

111TH CONGRESS  
1ST SESSION

# H. R. 1356

To reduce foreclosures of residential mortgages.

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IN THE HOUSE OF REPRESENTATIVES

MARCH 5, 2009

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

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## A BILL

To reduce foreclosures of residential mortgages.

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 “Homeownership Vest-  
5 ing Plan Act of 2009”.

6 **SEC. 2. HOMEOWNERSHIP VESTING PLAN.**

7 Title II of the National Housing Act (12 U.S.C. 1707  
8 et seq.) is amended—

9 (1) by redesignating section 257, as added by  
10 section 2124(a) of the Housing and Economic Relief  
11 Act of 2008 (12 U.S.C. 1715z–24), as section 258;  
12 and

1           (2) by adding after section 258, as so redesignig-  
2           nated, the following new section:

3   **“SEC. 259. HOMEOWNERSHIP VESTING PLAN.**

4           “(a) AUTHORITY.—The Secretary shall, subject only  
5           to the absence of requests for insurance under this section  
6           and the availability of amounts pursuant to subsection  
7           (i)—

8                   “(1) make commitments to insure and insure  
9                   any mortgage covering a 1- to 4-family residence  
10                  that is made for the purpose of paying or prepaying  
11                  outstanding obligations under an existing mortgage  
12                  or mortgages on the residence if the mortgage being  
13                  insured under this section meets the requirements of  
14                  this section; and

15                  “(2) in connection with the insurance of such  
16                  mortgages—

17                          “(A) make payments under subsection (c)  
18                          to servicers of eligible mortgages refinanced by  
19                          such insured mortgages;

20                          “(B) make payments under (b)(4) for the  
21                          extinguishment of subordinate liens on the  
22                          properties subject to eligible mortgages refi-  
23                          nance by such insured mortgages; and

24                          “(C) make loans under subsection (d) to  
25                          mortgagors under such insured mortgages.

1       “(b) ELIGIBLE MORTGAGES.—To be eligible for in-  
2 surance under this section, a mortgage shall comply with  
3 all of the following requirements:

4               “(1) OWNER-OCCUPIED SOLE RESIDENCE.—The  
5 residence securing the mortgage insured under this  
6 section shall be occupied by the mortgagor as the  
7 principal residence of the mortgagor and the mort-  
8 gagor shall provide a certification to the originator  
9 of the insured mortgage that such residence securing  
10 the mortgage is the only residence in which the  
11 mortgagor has any present ownership interest.

12               “(2) PRINCIPAL OBLIGATION AMOUNT.—The  
13 principal obligation amount of the mortgage to be  
14 insured under this section shall be equal to 97.5 per-  
15 cent of the current appraised value of the residence  
16 securing the mortgage.

17               “(3) REQUIRED WAIVER OF PREPAYMENT PEN-  
18 ALTIES AND FEES.—All penalties for prepayment or  
19 refinancing of the existing senior mortgage, and all  
20 fees and penalties related to default or delinquency  
21 on the existing senior mortgage, shall be waived or  
22 forgiven.

23               “(4) EXTINGUISHMENT OF SUBORDINATE  
24 LIENS.—

1           “(A) REQUIRED AGREEMENT.—All holders  
2 of existing mortgages on the property to which  
3 the eligible mortgage relates shall agree to ac-  
4 cept the proceeds of the insured loan, and any  
5 payment pursuant to subparagraph (B), as pay-  
6 ment in full of all indebtedness under the exist-  
7 ing mortgage, and all encumbrances related to  
8 such existing mortgage shall be removed. The  
9 Secretary may take such actions, in accordance  
10 with the standards established pursuant to sub-  
11 subparagraph (B), as may be necessary and appro-  
12 priate to facilitate coordination and agreement  
13 between the holders of the existing senior mort-  
14 gage and any existing subordinate mortgages,  
15 taking into consideration the subordinate lien  
16 status of such subordinate mortgages.

17           “(B) PAYMENT.—The Secretary shall pro-  
18 vide for the payment to the holder of any exist-  
19 ing subordinate mortgage of an amount equal  
20 to 5 cents for each dollar of the outstanding  
21 principal balance of, and accrued interest on,  
22 the outstanding mortgage.

23           “(5) INTEREST RATE AND TERM OF MORT-  
24 GAGE.—The mortgage to be insured under this sec-  
25 tion shall—

1           “(A) bear interest at a single rate that is  
2           fixed for the entire term of the mortgage; and

3           “(B) have a maturity of 30 years from the  
4           date of the beginning of amortization of such  
5           mortgage.

6           “(6) UNDERWRITING STANDARDS.—The mort-  
7           gage insured under this section shall comply with  
8           the underwriting standards applicable under the  
9           FHA Secure Program (established by mortgagee let-  
10          ter 2007–11, issued September 5, 2007), as such  
11          Program is in effect as of February 1, 2009.

12          “(7) PRIORITY OF LIEN FOR NON-VESTED LOAN  
13          PRINCIPAL.—The mortgage to be insured under this  
14          section shall provide that the Secretary’s lien pursu-  
15          ant to subsection (d)(4) on the residence that is sub-  
16          ject to the mortgage shall have superior priority to  
17          the lien under the insured mortgage.

18          “(8) REQUIREMENTS FOR EXISTING SENIOR  
19          MORTGAGE BEING REFINANCED.—

20                 “(A) ORIGINATION DATE.—The existing  
21                 senior mortgage shall have been originated dur-  
22                 ing the period beginning on January 1, 2003,  
23                 and ending upon December 31, 2007.

24                 “(B) PRINCIPAL OBLIGATION.—The exist-  
25                 ing senior mortgage shall have had an original

1 principal obligation in an amount that did not  
2 exceed the maximum dollar amount limitation  
3 in effect on February 1, 2009, under section  
4 203(b)(2) of the National Housing Act (12  
5 U.S.C. 1709(b)(2)) for a residence of the appli-  
6 cable size for the area in which the residence is  
7 located.

8 “(C) DEBT-TO-INCOME RATIO UPON ORIGI-  
9 NATION.—As of the time of the origination of  
10 the existing senior mortgage, the mortgagor  
11 shall have had a ratio of mortgage debt to in-  
12 come, taking into consideration all existing  
13 mortgages of that mortgagor at such time, ex-  
14 ceeding 30 percent.

15 “(D) LOAN-TO-VALUE RATIO.—The exist-  
16 ing senior mortgage shall, upon origination,  
17 have involved a principal obligation (including  
18 such initial service charges, appraisal, inspec-  
19 tion, and other fees as the Secretary shall ap-  
20 prove) in an amount not exceeding 90 percent  
21 of the appraised value of the property at such  
22 time.

23 “(e) PAYMENT TO SERVICER OF EXISTING MORT-  
24 GAGE.—For each mortgage insured under this section, the  
25 Secretary shall make a payment in the amount of \$1,000

1 to the servicer of the existing senior mortgage refinanced  
2 by such insured mortgage.

3 “(d) NONAMORTIZING NO-INTEREST LOAN.—

4 “(1) IN GENERAL.—In connection with each  
5 mortgage insured under this section, the Secretary  
6 shall make a loan under this subsection to the mort-  
7 gator, the proceeds of which shall be paid by the  
8 Secretary directly to the holder of the existing senior  
9 mortgage being refinanced by the mortgage insured  
10 under this section. Such loan shall be in an amount  
11 equal to the difference between—

12 “(A) the amount of the outstanding prin-  
13 cipal obligation under the existing senior mort-  
14 gage refinanced by such insured mortgage as of  
15 the time of the origination of such insured  
16 mortgage; and

17 “(B) the amount of the original principal  
18 obligation of the insured mortgage.

19 “(2) TERMS.—A loan under this section—

20 “(A) shall not bear interest; and

21 “(B) shall not require the borrower to  
22 make payments of principal, except as provided  
23 in paragraph (3).

24 “(3) REPAYMENT.—A loan under this section  
25 shall require repayment of principal only if the bor-

1       rower defaults with respect to the borrower’s obliga-  
2       tions under the insured mortgage in connection with  
3       which such loan is made during the 5-year period  
4       that begins on the date that such mortgage is in-  
5       sured, as follows:

6               “(A) YEAR 1.—If any such default occurs  
7               during the period that begins on the date that  
8               such mortgage is insured and ends 1 year after  
9               such date of insurance, the Secretary shall be  
10              entitled to repayment of 100 percent of the  
11              principal amount of the loan.

12             “(B) YEAR 2.—If any such default occurs  
13             during the period that begins 1 year after such  
14             date of insurance and ends 2 years after such  
15             date of insurance, the Secretary shall be enti-  
16             tled to 80 percent of such principal amount.

17             “(C) YEAR 3.—If any such default occurs  
18             during the period that begins 2 years after such  
19             date of insurance and ends 3 years after such  
20             date of insurance, the Secretary shall be enti-  
21             tled to 60 percent of such principal amount.

22             “(D) YEAR 4.—If any such default occurs  
23             during the period that begins 3 years after such  
24             date of insurance and ends 4 years after such

1 date of insurance, the Secretary shall be enti-  
2 tled to 40 percent of such principal amount.

3 “(E) YEAR 5.—If any such default occurs  
4 during the period that begins 4 years after such  
5 date of insurance and ends 5 years after such  
6 date of insurance, the Secretary shall be enti-  
7 tled to 20 percent of such principal amount.

8 “(F) AFTER YEAR 5.—If any such default  
9 occurs after the expiration of the 5-year period  
10 that begins on such date of insurance, the Sec-  
11 retary shall not be entitled to repayment of any  
12 portion of such principal amount.

13 “(4) LIEN.—Repayment of the portion of the  
14 principal amount of a loan made under this sub-  
15 section that is required under paragraph (3) shall be  
16 secured by a lien on the residence that is subject to  
17 the mortgage insured under this section in connec-  
18 tion with which such loan was made, that is held by  
19 the Secretary, and which shall have priority over all  
20 other liens on such residence.

21 “(e) PREMIUMS.—Notwithstanding any other provi-  
22 sion of this Act:

23 “(1) IN GENERAL.—For each eligible mortgage  
24 insured under this section, the Secretary shall estab-  
25 lish and collect an annual premium in an amount

1 equal to not less than 0.55 percent of the amount  
2 of the remaining insured principal balance of the  
3 mortgage and not more than 0.75 percent of such  
4 remaining insured principal balance, as determined  
5 according to a schedule established by the Secretary  
6 that assigns such annual premiums based upon the  
7 credit risk of the mortgage.

8 “(2) REDUCTION OR TERMINATION DURING  
9 MORTGAGE TERM.—Notwithstanding paragraph (1),  
10 the Secretary may provide that the annual premiums  
11 charged for eligible mortgages insured under this  
12 section are reduced over the term of the mortgage  
13 or that the collection of such premiums is discon-  
14 tinued at some time during the term of the mort-  
15 gage, in a manner that is consistent with policies for  
16 such reduction or discontinuation of annual pre-  
17 miums charged for mortgages in accordance with  
18 section 203(c).

19 “(f) SUNSET.—The Secretary may not enter into any  
20 new commitment to insure any refinanced eligible mort-  
21 gage, or newly insure any refinanced eligible mortgage,  
22 pursuant to this section after the expiration of the 3-year  
23 period beginning upon the date of the enactment of this  
24 Act.

1       “(g) DEFINITIONS.—For purposes of this section, the  
2 following definitions shall apply:

3           “(1) ELIGIBLE MORTGAGE.—The term ‘eligible  
4 mortgage’ means a mortgage that meets the require-  
5 ment under subsection (b) for insurance under this  
6 section.

7           “(2) EXISTING MORTGAGE.—The term ‘existing  
8 mortgage’ means, with respect to a mortgage in-  
9 sured or to be insured under this section, a mort-  
10 gage on the same residence that is to be subject to  
11 such mortgage insured under this section that is to  
12 be extinguished pursuant to such insured mortgage.

13           “(3) EXISTING SENIOR MORTGAGE.—The term  
14 ‘existing senior mortgage’ means, with respect to a  
15 mortgage insured or to be insured under this sec-  
16 tion, the existing mortgage that has superior pri-  
17 ority.

18           “(4) EXISTING SUBORDINATE MORTGAGE.—The  
19 term ‘existing subordinate mortgage’ means, with re-  
20 spect to a mortgage insured or to be insured under  
21 this section, an existing mortgage that has subordi-  
22 nate priority to the existing senior mortgage.

23       “(h) AUTHORIZATION OF APPROPRIATIONS.—There  
24 is authorized to be appropriated for fiscal years 2009  
25 through 2012—

1           “(1) \$2,000,000,000 for payments under sub-  
2           section (c) to servicers of eligible mortgages refi-  
3           nanced by such insured mortgages;

4           “(2) \$1,500,000,000 for payments under (b)(4)  
5           for the extinguishment of subordinate liens on the  
6           properties subject to eligible mortgages refinanced  
7           by such insured mortgages; and

8           “(3) \$90,000,000,000 for the costs (as such  
9           term is defined in section 502 of the Federal Credit  
10          Reform Act of 1974 (2 U.S.C. 661a)) of loans under  
11          subsection (d) to mortgagors under such insured  
12          mortgages.”.

13 **SEC. 3. SERVICER SAFE HARBOR.**

14          (a) SAFE HARBOR.—

15                 (1) LOAN MODIFICATIONS AND WORKOUT  
16                 PLANS.—Notwithstanding any other provision of  
17                 law, and notwithstanding any investment contract  
18                 between a servicer and a securitization vehicle or in-  
19                 vestor, a servicer that acts consistent with the duty  
20                 set forth in section 129A(a) of Truth in Lending Act  
21                 (15 U.S.C. 1639a) shall not be liable for entering  
22                 into a loan modification or workout plan with re-  
23                 spect to any such mortgage that meets all of the cri-  
24                 teria set forth in paragraph (2)(B) to—

1 (A) any person, based on that person's  
2 ownership of a residential mortgage loan or any  
3 interest in a pool of residential mortgage loans  
4 or in securities that distribute payments out of  
5 the principal, interest and other payments in  
6 loans on the pool;

7 (B) any person who is obligated pursuant  
8 to a derivatives instrument to make payments  
9 determined in reference to any loan or any in-  
10 terest referred to in subparagraph (A); or

11 (C) any person that insures any loan or  
12 any interest referred to in subparagraph (A)  
13 under any law or regulation of the United  
14 States or any law or regulation of any State or  
15 political subdivision of any State.

16 (2) ABILITY TO MODIFY MORTGAGES.—

17 (A) ABILITY.—Notwithstanding any other  
18 provision of law, and notwithstanding any in-  
19 vestment contract between a servicer and a  
20 securitization vehicle or investor, a servicer—

21 (i) shall not be limited in the ability  
22 to modify mortgages, the number of mort-  
23 gages that can be modified, the frequency  
24 of loan modifications, or the range of per-  
25 missible modifications; and

1 (ii) shall not be obligated to repur-  
2 chase loans from or otherwise make pay-  
3 ments to the securitization vehicle on ac-  
4 count of a modification, workout, or other  
5 loss mitigation plan for a residential mort-  
6 gage or a class of residential mortgages  
7 that constitute a part or all of the mort-  
8 gages in the securitization vehicle,

9 if any mortgage so modified meets all of the cri-  
10 teria set forth in subparagraph (B).

11 (B) CRITERIA.—The criteria under this  
12 subparagraph with respect to a mortgage are as  
13 follows:

14 (i) Default on the payment of such  
15 mortgage has occurred or is reasonably  
16 foreseeable.

17 (ii) The property securing such mort-  
18 gage is occupied by the mortgagor of such  
19 mortgage.

20 (iii) The servicer reasonably and in  
21 good faith believes that the anticipated re-  
22 covery on the principal outstanding obliga-  
23 tion of the mortgage under the particular  
24 modification or workout plan or other loss  
25 mitigation action will exceed, on a net

1 present value basis, the anticipated recov-  
2 ery on the principal outstanding obligation  
3 of the mortgage to be realized through  
4 foreclosure.

5 (3) APPLICABILITY.—This subsection shall  
6 apply only with respect to modifications, workouts,  
7 and other loss mitigation plans initiated before Jan-  
8 uary 1, 2012.

9 (b) REPORTING.—Each servicer that engages in loan  
10 modifications or workout plans subject to the safe harbor  
11 in subsection (a) shall report to the Secretary on a regular  
12 basis regarding the extent, scope and results of the  
13 servicer’s modification activities. The Secretary shall pre-  
14 scribe regulations specifying the form, content, and timing  
15 of such reports.

16 (c) DEFINITION OF SECURITIZATION VEHICLES.—  
17 For purposes of this section, the term “securitization vehi-  
18 cle” means a trust, corporation, partnership, limited liabil-  
19 ity entity, special purpose entity, or other structure that—

20 (1) is the issuer, or is created by the issuer, of  
21 mortgage pass-through certificates, participation cer-  
22 tificates, mortgage-backed securities, or other similar  
23 securities backed by a pool of assets that includes  
24 residential mortgage loans; and

1 (2) holds such mortgages.

