

111TH CONGRESS  
1ST SESSION

# S. 73

To establish a systematic mortgage modification program at the Federal Deposit Insurance Corporation, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JANUARY 6, 2009

Mrs. FEINSTEIN 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 a systematic mortgage modification program at the Federal Deposit Insurance Corporation, 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 “Systematic Foreclosure  
5       Prevention and Mortgage Modification Act”.

6       **SEC. 2. SYSTEMATIC FORECLOSURE PREVENTION AND**  
7                       **MORTGAGE MODIFICATION PLAN ESTAB-**  
8                       **LISHED.**

9       (a) IN GENERAL.—The Chairperson of the Federal  
10       Deposit Insurance Corporation shall establish a systematic

1 foreclosure prevention and mortgage modification program  
2 by—

3 (1) paying servicers \$1,000 to cover expenses  
4 for each loan modified according to the required  
5 standards; and

6 (2) sharing up to 50 percent of any losses in-  
7 curred if a modified loan should subsequently re-de-  
8 fault.

9 (b) PROGRAM COMPONENTS.—The program estab-  
10 lished under subsection (a) shall include the following  
11 components:

12 (1) ELIGIBLE BORROWERS.—The program shall  
13 be limited to loans secured by owner-occupied prop-  
14 erties.

15 (2) EXCLUSION FOR EARLY PAYMENT DE-  
16 FAULT.—To promote sustainable mortgages, govern-  
17 ment loss sharing shall be available only after the  
18 borrower has made a minimum of 6 payments on the  
19 modified mortgage.

20 (3) STANDARD NET PRESENT VALUE TEST.—In  
21 order to promote consistency and simplicity in imple-  
22 mentation and audit, a standard test comparing the  
23 expected net present value of modifying past due  
24 loans compared to the net present value of fore-  
25 closing on them will be applied. Under this test,

1 standard assumptions shall be used to ensure that a  
2 consistent standard for affordability is provided  
3 based on a 31 percent borrower mortgage debt-to-in-  
4 come ratio.

5 (4) SYSTEMATIC LOAN REVIEW BY PARTICI-  
6 PATING SERVICERS.—Participating servicers shall be  
7 required to undertake a systematic review of all of  
8 the loans under their management, to subject each  
9 loan to a standard net present value test to deter-  
10 mine whether it is a suitable candidate for modifica-  
11 tion, and to modify all loans that pass this test. The  
12 penalty for failing to undertake such a systematic  
13 review and to carry out modifications where they are  
14 justified would be disqualification from further par-  
15 ticipation in the program until such a systematic  
16 program was introduced.

17 (5) MODIFICATIONS.—Modifications may in-  
18 clude any of the following:

19 (A) Reduction in interest rates and fees.

20 (B) Forbearance of principal.

21 (C) Extension of the term to maturity.

22 (D) Other similar modifications.

23 (6) REDUCED LOSS SHARE PERCENTAGE FOR  
24 “UNDERWATER LOANS”.—For loan-to-value ratios  
25 above 100 percent, the government loss share shall

1 be progressively reduced from 50 percent to 20 per-  
2 cent as the current loan-to-value ratio rises, except  
3 that loss sharing shall not be available if the loan-  
4 to-value ratio of the first lien exceeds 150 percent.

5 (7) SIMPLIFIED LOSS SHARE CALCULATION.—

6 In order to ensure the administrative efficiency of  
7 this program, the calculation of loss share basis  
8 would be as simple as possible. In general terms, the  
9 calculation shall be based on the difference between  
10 the net present value, as defined by the Chairperson  
11 of the Federal Deposit Insurance Corporation, of the  
12 modified loan and the amount of recoveries obtained  
13 in a disposition by refinancing, short sale, or real es-  
14 tate owned sale, net of disposal costs as estimated  
15 according to industry standards. Interim modifica-  
16 tions shall be allowed.

17 (8) DE MINIMIS TEST.—To lower administra-  
18 tive costs, a de minimis test shall be used to exclude  
19 from loss sharing any modification that does not  
20 lower the monthly payment at least 10 percent.

21 (9) 8-YEAR LIMIT ON LOSS SHARING PAY-  
22 MENT.—The loss sharing guarantee shall terminate  
23 at the end of the 8-year period beginning on the  
24 date the modification was consummated.

1 (c) REGULATIONS.—The Corporation shall prescribe  
2 such regulations as may be necessary to implement this  
3 Act and prevent evasions thereof.

4 (d) TROUBLED ASSETS.—The costs incurred by the  
5 Federal Government in carrying out the loan modification  
6 program established under this section shall be covered  
7 out of the funds made available to the Secretary of the  
8 Treasury under section 118 of the Emergency Economic  
9 Stabilization Act of 2008.

10 (e) MODIFICATIONS TO PROGRAM.—The Chairperson  
11 of the Federal Deposit Insurance Corporation may make  
12 any modification to the program established under sub-  
13 section (a) that the Chairperson determines are appro-  
14 priate for the purpose of maximizing the number of fore-  
15 closures prevented.

16 (f) REPORT.—Before the end of the 6-month period  
17 beginning on the date of the enactment of this Act, the  
18 Chairperson of the Federal Deposit Insurance Corporation  
19 shall submit a progress report to the Congress containing  
20 such findings and such recommendations for legislative or  
21 administrative action as the Chairperson may determine  
22 to be appropriate.

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