

112TH CONGRESS  
2D SESSION

# S. 2093

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

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 9, 2012

Mr. MENENDEZ 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 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       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) Underwater homeowners have an incentive  
4 to walk away from their homes, contributing greatly  
5 to the increase in foreclosures.

6 **SEC. 3. SHARED APPRECIATION MORTGAGE MODIFICATION**

7 **PILOT PROGRAMS.**

8 (a) DEFINITIONS.—In this section—

9 (1) the term “capital improvement” means a  
10 home improvement described in table 4 of Publica-  
11 tion 530 of the Internal Revenue Service, or any  
12 successor thereto;

13 (2) the term “covered mortgage” means a  
14 mortgage—

15 (A) that is—

16 (i) sold to the Federal National Mort-  
17 gage Association, the Government National  
18 Mortgage Association, or the Federal  
19 Home Loan Mortgage Corporation; or

20 (ii) insured under title II of the Na-  
21 tional Housing Act (12 U.S.C. 1707 et  
22 seq.);

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

1 (C) that is in an amount that is greater  
2 than the appraised value of the real property  
3 securing the mortgage on or about the date on  
4 which the homeowner is approved to participate  
5 in the pilot program under subsection (b);

6 (D) with respect to which the home-  
7 owner—

8 (i) is not fewer than 60 days delin-  
9 quent; or

10 (ii) is at risk of imminent default; and

11 (E) of a homeowner who has a documented  
12 financial hardship that prevents or will prevent  
13 the homeowner from making mortgage pay-  
14 ments;

15 (3) the term “enterprise” has the same mean-  
16 ing as in section 1303 of the Federal Housing En-  
17 terprises Financial Safety and Soundness Act of  
18 1992 (12 U.S.C. 4502);

19 (4) the term “homeowner” means the mort-  
20 gator under a covered mortgage;

21 (5) the term “investor” means—

22 (A) the mortgagee under a covered mort-  
23 gage; or

24 (B) in the case of a covered mortgage that  
25 collateralizes an asset-backed security, as de-

1            fined in section 3(a) of the Securities Exchange  
2            Act of 1934 (15 U.S.C. 78c(a)), the trustee for  
3            the asset-backed security;

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

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

9            (b) PILOT PROGRAMS ESTABLISHED.—The Director  
10          of the Federal Housing Finance Agency and the Federal  
11          Housing Commissioner shall each establish a pilot pro-  
12          gram to encourage the use of shared appreciation mort-  
13          gage modifications that are designed to return greater  
14          cash flow to investors than other loss-mitigation activities,  
15          including foreclosure, and result in positive net present  
16          value for the investor.

17          (c) SHARED APPRECIATION MORTGAGE MODIFICA-  
18          TION.—For purpose of the pilot program, a shared appre-  
19          ciation mortgage modification shall—

20                (1) reduce the loan-to-value ratio of a covered  
21                mortgage to 95 percent within 3 years, by reducing  
22                the amount of principal under the covered mortgage  
23                by  $\frac{1}{3}$  at the end of each year for 3 years;

24                (2) reduce the interest rate for a covered mort-  
25                gage, if a reduction of principal under paragraph (1)

1 would not result in a reduced monthly payment that  
2 is affordable to the homeowner;

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

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

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

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

1           (5) result in a positive net present value for the  
2 investor after taking into account the principal re-  
3 duction under paragraph (1) and, if necessary, any  
4 interest rate reduction under paragraph (2).

5 (d) DETERMINATION OF VALUE OF HOME.—

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

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

17           (3) COST.—

18           (A) RESPONSIBILITY FOR COST.—

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

22           (ii) DEDUCTION FROM HOMEOWNER  
23 SHARE.—At the option of the investor, the  
24 cost of an appraisal under paragraph (1)  
25 may be added to the amount paid by the

1 homeowner to the investor under sub-  
2 section (c)(4).

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

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

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

1           (1) is delinquent on more than 3 payments  
2 under the shared appreciation mortgage modification  
3 during any of the 3 successive 1-year periods begin-  
4 ning on the date on which the shared appreciation  
5 mortgage 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) NOTIFICATION.—

10           (1) IN GENERAL.—Each pilot program shall re-  
11 quire that the servicer of a covered mortgage trans-  
12 mit to each homeowner participating in the pilot  
13 program written notice, in clear and simple lan-  
14 guage, of how to maintain and submit any docu-  
15 mentation of capital improvements that is necessary  
16 to ensure that the shares of any increase in the  
17 value of the real property securing the covered mort-  
18 gage to which the investor and the homeowner are  
19 entitled are determined accurately.

20           (2) TIMING.—The pilot program shall require  
21 that a servicer provide the notice described in para-  
22 graph (1)—

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



1           (B) before the homeowner sells or refi-  
2           nances the real property securing the covered  
3           mortgage.

4           (g) PARTICIPATION BY SERVICERS.—The Director of  
5 the Federal Housing Finance Agency shall require each  
6 enterprise to require that any servicer of a covered mort-  
7 gage in which the enterprise is an investor participate in  
8 the pilot program of the Federal Housing Finance Agency  
9 by offering shared appreciation mortgage modifications to  
10 a random and statistically significant sampling of home-  
11 owners with covered mortgages.

12          (h) STUDIES AND REPORTS.—The Director of the  
13 Federal Housing Finance Agency and the Federal Hous-  
14 ing Commissioner shall—

15           (1) conduct annual studies of the pilot program  
16           of the Federal Housing Finance Agency and the  
17           Federal Housing Administration, respectively; and

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

22          (i) TERMINATION.—On and after the date that is 2  
23 years after the date of enactment of this Act, the Director  
24 of the Federal Housing Finance Agency and the Federal  
25 Housing Commissioner may not enter into any agreement

- 1 under the pilot program with respect to a shared apprecia-
- 2 tion mortgage modification.

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