

114TH CONGRESS
2D SESSION

H. R. 6500

To establish a Mortgage Credit Risk Sharing Pilot Program at Fannie Mae and Freddie Mac, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 8, 2016

Mr. DELANEY (for himself, Mr. CARNEY, and Mr. HIMES) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To establish a Mortgage Credit Risk Sharing Pilot Program at Fannie Mae and Freddie Mac, 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 “Moving Housing For-
5 ward Act of 2016”.

6 **SEC. 2. DEFINITIONS.**

7 (a) INCORPORATION OF DEFINITIONS.—Except as
8 otherwise provided in this Act, the terms used in this Act

1 have the meaning given those terms, respectively, under
2 section 1303 of the Federal Housing Enterprises Finan-
3 cial Safety and Soundness Act of 1992 (12 U.S.C. 4502).

4 (b) OTHER DEFINITIONS.—For purposes of this Act:

5 (1) CATASTROPHIC CREDIT LOSS.—The term
6 “catastrophic credit loss” means all potential credit
7 loss that exceeds both expected and unexpected cred-
8 it loss.

9 (2) COUNTERPARTY RISK.—The term “counter-
10 party risk” means, with regard to an enterprise, the
11 risk that any person contractually obligated to the
12 enterprise in any transaction will fail to perform in
13 accordance with the terms of the contractual obliga-
14 tion.

15 (3) CREDIT RISK.—The term “credit risk”
16 means the risk of loss to an enterprise on a residen-
17 tial mortgage loan held or guaranteed by the enter-
18 prise or on any security guaranteed by the enter-
19 prise that could result from a mortgagor’s failure to
20 repay the loan in accordance with its terms.

21 (4) CREDIT RISK TRANSFER.—The term “credit
22 risk transfer” means, with regard to an enterprise,
23 the sale or disposition of credit risk on loans guaran-
24 teed by an enterprise to another party, who assumes

1 the credit risk in accordance with agreed upon
2 terms.

3 (5) EXCLUDED REFINANCING.—The term “ex-
4 cluded refinancing” means a single family residential
5 mortgage loan that was originated under the Home
6 Affordable Refinance Program established by FHFA
7 or any other mortgage loan refinanced under a tem-
8 porary program that FHFA has determined not to
9 include in a credit risk transfer transaction entered
10 into by an enterprise prior to the date of enactment
11 of this Act. Such a determination not to include any
12 refinanced mortgage loan may be demonstrated by
13 prior actual exclusion and no other determination by
14 FHFA is required.

15 (6) EXPECTED CREDIT LOSS.—The term “ex-
16 pected credit loss” means credit loss that is reason-
17 ably anticipated under baseline economic conditions.

18 (7) FHFA.—The term “FHFA” means the
19 Federal Housing Finance Agency.

20 (8) PARI PASSU.—The term “pari passu”
21 means having equal rights of payment and equal se-
22 niority.

23 (9) UNEXPECTED CREDIT LOSS.—The term
24 “unexpected credit loss” means credit loss that is
25 reasonably anticipated under stressful, yet plausible,

1 economic conditions, and does not include expected
2 loss or catastrophic loss.

3 **SEC. 3. MORTGAGE CREDIT RISK SHARING PILOT PRO-**
4 **GRAM.**

5 (a) SENSE OF CONGRESS.—It is the sense of Con-
6 gress that—

7 (1) at the direction of FHFA, the enterprises
8 have entered into transactions to transfer credit risk
9 they assume by guaranteeing the payment of prin-
10 cipal and interest on securities backed by certain
11 residential mortgage loans; and

12 (2) credit risk transfer transactions should be
13 encouraged that reduce taxpayer exposure to credit
14 risk assumed by an enterprise and do not expose an
15 enterprise to excessive counterparty risk.

16 (b) ESTABLISHMENT.—Subject to the requirements
17 of this section, the Director shall require each enterprise
18 to establish a Mortgage Credit Risk Sharing Pilot Pro-
19 gram (in this section referred to as the “Pilot Program”).

20 (c) PILOT PROGRAM REQUIREMENTS.—Under the
21 Pilot Program, FHFA shall direct each enterprise to, each
22 quarter beginning with the first quarter following the end
23 of the 9-month period beginning on the date of the enact-
24 ment of this Act, conduct risk-sharing transactions that
25 provide for an enterprise to share credit risk on a pool

1 of single-family residential mortgage loans that back secu-
2 rities on which the enterprise guarantees the timely pay-
3 ment of principal and interest with the private sector.
4 Such transactions shall meet the following requirements:

5 (1) TARGETED LOANS.—Credit risk shall be
6 transferred on targeted loans. Targeted loans are
7 residential mortgage loans that—

8 (A) are single family residential mortgage
9 loans;

10 (B) are not the result of an excluded refi-
11 nancing, as determined by FHFA; and

12 (C) are a representative sample of the un-
13 paid principal balance loans eligible for the to-
14 be-announced market.

15 (2) LOSSES TRANSFERRED THROUGH THE
16 PILOT PROGRAM.—

17 (A) IN GENERAL.—Each enterprise shall
18 transfer to the private sector—

19 (i) either all or the majority of the ag-
20 gregate risk shared on a pari passu basis
21 of the expected and unexpected loss on the
22 unpaid principal balance on the trans-
23 actions; and

24 (ii) a target of at least 10 percent in
25 a vertical position of the risk of all of the

1 catastrophic credit loss on the unpaid prin-
2 cipal balance on the transactions.

3 (B) AUTHORITY OF THE DIRECTOR.—The
4 Director may permit an enterprise to transfer
5 less than 10 percent in a vertical position of the
6 risk of catastrophic credit loss during a transi-
7 tion period, up until 15 months after the date
8 of the enactment of this Act, to compliance with
9 the 10 percent target of the Pilot Program.

10 (C) TREATMENT OF CATASTROPHIC
11 RISK.—Risk of catastrophic credit loss shall be
12 transferred on a pari passu basis.

13 (3) SCOPE OF THE PILOT PROGRAM.—The Di-
14 rector shall require that credit risk on at least 5 per-
15 cent of new acquisitions, as defined by the Director,
16 of targeted loans described in paragraph (1) shall be
17 transferred through the Pilot Program. Each enter-
18 prise may vary the percentage of new acquisitions of
19 targeted loans transferred through the Pilot Pro-
20 gram, provided that the average annual percentage
21 over each year of the Pilot Program is not less than
22 5 percent.

23 (4) MEASUREMENTS.—In carrying out the Pilot
24 Program, FHFA shall measure the credit risk and
25 the amount of risk transferred.

1 (5) ADDITIONAL REQUIREMENTS.—In carrying
2 out the Pilot Program, the enterprises shall—

3 (A) collect and disclose loan-level data on
4 each of the mortgage loans backing the credit
5 risk transactions, including consumer credit
6 score information and the loan-to-value ratio of
7 the loan; and

8 (B) refine transaction structure designs to
9 improve execution.

10 (d) PROMOTION OF MARKET FOR CREDIT RISK
11 TRANSACTIONS.—With respect to all credit risk transfer
12 transactions of an enterprise, including any transaction
13 under the Pilot Program, the Director shall do the fol-
14 lowing:

15 (1) Work to ensure a secondary market for
16 credit risk transfer products that will give investors
17 as deep and liquid a market.

18 (2) Not later than 1 year after the date of the
19 enactment of this Act, in consultation with the Secu-
20 rities Exchange Commission, the Commodity Fu-
21 tures Trading Commission, and any Federal banking
22 agency as appropriate, issue a report to the Com-
23 mittee on Financial Services of the House of Rep-
24 resentatives and the Committee on Banking, Hous-
25 ing, and Urban Affairs of the Senate that provides

1 recommendations on how to incentivize additional
2 sources of private capital to participate in credit risk
3 transfer transactions, including regulatory actions
4 taken and recommendations for legislative proposals
5 to remove impediments to such participation. Noth-
6 ing in the preceding sentence is intended to prevent
7 or delay FHFA or another agency from developing
8 and implementing a regulatory action to remove any
9 impediment to or incentivize such participation prior
10 to issuance of such report as authorized under cur-
11 rent law.

12 (3) Require the enterprises to make 60 percent
13 of mortgages available to be subject to credit risk
14 transactions in the first fiscal year after the date of
15 the enactment of this Act, 70 percent in the second
16 fiscal year after such date of enactment, and 80 per-
17 cent in the third fiscal year after such date of enact-
18 ment.

19 (e) CAPITAL STANDARDS.—

20 (1) IN GENERAL.—The Director may set capital
21 or collateral requirements for participants in the
22 Pilot Program.

23 (2) USE OF CERTAIN CAPITAL MARKETS TRANS-
24 ACTIONS.—In setting capital standards under para-
25 graph (1), the Director shall allow participants to

1 prudently reduce or eliminate any capital require-
2 ments for credit-risk sharing transactions through
3 the use of capital markets transactions that pre-fund
4 the risk, including credit-linked notes.

5 (f) ECONOMIC CONSIDERATIONS.—If the Director of
6 the FHFA and the Secretary of the Treasury determine
7 that the Pilot Program is economically unreasonable due
8 to housing market conditions, the Director may lower the
9 percentage amounts specified under subsection (c)(2),
10 (c)(3), or (d)(1)(C).

11 (g) FHFA REPORTS.—

12 (1) IN GENERAL.—Not later than 1 year after
13 the date of the enactment of this Act, and annually
14 thereafter, the Director shall provide a report to the
15 Committee on Financial Services of the House of
16 Representatives and the Committee on Banking,
17 Housing, and Urban Affairs of the Senate con-
18 taining—

19 (A) information on credit risk transfer
20 transaction pricing on quarterly basis;

21 (B) the amount of credit risk that has
22 been transferred from the enterprises on a
23 quarterly basis;

24 (C) metrics and annual goals regarding the
25 Pilot Program;

1 (D) the percentage of the unpaid principal
2 balance of mortgage loans covered under the
3 Pilot Program in each year;

4 (E) a description of how the FHFA in-
5 tends to move forward with mortgage insurance
6 focused transactions following the recently fi-
7 nalized mortgage insurance master policy re-
8 quirements and private mortgage insurer eligi-
9 bility requirements, and how the FHFA evalu-
10 ates the remaining counterparty risk with mort-
11 gage insurers;

12 (F) a description of new credit risk trans-
13 fer pilot programs that FHFA intends an en-
14 terprise to undertake over the next three years
15 and steps FHFA intends to take to solicit new
16 ideas for new and innovative ways to transfer
17 credit risk away from the enterprises and the
18 taxpayers, including transfers of expected, un-
19 expected, and catastrophic credit loss; and

20 (G) a description of how FHFA plans to
21 transition from credit risk sharing pilot pro-
22 grams to a regular standardized program of
23 credit risk transfers that establish a stable and
24 liquid market for mortgage credit risk.

1 (2) SOLICITATION OF PUBLIC FEEDBACK.—In
2 preparing any report required under paragraph (1),
3 the Director shall solicit public feedback, including
4 feedback to—

5 (A) generate new potential forms of credit
6 risk transfer; and

7 (B) identify potential barriers to entry for
8 private sector parties to invest in such trans-
9 actions.

10 (3) CONFIDENTIALITY.—In issuing any report
11 under paragraph (1), the Director shall protect
12 counterparty proprietary data, including in making
13 information available about the Pilot Program.

14 (h) RULE OF CONSTRUCTION.—Nothing in this sec-
15 tion shall be construed to limit the ability of the Director
16 to conduct customized risk sharing transactions as author-
17 ized under current law.

18 (i) DURATION OF THE PILOT PROGRAM.—

19 (1) IN GENERAL.—The Pilot Program shall last
20 a minimum of 3 years after the first transfer of cat-
21 astrophic credit loss. The Director may continue to
22 direct the enterprises to transfer risk of credit loss,
23 including risk of catastrophic credit loss, and may
24 continue to enter into credit risk transfer trans-
25 actions to transfer such risk after the end of 3 years

1 under authority prior to the enactment of the Pilot
2 Program.

3 (2) ANALYSIS.—After the Pilot Program is exe-
4 cuted for 3 years, the Director shall examine the ec-
5 onomics of developing the Pilot Program into a con-
6 tinuous risk sharing program.

7 **SEC. 4. REGULATORY IMPLEMENTATION OF CREDIT RISK-**
8 **SHARING MARKET.**

9 (a) APPLICATION OF SECTION 3 OF THE INVEST-
10 MENT COMPANY ACT OF 1940.—For any credit risk
11 transfer transaction approved by the Director, including
12 a transaction in which credit risk is transferred on mort-
13 gage loans that do not directly back the securities being
14 issued, the issuer shall be deemed to be a person primarily
15 engaged in the business of purchasing or otherwise acquir-
16 ing mortgages or other liens on and interests in real estate
17 for purposes of section 3(c)(5) of the Investment Company
18 Act of 1940 (15 U.S.C. 80a-3).

19 (b) FEDERAL INCOME TAX TREATMENT.—

20 (1) REAL ESTATE MORTGAGE INVESTMENT
21 CONDUITS.—For purposes of sections 860A through
22 860G of the Internal Revenue Code of 1986 (the
23 “Code”)—

24 (A) any financial instrument issued by an
25 enterprise (or a legal entity sponsored by an en-

1 enterprise to implement a credit risk transfer
2 transaction) as part of a credit risk transfer
3 transaction shall be treated as a “qualified
4 mortgage”; and

5 (B) any amount includible in gross income
6 with respect to such a financial instrument
7 shall be treated as interest on a “qualified
8 mortgage”.

9 (2) REAL ESTATE INVESTMENT TRUSTS.—For
10 purposes of Code sections 856 through 860—

11 (A) any financial instrument issued by an
12 enterprise (or a legal entity sponsored by an en-
13 terprise to implement a credit risk transfer
14 transaction) as part of a credit risk transfer
15 transaction shall be treated as a “real estate
16 asset”; and

17 (B) any amount includible in gross income
18 with respect to such a financial instrument
19 shall be treated as interest on an obligation se-
20 cured by a mortgage on real property.

21 (3) TAXABLE MORTGAGE POOLS.—A credit risk
22 transfer transaction entered into by an enterprise
23 (or a legal entity sponsored by an enterprise) shall
24 not be treated as a “taxable mortgage pool” for pur-
25 poses of section 7701(i) of the Code.

1 (4) REGULATIONS.—The Secretary of the
2 Treasury shall prescribe such regulations or admin-
3 istrative guidance as may be necessary or appro-
4 priate to carry out the purposes of this subsection.

5 (c) RULE OF APPLICATION.—Subsections (a) and (b)
6 shall apply in the case of any risk transfer transaction
7 and any financial instrument issued by the enterprise (or
8 a legal entity sponsored by an enterprise to implement a
9 credit risk transfer transaction) as part of a credit risk
10 transfer transaction that is outstanding on, or is issued
11 after, the date of the enactment of this Act.

12 (d) CONFORMING AMENDMENTS.—

13 (1) INVESTMENT COMPANY ACT OF 1940.—Sec-
14 tion 3(c)(5) of the Investment Company Act of 1940
15 (15 U.S.C. 80a–3(c)(5)) is amended by adding at
16 the end the following: “For any credit risk transfer
17 transaction approved by the Director of the Federal
18 Housing Finance Agency, including a transaction in
19 which credit risk is transferred on mortgage loans
20 that do not directly back the securities being issued,
21 the issuer shall be deemed to be a person primarily
22 engaged in the business of purchasing or otherwise
23 acquiring mortgages or other liens on and interests
24 in real estate.”.

1 (2) RULE OF APPLICATION.—The amendments
2 made by paragraph (1) shall apply in the case of
3 any credit risk transfer transaction and any finan-
4 cial instrument issued by an enterprise (or a legal
5 entity sponsored by an enterprise to implement a
6 credit risk transfer transaction) as part of a credit
7 risk transfer transaction that is outstanding on, or
8 is issued after, the date of the enactment of this Act.

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