortgage Association, the Government Na-  
13                   tional Mortgage Association, or the Fed-  
14                   eral Home Loan Mortgage Corporation; or

15                   (ii) insured under title II of the Na-  
16                   tional Housing Act (12 U.S.C. 1707 et  
17                   seq.);

18           (B) that is secured by real property that is  
19           the primary or secondary residence of a home-  
20           owner;

21           (C) that is in an amount that is greater  
22           than the appraised value of the real property  
23           securing the mortgage on or about the date on  
24           which the homeowner is approved to participate  
25           in the pilot program under subsection (b);

1 (D) with respect to which the home-  
2 owner—

3 (i) is not fewer than 60 days delin-  
4 quent; or

5 (ii) is at risk of imminent default;

6 (E) of a homeowner who has a documented  
7 financial hardship that prevents or will prevent  
8 the homeowner from making mortgage pay-  
9 ments; and

10 (F) that may, at the discretion of the Di-  
11 rector of the Federal Housing Finance Agency  
12 with respect to mortgage-backed securities or  
13 participation certificates issued by an enterprise  
14 or of the Secretary of Housing and Urban De-  
15 velopment with respect to mortgage-backed se-  
16 curities issued by the Government National  
17 Mortgage Association, respectively, be made  
18 part of any security instrument that may com-  
19 bine or separate the mortgage note and equity  
20 position in the real property securing the mort-  
21 gage;

22 (2) the term “equity value of the real property”  
23 means with respect to a covered mortgage, the dif-  
24 ference between the value of the real property secur-  
25 ing the covered mortgage upon the time of sale (or

1       refinance) and the initial principal obligation amount  
2       owed on the covered mortgage, less any transaction  
3       costs associated with the sale or refinancing, pro-  
4       vided that if the equity value is negative at time of  
5       sale (or refinance), no payment is due the investor;

6           (3) the term “enterprise” has the same mean-  
7       ing as in section 1303 of the Federal Housing En-  
8       terprises Financial Safety and Soundness Act of  
9       1992 (12 U.S.C. 4502);

10          (4) the term “homeowner” means the mort-  
11       gagor under a covered mortgage;

12          (5) the term “investor” means—

13           (A) the mortgagee under a covered mort-  
14       gage; or

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

20          (6) the term “pilot program” means a pilot pro-  
21       gram established under subsection (b); and

22          (7) the term “shared equity mortgage modifica-  
23       tion” means a modification of a covered mortgage in  
24       accordance with subsection (c).

1 (b) PILOT PROGRAMS ESTABLISHED.—The Director  
2 of the Federal Housing Finance Agency and the Federal  
3 Housing Commissioner shall each establish a pilot pro-  
4 gram to encourage the use of shared equity mortgage  
5 modifications that are designed to return greater net  
6 present value to investors than other loss-mitigation activi-  
7 ties, including foreclosure.

8 (c) SHARED EQUITY MORTGAGE MODIFICATION.—  
9 For purposes of the pilot program, a shared equity mort-  
10 gage modification shall—

11 (1) reduce the loan-to-value ratio of a covered  
12 mortgage to 100 percent or less within 3 years, by  
13 reducing the difference between the initial original  
14 principal obligation amount owed on the covered  
15 mortgage and the reduced principal obligation  
16 amount determined by the targeted loan-to-value  
17 ratio set forth in this paragraph by  $\frac{1}{3}$  at the end  
18 of each year for 3 years;

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

23 (3) reduce the amount of any periodic payment  
24 required to be made by the homeowner, so that the  
25 amount payable by the homeowner is equal to the

1 amount that would be payable by the homeowner if,  
2 on the date on which the shared equity mortgage  
3 modification takes effect—

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

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

9 (4) require the homeowner to pay to the inves-  
10 tor upon refinancing or selling the real property se-  
11 curing a covered mortgage, a percentage (not to ex-  
12 ceed 50 percent) of the equity value of such real  
13 property, provided that—

14 (A) the dollar amount due to the investor  
15 upon such sale or refinance shall not exceed an  
16 amount that is equal to twice the largest dollar  
17 amount of the principal reduction that the  
18 homeowner achieved as a result of the principal  
19 reduction under paragraph (1);

20 (B) the cap established under subpara-  
21 graph (A) shall on February 1 of the year fol-  
22 lowing the year of enactment of this Act, and  
23 each February 1 thereafter, be adjusted for in-  
24 flation, by multiplying the prior year's cap  
25 amount by the ratio of the annual average of

1 the Consumer Price Index for All Urban Con-  
2 sumers (CPI-U), or a BLS-designated suc-  
3 cessor to CPI-U, for the prior calendar year to  
4 its annual average for the calendar year two  
5 years prior; and

6 (C) the investor is permitted to structure  
7 the equity-sharing interest that the investor is  
8 entitled to receive under this paragraph to be  
9 transferrable, including by structuring such in-  
10 terest for future sale to other investors;

11 (5) be designed to deliver maximal net present  
12 value to the investor, taking into account—

13 (A) the principal reduction under para-  
14 graph (1);

15 (B) any interest rate reductions under  
16 paragraph (2);

17 (C) expected reductions in foreclosure and  
18 in any other costs that might reduce net  
19 present value; and

20 (D) the value of the equity sharing interest  
21 determined under paragraph (4); and

22 (6) be based on factors including the percentage  
23 value of any principal reduction under paragraph  
24 (1), the amount of any such principal reduction, and  
25 any other factors as determined appropriate by the

1 Director of the Federal Housing Finance Agency or  
2 the Federal Housing Commissioner, respectively.

3 (d) DETERMINATION OF VALUE OF HOME.—

4 (1) IN GENERAL.—For purposes of this section,  
5 the value of real property securing a covered mort-  
6 gage shall be determined by a licensed appraiser who  
7 is independent of and does not otherwise do business  
8 with the homeowner, servicer, investor, or an affil-  
9 iate of the homeowner, servicer, or investor.

10 (2) TIME FOR DETERMINATION.—The value of  
11 real property securing a covered mortgage shall be  
12 determined on a date that is as close as practicable  
13 to the date on which a homeowner begins to partici-  
14 pate in a pilot program.

15 (3) COST.—

16 (A) RESPONSIBILITY FOR COST.—

17 (i) INITIAL COST.—The investor shall  
18 pay the cost of an appraisal under para-  
19 graph (1).

20 (ii) DEDUCTION FROM HOMEOWNER  
21 SHARE.—At the option of the investor, up  
22 to one-half of the cost of an appraisal  
23 under paragraph (1) may be added to the  
24 amount paid by the homeowner to the in-  
25 vestor under subsection (c)(4).

1 (B) REASONABLENESS OF COST.—The  
2 cost of an appraisal under paragraph (1) shall  
3 be reasonable, as determined by the Director of  
4 the Federal Housing Finance Agency or the  
5 Federal Housing Commissioner, respectively.

6 (4) SECOND APPRAISAL.—At the time of refi-  
7 nancing or sale of real property securing a covered  
8 mortgage, the investor may request a second ap-  
9 praisal of the value of the real property, at the ex-  
10 pense of the investor, by a licensed appraiser se-  
11 lected by the Director of the Federal Housing Fi-  
12 nance Agency or the Federal Housing Commis-  
13 sioner, respectively, who is independent of and does  
14 not otherwise do business with the homeowner,  
15 servicer, investor, or an affiliate of the homeowner,  
16 servicer, or investor, if the investor believes that the  
17 sale price or claimed value at the time of the refi-  
18 nancing is not an accurate reflection of the fair mar-  
19 ket value of the real property.

20 (e) ELIGIBILITY FOR REDUCTION OF PRINCIPAL.—  
21 Each pilot program shall provide that a homeowner is not  
22 eligible for a reduction in the amount of principal under  
23 a covered mortgage under a shared equity mortgage modi-  
24 fication if, after the homeowner begins participating in the  
25 pilot program, the homeowner—

1           (1) is delinquent on more than 3 payments  
2           under the shared equity mortgage modification dur-  
3           ing any of the 3 successive 1-year periods beginning  
4           on the date on which the shared equity mortgage  
5           modification is made; and

6           (2) fails to be current with all payments de-  
7           scribed in paragraph (1) before the end of each 1-  
8           year period described in paragraph (1).

9           (f) PARTICIPATION BY SERVICERS.—The Director of  
10          the Federal Housing Finance Agency shall require each  
11          enterprise to require that any servicer of a covered mort-  
12          gage in which the enterprise is an investor participate in  
13          the pilot program of the Federal Housing Finance Agency  
14          by offering shared equity mortgage modifications to a ran-  
15          dom and statistically significant sampling of homeowners  
16          with covered mortgages.

17          (g) STUDIES AND REPORTS.—The Director of the  
18          Federal Housing Finance Agency and the Federal Hous-  
19          ing Commissioner shall—

20                 (1) conduct annual studies of the pilot program  
21                 of the Federal Housing Finance Agency and the  
22                 Federal Housing Administration, respectively;

23                 (2) submit a report to Congress containing the  
24                 results of each study at the end of each of the 3 suc-

1 cessive 1-year periods beginning on the date on  
2 which the pilot program is established; and

3 (3) make publicly available to the maximum ex-  
4 tent possible, consistent with the protection of any  
5 personal information, and in a timely manner any  
6 data generated by the pilot program.

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