

**Summary and Explanation  
GSE, Housing, and FHA Provisions  
Housing and Economic Recovery Act of 2008**

**Prepared for the  
Council of Federal Home Loan Banks**

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## **Housing and Economic Recovery Act of 2008**

### **Summary and Explanation of Provisions Relating to the GSEs, FHA, Hope for Homeowners, Mortgage Origination and Related Matters**

*On July 30, 2008 President Bush signed into law the Housing and Economic Recovery Act of 2008, Public Law 110-289. This paper provides an explanation of the provisions of this law relating to the Government Sponsored Enterprises and Federal Home Loan Banks, the Hope for Homeowners program, licensing and registration requirements for loan originators, modernization of the FHA program, protection for military service members, Federal assistance for the acquisition of abandoned and foreclosed properties and new disclosure requirements. Provisions relating to veterans housing, public housing, housing preservation, and the tax laws (with the exception of Section 149) are not discussed in this paper.*

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## **DIVISION A: FEDERAL HOUSING FINANCE REGULATORY REFORM ACT TITLE I – REFORM OF REGULATION OF ENTERPRISES**

### **Subtitle A – Improvement of Safety and Soundness Supervision**

#### *Establishment of the Federal Housing Finance Agency*

This title transfers the responsibilities of the Office of Federal Housing Enterprise Oversight (OFHEO) and the Federal Housing Finance Board (FHFB) to a new independent body, the Federal Housing Finance Agency (FHFA). FHFA is granted general regulatory authority over each of the regulated entities (Fannie Mae, Freddie Mac, and the 12 Federal Home Loan Banks) and the Office of Finance of the Federal Home Loan Bank System. [Section 1101 Effective July 30, 2008]

The FHFA is headed by a Director, who is appointed to a five-year term with the advice and consent of the Senate. Until a Director is appointed and confirmed, the head of OFHEO on the date of enactment (James Lockhart) acts as the Director of FHFA.

The Director appoints a Deputy Director for the Division of Enterprise Regulation, a Deputy Director for the Division of Federal Home Loan Bank Regulation, and a Deputy Director for Housing Mission and Goals. The Deputy for Housing Mission and Goals has oversight of the housing mission and goals of the Enterprises, and the housing finance and community and economic development mission of the FHLBanks. In carrying out this mission, this Deputy Director must consider the differences between the Enterprises and FHLBanks. [Section 1101]

#### *Duties and Authorities of the Director*

The principal duties of the Director are to oversee the prudential operations of each regulated entity, and to ensure that they operate in a safe and sound manner; that they foster liquid, efficient, competitive and resilient national housing finance markets; comply with applicable law and regulations, and only engage in activities consistent with statutory authority and the public interest. The Director has independent litigation authority and independence in testifying before Congress. [Section 1102]

#### *Federal Housing Finance Oversight Board*

The Act establishes the Federal Housing Finance Oversight Board, composed of the Secretaries of Treasury and HUD, the Chairman of the SEC, and the Director. The Oversight Board functions solely as an advisory body to the Director. The Oversight Board will testify annually before Congress on such matters as the safety and soundness of the regulated entities, an evaluation of their performance in carrying out their missions, and the operations and performance of the FHFA. [Section 1103]

### *Reports*

The regulated entities will file regular reports with FHFA, including financial statements determined on a fair value basis. Any regulated entity that fails to make a required report, or to obtain information required by FHFA, or that submits false or misleading information, is subject to civil money penalties. [Section 1104]

### *Inspector General and Ombudsman*

The Act provides for an Inspector General for the FHFA, and requires the Director to establish an Office of the Ombudsman to consider complaints from any regulated entity or person that has a business relationship with a regulated entity. [Section 1105]

### *Assessments*

The Director will collect annual assessments from the entities as necessary to provide for the reasonable costs and expenses of the FHFA, including a working capital fund. Assessments on the Enterprises may not exceed amounts for the costs (including working capital funds) related to the supervision and regulation of the Enterprises. Assessments on the Federal Home Loan Banks are likewise limited. Assessments against any entity that is not adequately capitalized may be increased to pay for additional supervisory expenses. The Director may also adjust an assessment on any particular entity to ensure that the costs of enforcement activities are borne only by that entity.

Assessments are not Government funds, are not subject to apportionment, and may be invested in bank accounts or Treasury securities. [Section 1106]

### *Prudential Management and Operations Standards*

The Director will establish standards, by rule or guideline, for each regulated entity relating to 11 different management or operational areas, such as internal controls, audit, interest rate risk, market risk, liquidity, and counterparty and credit risk. If an entity fails to meet a standard, it must submit a plan for corrective action. [Section 1108]

### *Review of Enterprises' Assets and Liabilities*

FHFA must issue a regulation establishing criteria for the portfolio holdings of the Enterprises, to ensure that current and future holdings are supported by adequate capital and are consistent with the mission and safe and sound operations of the Enterprises. Regulations are due 180 days after enactment. [Section 1109]

### *Risk-Based Capital*

The new agency must establish, by regulation, risk-based capital requirements for the Enterprises and for the FHLBanks. [Section 1110]

### *Minimum Capital*

FHFA regulations may establish minimum capital ratios for the Enterprises, for the FHLBanks, or both, that is higher than the levels established under current law. By order, the Director may require a particular entity to increase its capital for a temporary period. The Director is to issue regulations establishing standards for the imposition of such temporary capital requirement, and the time frame pursuant to which this additional requirement will be reviewed. The Director, by order or regulation, may establish a capital or reserve requirement for any particular product or activity.

The new agency will periodically review the amount of core capital maintained by the Enterprises, the amount of capital retained by the FHLBanks, and the minimum capital levels for the entities. [Section 1111]

### *SEC Registration*

Equity securities issued by the Enterprises must be registered with the SEC. Each FHLBank is required to register, within 120 days of enactment, a class of common stock. The FHLBanks are also required to comply with SEC rules issued pursuant to Section 10A (m) of the '34 Act relating to independent audit committees. [Section 1112]

### *Executive Compensation*

FHFA may prohibit any regulated entity from paying compensation to any executive officer that is not reasonable and comparable with compensation for employment in other similar businesses. FHFA may not prescribe or set a specific level

or range of compensation. However, the agency may require a regulated entity to withhold any payment, transfer or disbursement of compensation. [Section 1113]

#### *Golden Parachutes and Indemnification*

FHFA may limit or prohibit payments made to parties that are contingent upon the insolvency of the regulated entity or that are received after the date on which the entity is insolvent or the date on which a conservator or receiver has been appointed, or paid in contemplation of such an occurrence. The agency may also prohibit payments to reimburse any party for legal expenses or other liability, if the person is removed from office or if the action results in a cease-and-desist order or civil money penalty against that person. [Section 1114]

#### *Reporting Fraudulent Loans*

A regulated entity is required to make a timely report once it has discovered that it has purchased or sold a fraudulent loan, or suspects a possible fraud. Regulated entities must establish procedures to discover fraudulent transactions. [Section 1115]

#### *Inclusion of Minorities and Women*

All regulated entities must establish an Office of Minority and Women Inclusion. The Office is responsible for carrying out certain affirmative action programs pursuant to regulations issued by the Director. Among the new requirements, each regulated entity must develop and implement standards and procedures to ensure, to the maximum extent possible, the inclusion of minority- and women-owned businesses in all business activities of the entities. Each regulated entity must include in its annual report detailed information on compliance. The Director is also required to take affirmative steps to seek diversity at all levels of FHFA's workforce. [Section 1116]

#### *Temporary Authority for Treasury Investment in Regulated Entities*

Although the Act does not explicitly provide for the U.S. Government backing of any regulated entity, the legislation does authorize the Secretary of the Treasury to purchase obligations and securities issued by an Enterprise, as well as any obligation (but not security) issued by a Federal Home Loan Bank, on such terms and conditions as the Secretary may determine. To use this authority, the Secretary must determine that the investment is necessary to provide stability to the financial markets, prevent disruptions in the availability of mortgage funds, and to protect the taxpayer. The Secretary must consider the need for preferences or priorities regarding payment to the Government, limits on maturity, the regulated entity's plan for the orderly resumption of private funding, the probability of the entity fulfilling the terms of the obligation, the need to maintain the private shareholder-owned status of the entity, and restrictions on the entity's resources (such as limitations on dividends). In addition, the regulated entity involved must agree to the issuance of the securities or obligations to be purchased by the Treasury. This authority expires on December 31, 2009. [Section 1117]

### *Consultations with the Federal Reserve Board*

The Director of the FHFA must consult with the Federal Reserve before issuing any proposed or final regulation, order, or guideline concerning prudential and operational standards, safe and sound operations, and capital requirements and portfolio standards applicable to the regulated entities. Consultation is also required before putting a regulated entity into conservatorship or receivership. FHFA is to share information with the Federal Reserve regarding the financial condition of the entities on a regular periodic basis. This consultation requirement terminates on December 31, 2009. [Section 1118]

### **Subtitle B – Improvement of Mission Supervision**

#### *Assumption of Housing Mission Responsibilities*

The housing mission responsibilities of the Secretary of HUD are transferred to the Director of FHFA. The Secretary of HUD retains his responsibilities with respect to the Fair Housing Act. [Section 1122]

#### *Review of Enterprise Products*

An Enterprise must obtain FHFA approval for any new product. Approval is based on whether the product is authorized by statute, in the public interest, and consistent with the safety and soundness of the Enterprise or the mortgage finance system. The agency publishes the proposal and accepts comments for 30 days. Within 30 days after the close of the comment period, the agency must approve or deny approval. If no action is taken the product is deemed approved. FHFA may temporarily approve a new product without a comment period if exigent circumstances exist that make delay contrary to the public interest. This process does not apply to the automated loan underwriting system or to modifications in loan terms or underwriting criteria, so long as the modification does not alter the transaction to include services other than residential mortgage financing.

If an Enterprise believes that a new activity is not a new “product,” it may provide written notice to the Director, who will have 15 days to determine if the activity is in fact a “product” subject to the review procedure. [Section 1123]

#### *Conforming Loan Limits*

The conforming loan limits for the Enterprises are to be adjusted each year, beginning on January 1, 2009. The limit is calculated by increasing \$417,000 by the change in house price index maintained by the Director. However, if the change is negative, the conforming loan limit is not reduced. Instead, declines in the house price index are accumulated and then used to reduce a future increase.

In high cost areas a special rule applies. A high cost area is defined as an area in which 115 percent of the median house price exceeds the conforming loan limit. In such an area the loan limit is the lesser of 115 percent of the median house price in that area or 150 percent of the conforming loan limit (e.g., \$625,500 for 2009, based on a conforming loan limit of \$417,000) [Section 1124]

#### *Sense of the Congress on Securitization*

The law contains a Sense of the Congress that the Enterprises are encouraged to securitize mortgages acquired under the increased conforming loan limits established by the Act. [Section 1124]

#### *Housing Price Index; Housing Report; Public Use Database*

FHFA will establish a method for assessing the national average single family house price for use in determining the conforming loan limits. The agency is also required to submit a report to Congress on how the Enterprises are meeting their housing goals and actions the Enterprises could take to promote and expand the purposes of the Enterprise. The report must also analyze data on income, race and gender by census tract; identify the extent of purchases and secondary market activities with subprime mortgages and nontraditional loans; and report other similar information.

The new agency is required to conduct a monthly survey to collect data on the characteristics of individual mortgages that are or are not eligible for purchase by the Enterprises. Data to be surveyed includes the price of the home, loan to value ratio, the terms of the mortgage, the creditworthiness of the borrower, and whether the mortgage was purchased by an Enterprise. The survey is also to include similar data on subprime and nontraditional. The data collected is to be publicly available.

In addition, the Act requires the public disclosure, on a census tract basis, of the same data reported by the Enterprises as is reported by depository institutions under the Home Mortgage Disclosure Act, as well as the information collected by the Director relating to high cost mortgages purchased by the Enterprises. [Section 1127]

#### *Housing Goals*

The Director is to set housing goals for the Enterprises effective as of 2010. Before that date, the 2008 goals will remain effective, but the Director is to consider whether such goals should be changed in 2009 in light of market conditions. As part of this review, the Director must solicit public comment.

By regulation, the Director is to establish single-family housing goals that include goals for purchase money mortgages and refinancing mortgages. The Director will also establish goals for the purchase of multi-family mortgages. These goals may be revised to account for changes in market or economic conditions, or if efforts to meet a goal

would result in the constraint of liquidity or over-investment in certain markets, or to avoid other similar consequences. [Section 1128]

#### *Interest Rate Disparities*

The Enterprises are to provide data on disparities in interest rates charged to minorities compared to non-minorities. If the agency determines that such disparities exist for a particular lender, such finding must be referred to the appropriate regulatory enforcement agency. Director is to submit a report to Congress. [Section 1128]

#### *Duty to Serve Underserved Markets*

The statute provides that the Enterprises have a duty to increase the liquidity of mortgage investments and improve the distribution of mortgage funds for underserved markets. The Enterprises are required to develop loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages for very low-, low-, and moderate-income families. Effective in 2010, the Director is to establish, by regulation, a method for evaluating compliance, and for rating the Enterprises based on their compliance. [Section 1129]

#### *Enforcement of Housing Goals and Duty to Serve Underserved Markets*

If FHFA finds that an Enterprise failed to meet a housing goal, the agency will serve a notice on the Enterprise, which then has 30 days to respond. After consideration of the response, if any, the agency may require the Enterprise to submit a remediation plan. If the plan is unacceptable, or if the Enterprise fails to comply with the plan, FHFA may issue a cease-and-desist order or impose a civil money penalty. A failure to comply with the duty to serve underserved markets is treated similarly, except the only enforcement remedy for failure to submit or comply with a remedial plan is the imposition of a civil money penalty. [Section 1130]

#### *Affordable Housing Programs*

The Secretary of HUD is to establish a Housing Trust Fund to award grants to States to increase the supply of rental housing and homeownership for extremely low- and very low-income families. The statute establishes a Capital Magnet Fund in the Treasury to award grants for the purpose of attracting private capital for the development and preservation of housing for extremely low-income, very low- income and low-income families. Grants may also be given to increase private investment in economic and community service facilities. Grants can be used to fund loan loss reserves, to capitalize a revolving fund, and for other forms of risk sharing. Grants are expected to be leveraged so that they support financing activities equal to at least 10 times the amount of the grant.

The Enterprises are to set aside an amount equal to 4.2 basis points of the unpaid principal balance of total new business purchases for several purposes. Of that amount,

25 percent, or 1.05 basis points, is to be deposited into a HOPE Reserve Fund established in the Treasury. This is a permanent allocation that will be used to pay for losses under the HOPE for Homeowners program, and thereafter be used to reduce the Federal deficit. Of the remaining 3.15 basis points, 65 percent is allocated to the Housing Trust Fund and 35 percent to the Capital Magnet Fund. The Director can suspend payments, if necessary, to avoid financial instability or undercapitalization of an Enterprise. By regulation, the Director shall prohibit the Enterprises from passing on the 4.2 basis point allocation to loan originators.

For years 2009 through 2011, a portion of the amounts allocated for the Housing Trust Fund and the Capital Magnet Fund is diverted to the Treasury to help pay for the HOPE for Homeowners program. This is in addition to the 1.05 basis point permanent allocation explained above. In 2009, all of the 3.15 basis points allocation is diverted to the Treasury. In 2010, the amount diverted is reduced to 50 percent of the 3.15 basis points, and in 2011, the amount is reduced to 25 percent. The following year, this allocation is phased out, leaving only the 1.05 permanent contribution. [Section 1131]

#### *Financial Education and Counseling*

The Treasury is authorized to make grants to eligible organizations to provide financial education and counseling services for prospective homebuyers. The grants are subject to appropriations. [Section 1132]

#### *Transfer of HUD Personnel*

HUD employees with responsibilities primarily involving the establishment and enforcement of the Enterprises' housing goals are transferred to FHFA effective as of July 30, 2008. Such employees are guaranteed a position with the same status, tenure, grade and pay. Permanent transferred employees may not be removed except for cause prior to July 30, 2009. [Section 1133]

### **Subtitle C – Prompt Corrective Action**

#### *Critical Capital Levels*

The bill does not amend the prior statutory definition of critical capital levels as applied to the Enterprises: 1.25 percent of on-balance sheet assets, plus .25 percent of off-balance sheet mortgage backed securities issued or guaranteed by the Enterprise, plus .25 percent of other off-balance sheet obligations. For the Federal Home Loan Banks the new law provides that FHA shall define the critical capital level, after considering the critical capital levels established for the Enterprises, but also after taking into consideration the different operations of the Federal Home Loan Banks and the Enterprises. Regulations are due within 180 days of enactment. [Section 1141]



### *Capital Classifications for the Federal Home Loan Banks*

The Director is directed to establish classifications for the FHLBanks: adequately capitalized, undercapitalized, significantly undercapitalized, and critically undercapitalized. The criteria to assign Banks to a classification will take into account the amount and types of capital held by a Bank, and the risk-based minimum and critical capital levels of the Banks. The Director will also consider the capital classifications established for the Enterprises, but make appropriate modifications to reflect the difference in operations between the Banks and the Enterprises. [Section 1142]

### *Discretionary Reclassification*

FHFA may reclassify an Enterprise or a Bank if it determines that the entity is engaging in conduct that could result in a rapid depletion of core or total capital, or that the value of collateral has decreased significantly in value. A reclassification may also be based on a finding that the entity is in an unsafe or unsound condition or engaging in unsafe or unsound practices. [Section 1142]

### *Capital Distribution*

A regulated entity may not make a capital distribution if making such a distribution would result in the entity becoming undercapitalized. [Section 1142]

### *Remedial Actions*

If an entity is undercapitalized, FHFA may take a wide range of remedial actions, such as restricting asset growth and requiring the replacement of existing management. [Sections 1143-1144]

### *Conservatorship and Receivership*

The Director is required to put a regulated entity into a receivership if the Director determines that the entity has assets that are less than its liabilities for the preceding 60 calendar days, or if the entity has not been paying its debts as they come due for the preceding 60 calendar days.

The Director may put an entity into a receivership or conservatorship for a number of reasons. For example, a conservator or receiver may be appointed if the Director determines that any one of the following conditions exist: insufficient assets; unsafe or unsound condition; losses that will deplete substantially all of the entity's capital and no reasonable prospect for recapitalization; unlikely to be able to pay obligations in the normal course of business; the entity is critically undercapitalized; willful violation of a cease and desist order; or failure to implement a capital restoration plan. A receiver or conservator is given broad powers over a regulated entity, similar to the powers given to the FDIC when it acts in a similar role for an insured bank, including the ability to establish a bridge institution called, in this case, a "limited-life regulated

entity.” If an Enterprise is placed into a receivership, the receiver must use a limited life Enterprise which will succeed to the charter of the Enterprise and continue in existence for up to two years. The use of the limited life entity for a Federal Home Loan Bank in receivership is optional with the receiver. [Section 1145]

### **Subtitle D – Enforcement**

FHFA has the same types of enforcement powers as the banking agencies. These powers include cease-and-desist orders, removal of personnel, and civil money penalties. FHFA may petition a court for enforcement of an effective order or notice (under this subtitle or subtitle B), or to obtain a subpoena, without the need for Department of Justice approval. [Sections 1151-1158]

### **Subtitle E – General Provisions**

#### *Presidentially Appointed Directors of Enterprises*

The new law changes the number of directors for Fannie Mae and Freddie Mac to 13, or such other number as the Director may determine. All directors will be elected. However, existing appointed directors are to serve the remainder of their annual term. [Section 1162]

## **TITLE II – FEDERAL HOME LOAN BANKS**

#### *Recognition of the Distinction between the Banks and the Enterprises*

Prior to promulgating any regulation or taking any other formal or informal agency action of general applicability and future effect, including examination guidance, the Director must consider the differences between the Banks and the Enterprises, with respect to the Banks’ cooperative ownership structure; their mission of providing liquidity to members; their affordable housing and community development mission; capital structure; joint and several liability; and any other differences the Director considers appropriate. [Section 1201]

#### *Bank Directors*

The new law sets the number of directors for each Bank at 13, or such other number as the Director of the FHFA may determine appropriate. All directors are to be elected. At least two-fifths of the directors are to be “independent,” meaning that these directors may not also serve as an officer of any Bank, or as a director, officer or employee of a member of any of the Banks, or any entity that receives advances from any Bank. However, independent directors may hold shares or have other financial interests in a member institution.

At least two of the independent directors must have at least four years experience in representing community or consumer interests (public interest directors). Independent directors are to be nominated by each Bank's board of directors, after consultation with the Advisory Council for that Bank, and pursuant to procedures contained in the Bank's by-laws. The nomination process must also be consistent with the regulations of the Federal Housing Finance Agency.

Directors serve four-year terms, and may not serve more than three consecutive terms. Each Bank may pay its directors reasonable compensation for the time required, and necessary expenses, in accordance with the resolutions adopted by each Bank, but subject to the approval of the Director. FHFA must include information on director compensation in its annual report to Congress.

The "grandfather" clause that requires each State to have at least as many director slots as the State had on December 31, 1960 is retained, except in the case of a merger of two or more Banks.

Any directors serving on July 30, 2008 may continue to serve until his or her term has expired. [Section 1202]

#### *Office of Finance and Other Joint Offices*

The existing prohibition on the establishment of joint offices (other than the Office of Finance) is deleted. The Office of Finance is designated as the unit to issue and service Bank System consolidated debt. [Section 1204]

#### *Housing Goals*

The FHFA Director will establish housing goals with respect to the purchase of mortgages, *if any*, by the Federal Home Loan Banks. The goals are to be consistent with the goals established for the Enterprises, but the Director must also consider the unique mission and ownership structure of the Banks. A two-year transition period is established to allow the goals to be phased in. The Director is to report to Congress annually on the performance of the Banks in meeting these goals. [Section 1205]

#### *Community Development Financial Institution*

Community development financial institutions certified under the Community Development Banking and Financial Institutions Act of 1994 are eligible for Bank membership. [Section 1206]

#### *Information Sharing*

In order to allow a Federal Home Loan Bank to evaluate the condition of other Federal Home Loan Banks, the Director is to make available to each Bank reports, records or other information relating to the condition of each Bank. A Bank may request

that information be treated as proprietary and confidential. No privilege is waived through this process. The Director must issue regulations to facilitate the sharing of information. [Section 1207]

#### *SEC Registration and Exemptions*

The new law provides a number of exemptions for the Banks from the requirements of the securities laws dealing with such matters as proxies, purchasing their own securities, certain periodic reports, and tender offers. In issuing any implementing regulations, the SEC must take into account the distinctive nature of the Banks when evaluating the accounting treatment of payments to the Resolution Funding Corporation, the role of the combined financial statement of the Banks, the classification of redeemable capital stock, and the accounting treatment related to the joint and several nature of Bank obligations. [Section 1208]

#### *Voluntary Mergers*

Any Federal Home Loan Bank may, with the approval of the Director and the boards of the Banks involved, merge with another Bank. The Director is to promulgate regulations establishing the conditions and procedures for the approval of any such merger, including the procedures for member approval. [Section 1209]

#### *Authority to Reduce Districts*

The number of districts may be reduced to less than 8 as a result of a voluntary merger or the decision of the Director to liquidate a Bank. [Section 1210]

#### *Community Financial Institutions*

The maximum size for a community financial institution member is increased from \$500 million to \$ 1 billion. Advances to these institutions may be secured by community development related collateral, and advances may be given to these institutions for community development purposes. [Section 1211]

#### *Report on Collateral and Mortgages Purchased*

The Director is to submit an annual report to Congress on the collateral pledged to the Banks, including an analysis of collateral by type and Bank district. Each Bank is required to provide census tract level data on mortgages purchased, if any. The data must include the same data elements required to be reported under the Home Mortgage Disclosure Act, as well as the data elements that Fannie and Freddie must provide with respect to their mortgage purchases. The FHFA will make this data publicly available, unless it is deemed proprietary. [Section 1212]

### *REFCORP Reports*

FHFA must submit semi-annual reports to Congress on the projected date for the completion of REFCORP payments. [Section 1213]

### *Liquidation or Reorganization of a Federal Home Loan Bank*

Existing authority to liquidate or reorganize a Federal Home Loan Bank (outside of the new receivership provisions) is retained, but the Director is to provide at least 30 days prior notice. A Bank may contest the decision to liquidate or reorganize and has the right to a hearing on the record before an Administrative Law Judge. [Section 1214]

### *Securitization Study*

The Director is to undertake a study on securitization of home mortgage loans purchased by a Bank under the Acquired Member Asset program. The study will consider the benefits and risks of securitization, the potential impact on liquidity in the mortgage and credit markets, the ability of the Banks to manage risks, the impact on existing activities, and the joint and several liability of the Banks. The Director is to consult with the Banks, the Office of Finance, and industry experts. A report is due by July 30, 2009. [Section 1215]

### *Study on Federal Home Loan Bank Advances*

The Director is to conduct a study on the extent to which loans and securities used to support Bank advances are consistent with the interagency guidance on non-traditional mortgage products. A report is due to Congress by July 30, 2009. [Section 1217]

### *Refinancing Authority*

Until July 30, 2010, AHP subsidized advances may be used to refinance loans for families having an income at or below 80 percent of the median area income. [Section 1218]

### *Tax Exempt Bonds*

The legislation includes amendments to Section 149 of the Internal Revenue Code making certain bonds guaranteed by the FHLBanks eligible for treatment as tax exempt bonds. This amendment applies to bonds issued between July 30, 2008 and December 31, 2010. [Section 3023]

### **TITLE III – TRANSFER OF FUNCTIONS AND PERSONNEL**

#### *Abolition of OFHEO and the FHFB*

Effective as of July 30, 2009, OFHEO and the FHFB are abolished. Until that date, OFHEO and the FHFB may take actions solely for the winding up of the affairs of each agency. Also during this period, the Director of the FHFA may use the property and services of OFHEO and FHFB personnel to assist the Director in performing services transferred to the FHFA. [Sections 1301 and 1311]

#### *Continuation of Existing Regulations and Orders*

All effective regulations, orders, and determinations of OFHEO and the FHFB remain in effect until modified or revoked by the Director. [Sections 1302 and 1312]

#### *Transfer of Employees*

All career employees of OFHEO and the FHFB in the competitive service are to be transferred to the FHFA no later than July 30, 2009. Transferred employees are guaranteed a position with the same status, tenure, grade, and pay. Any employee holding a permanent position prior to the transfer cannot be involuntarily separated except for cause for a 12-month period following the transfer. FHFA may decline a transfer with respect to an employee excepted from the competitive service or an employee in a non-career position in the Senior Executive Service. Following a 1-year period, the Director may determine that a reorganization of the combined workforce is necessary, and thereby reduce staffing levels. [Sections 1303 and 1313]

### **TITLE IV – HOPE FOR HOMEOWNERS**

#### *Purposes*

The statute establishes the “HOPE for Homeowners” insurance program within the Federal Housing Administration (FHA). This is a voluntary program to insure loans for distressed borrowers. These insured loans will refinance existing mortgage loans that have proven to be burdensome to the homeowner. The goals of the program are to support long-term, sustainable homeownership; to allow homeowners to avoid foreclosure by reducing the principal balance and interest rate on their mortgages; to help stabilize the mortgage markets by bringing transparency to the value of assets; to target assistance to homeowners for their principal residence; to enhance the administrative capacity of the FHA; and to provide servicers with additional methods to avoid foreclosures. [Section 1402]

#### *Board of Directors of the HOPE for Homeowners Program*

The program has a Board of Directors composed of the Secretary of the Treasury, the Secretary of HUD, the Chairperson of the Federal Reserve Board, and the

Chairperson of the FDIC. The Board is responsible for establishing requirements and standards for the program, and to promulgate necessary regulations. The Secretary of HUD may issue “interim guidance” and mortgage letters to implement the standards developed by the Board. [Section 1402]

### *Mortgagor Requirements*

To qualify for the program, the mortgagor (homeowner-borrower) must meet the following requirements:

- The mortgagor must certify that he or she has not intentionally defaulted on any mortgage, or intentionally and knowingly furnished material information that was false in order to qualify for a loan.
- The mortgagor must agree to reimburse the FHA for any reduction in mortgage liability if he or she made a false statement in any required certification or required documentation.
- As of March 1, 2008, the homeowner’s *mortgage* debt to income ratio was greater than 31 percent (or such higher amount determined by the Board).
- Document that the home securing the mortgage is the borrower’s primary residence, and is the only home in which he or she has any ownership interest.
- Not have been convicted of fraud during the 10-year period ending upon the insurance of the refinancing mortgage.
- The mortgagor must have entered into the loan being refinanced on or before January 1, 2008. [Section 1402]

### *Principal Obligation of Refinancing Mortgage*

To qualify under this program, the principal obligation of the mortgage to be insured cannot exceed the lesser of:

- The amount that the mortgagor has a reasonable ability to repay, based on FHA underwriting criteria or criteria developed by the Board; or
- 90 percent of the current appraised value of the property.

### *Mortgagee Requirements*

All mortgagees holding a security interest in the property must agree to participate in the program and to waive any prepayment penalties and default or delinquency fees. These lenders must accept the net amount of the new insured loan proceeds as payment in full on all of the mortgage indebtedness. The Secretary of HUD is to take actions, subject to the Board’s standards, to facilitate coordination and agreement among first and second mortgage holders. [Section 1402]

### *Shared Appreciation with Existing Subordinate Mortgagees*

The Board is to establish standards and policies that will allow for the transfer of realized future appreciation in the property to existing *second* mortgage holders, from amounts that would otherwise be paid to the Secretary of HUD. [Section 1402]

### *Terms of the Refinancing Mortgage, Maximum Amount of the Loan*

The refinancing mortgage must be a fixed rate loan with a maturity of at least 30 years from the date on which amortization begins. The maximum amount of the loan cannot exceed \$550,440. [Section 1402]

### *Prohibition on Second Mortgages*

During the first 5 years after a loan has been insured under this program, the homeowner may not grant a second mortgage lien on the property, except as the Board may determine necessary for property maintenance. The second loan cannot “reduce the value of the Government’s equity in the borrower’s home,” and when combined with the first mortgage, cannot exceed 95 percent of the appraised value of the home when the second loan is made. [Section 1402]

### *Appraisal Standards*

The appraisal must be based on the current value of the property, conducted in accordance with the appraisal requirements found in the Financial Institutions Reform, Recovery and Improvement Act (FIRREA), conducted by an appraiser that meets the competency requirements of the Uniform Standards of Professional Appraisal Practice, consistent with FHA appraisal requirements, and in compliance with independence requirements. Any party interested in the mortgage transaction may not improperly influence the appraisal. Appraisers must also be certified by the State in which the property is located or by a nationally recognized professional appraisal organization, and have verifiable education in appraisal requirements established by the FHA. [Sections 1402 and 1404]

### *Documentation of Income*

The lender must document and verify the homeowner’s income by procuring an income tax return transcript from the borrower or the Internal Revenue Service for the two most recent tax years. The Board may establish standards for other methods of verifying income. [Section 1402]

### *Study of Auction or Bulk Refinancing*

The Board is to conduct a study of the need for and efficiency of an auction or bulk refinancing mechanism to facilitate refinancing of existing mortgages that are at risk for foreclosure. A report must be submitted to Congress by September 28, 2008.



### *Standards to Protect Against Adverse Selection*

The Board will establish standards to require representations and warranties that all underwriting and appraisal standards under this program have been satisfied. The Secretary is prohibited from paying insurance benefits to any mortgagee who violates these representations and warranties, and in all cases if the homeowner fails to make the first payment on the loan. The Board may issue other standards or policies to protect against adverse selection, such as making higher risk borrowers demonstrate payment performance for a period of time. [Section 1402]

### *Premiums*

The initial up front premium is set by the statute at 3 percent. This premium is paid from the loan proceeds, thereby reducing the funds available to extinguish existing mortgages to 87 percent of the property's appraised value. Annual premiums will be 1.5 percent of the remaining insured principal balance. [Section 1402]

### *Origination Fees and Interest Rate*

The Board will establish a reasonable limitation on origination fees and procedures to ensure that interest rates on loans insured under the program are commensurate with market rates. [Section 1402]

### *Equity Appreciation*

In the event of a sale or refinancing of the property that is insured under this program, any "equity created as a direct result of such sale or refinancing" is shared between the Government and the homeowner as follows:

- During the first year, 100 percent is allocated to the Secretary.
- During the second year, 90 percent is allocated to the Secretary.
- During the third year, 80 percent is allocated to the Secretary.
- During the fourth year, 70 percent is allocated to the Secretary.
- During the fifth year, 60 percent is allocated to the Secretary.
- After five years, 50 percent is allocated to the Secretary.

The statute also provides that upon the sale or disposition of the property, the homeowner and the Secretary shall each be entitled to "50 percent in any appreciation in the value of the appraised value of such property" that has occurred since the mortgage was insured. [Section 1402]

While the statute is not totally clear, it appears that the first formula relates to the sharing of equity that results from the fact that the new loan could not exceed 90 percent of the appraised value of the property, as well as equity created through the amortization

of that loan. The second formula, which is a constant 50 percent sharing, relates only to equity that may have been created through appreciation in value.

#### *HOPE Fund*

A Home Ownership Preservation Equity Fund is established in the Federal Housing Administration as a revolving fund to be used by the Board to carry out this program. [Section 1402]

#### *Limitation on Insurance Authority*

The aggregate principal amount of mortgages that may be insured under this program cannot exceed \$300 billion. [Section 1402]

#### *Reports*

The Board is to make monthly reports to Congress that contain information for each month on the number and aggregate principal amount of mortgages insured under this program, the average amount of principal reduction, the amount of premiums collected, the claim and loss rates for mortgages insured under this program, and any other appropriate information. [Section 1402]

#### *Outreach*

HUD is to engage in outreach efforts to ensure that homeowners, lenders and the general public are aware of opportunities under this program. [Section 1402]

#### *Enhancement of FHA Capacity*

Under the direction of the Board, the Secretary of HUD is to take necessary actions to contract for the establishment of underwriting criteria, automated underwriting systems, pricing standards, and other factors relating to eligibility for mortgages insured under this program. The Secretary is also to enter into contracts for independent quality reviews of underwriting, appraisals, and fraud detection. Finally, the Secretary is to increase HUD personnel as necessary to process or monitor the processing of mortgages insured under this program. [Section 1402]

#### *GNMA Guarantees*

The Government National Mortgage Association may guarantee securities or make commitments to guarantee securities backed by pools of mortgages insured under this program. [Section 1402]

### *Start and Termination Dates*

The FHA may not enter into a commitment to insure any mortgage under this program, or “newly insure” a loan under this program, before October 1, 2008 or after September 30, 2011. In addition, the loan that will be refinanced must have been originated on or before January 1, 2008. [Section 1402]

### *Voluntary Program*

No lender, homeowner or other party may be required to participate in this program. It is a voluntary program. [Section 1402]

### *HOPE Bonds*

The Treasury may issue “HOPE Bonds,” that are to be used to provide subsidies for the loan guarantees under the HOPE for Homeowners program and other net costs to the Government. Contributions from Fannie Mae and Freddie Mac, as discussed above, will be used to offset net losses to the Government. If the allocation from these GSEs exceeds losses, the excess will be used to reduce the Government debt. [Section 1402]

### *Fiduciary Duties of Servicers*

The new statute amends the Truth-in-Lending Act to provide a new Federal standard regarding the fiduciary duties of servicers. Under the new standard, unless an investment contract between a servicer and an investor provides otherwise, the servicer:

- Owes a duty to maximize the net present value of the pooled mortgages in an investment to all investors and parties having an interest in such investment, not to any individual party or group.
- Is deemed to be acting in the best interests of investors if the servicer agrees to a modification or workout plan, including any modification or workout plan undertaken pursuant to the HOPE for Homeowners Act, if default on the mortgage is reasonably foreseeable; the property is owner-occupied; and the anticipated recovery under the modification exceeds, on a net present value basis, the anticipated recovery through foreclosure. [Section 1403]

## **TITLE V – SAFE MORTGAGE LICENSING ACT**

### *Purposes and Methods*

The States, through the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR), are encouraged to establish a nationwide mortgage licensing system and registry. The objectives include: uniform license applications and reporting requirements; a comprehensive supervisory database; a means by which mortgage originators would, to the greatest extent possible,

be required to act in the best interests of the consumer; increased accountability and tracking of loan originators; enhanced consumer protection; consumer access to the employment history and disciplinary records; comprehensive training and examination requirements relating to subprime mortgages; and the collection and disbursement of consumer complaints on behalf of Federal and State regulators. [Section 1502]

### *Definition of Loan Originator*

A “loan originator” is defined as an *individual* who “takes a residential mortgage loan application” and “offers or negotiates terms of a residential mortgage loan for compensation and gain.” A person that only performs real estate brokerage activities and is licensed or registered under State law is not a “loan originator,” unless that person is compensated by a lender or loan originator. It also does not include a person who extends credit in connection with time share plans. [Section 1503]

### *Nationwide Mortgage Licensing System and Registry*

The Nationwide Mortgage Licensing System and Registry is a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. If a State fails to adopt such a system and registry within certain prescribed time limits, the Secretary of HUD is authorized to establish a back-up Federal system. [Section 1503]

### *License and Registration*

Generally, a loan originator must obtain a State license and register with the National Registry. However, the following individuals are not required to obtain a license, and register with Federal banking agencies—

- Employees of depository institutions (including credit unions).
- Employees of companies that are owned and controlled by a depository institution and regulated by a Federal banking agency or the NCUA.
- Employees of an institution regulated by the Farm Credit Administration. [Sections 1503 and 1504]

### *Registration Requirements*

In order to be registered with the National Registry, a loan originator must provide, at a minimum –

- Fingerprints for submission to the FBI and other governmental entities for purposes of a criminal history background check.
- A personal history including experience.
- Authorization for the release of a credit report.
- Authorization for the release of information related to administrative, civil or criminal findings. [Section 1505]

### *Requirements for a State License*

In order to obtain a State license, the following minimum standards must be met:

- No prior revocation of a loan origination license in any jurisdiction.
- No conviction to a felony for 7 years prior to the date of the application.
- No conviction to a felony at any time if offense involved fraud, dishonesty, a breach of trust, or money laundering.
- The applicant must demonstrate financial responsibility, character, and general fitness to “command the confidence of the community and to warrant a determination that the loan originator will operate honestly, fairly and efficiently.”
- The applicant must meet a net worth requirement or surety bond requirement, or pay into a State fund, as required under State law. [Section 1505]

### *Pre-Licensing Educational Requirements*

An applicant must take at least 20 hours of educational courses prior to obtaining a license. The courses must be approved by the Nationwide Mortgage Licensing System and Registry, and must include at least 3 hours on Federal law, 3 hours on ethics, consumer protection, fraud, and fair lending, and 2 hours on lending standards for loans that are not 30-year fixed rate products. [Section 1505]

### *Testing*

All applicants must pass a written test developed by the Nationwide Mortgage Licensing System and Registry, and administered by an approved test provider. The test must measure an applicant’s understanding of ethics, Federal law, State law, and the marketplace for loans that are not 30-year fixed interest rate products. A passing grade on the test cannot be less than 75 percent. If an applicant fails, he or she may not take another test for at least 30 days. After 3 consecutive failures, the applicant must wait at least 60 days before taking the test again. [Section 1505]

### *Continuing Education Requirement*

A loan originator must complete at least 8 hours of continuing education courses annually. The courses must be approved by the Nationwide Mortgage Licensing System and Registry. An instructor may receive continuing education credits at the rate of 1 hour for each 2 hours taught. [Section 1505]

### *Mortgage Licensee Call Reports*

Each “mortgage licensee” shall submit to the Nationwide Mortgage Licensing System and Registry reports of condition. The term “mortgage licensee” is not defined. [Section 1505]

### *Registration of Employees of Depository Institutions and Their Subsidiaries*

While employees of depository institutions, credit unions, and their subsidiaries, and employees of institutions regulated by the Farm Credit Administration do not have to be licensed, they are required to be registered. The Federal banking agencies and the Farm Credit Administration are directed to jointly develop a system for registering such employees with the Nationwide Mortgage Licensing System and Registry before July 30, 2009. The system developed by the Federal agencies must furnish to the National Registry the fingerprints of the employees for purposes of a criminal background check, the personal and experience history of the employee, and authorization to obtain information concerning administrative, civil and criminal findings. The Federal banking agencies (including the NCUA) may make de minus exceptions from the registration requirements, and shall make reasonable efforts to utilize existing information and automating the registration process. [Section 1507]

### *Unique Identifier*

The Federal agencies and the Nationwide Mortgage Licensing System and Registry are to coordinate in assigning a unique identifier to each loan originator. The identifier will be used to facilitate electronic tracking of and public access to the employment and disciplinary history of registered loan originators. [Section 1507]

### *Minimum State Requirements*

A State system will meet the requirements of this program if –

- A State loan originator supervisory authority is maintained to supervise and take necessary enforcement actions against loan originators.
- The State supervisor ensures that all State licensed loan originators are registered.
- The State supervisor is required to report violations of law and enforcement actions to the Licensing System and Registry.
- The State supervisor is empowered to impose civil money penalties on individuals acting as loan originators without a valid license or registration.
- The State has established minimum net worth or surety bonding requirements that reflect the dollar amount of loans originated, or has established a recovery fund paid into by loan originators. [Section 1508]

### *HUD Back-Up System*

If after certain prescribed time periods the Secretary of HUD determines that a State does not have in place a system for licensing and registering loan originators that meets minimum requirements describe above, or does not participate in the Nationwide Mortgage Licensing System and Registry, HUD is to establish a system for licensing and

registering loan originators in that State. If the Secretary determines that the Nationwide System is failing to meet the requirements and purposes of these statutory provisions, the Secretary is to establish and maintain such a System and Registry. [Sections 1508 and 1509]

### *Fees*

The Federal banking agencies (including the NCUA), the Farm Credit Administration, the Secretary of HUD, and the Nationwide Mortgage Licensing System and Registry may charge reasonable fees to cover the costs of maintaining and providing access to information from the National System and Registry. Fees may not be charged to consumers for access to the system and registry. [Section 1510]

### *Background Checks*

The Attorney General must provide access to all criminal history information to appropriate State officials responsible for regulating State-licensed loan originators if such information is required under State law to license a loan originator. The CSBS (or a subsidiary) may be used as an agent for requesting and distributing information between the Department of Justice and the States. [Section 1511]

### *Confidentiality*

Federal and State privacy laws apply to material provided to the Nationwide Mortgage Licensing System and Registry, and any privilege shall continue to apply after the information has been disclosed to the system. Such information may be shared with Federal and State authorities with mortgage industry oversight authority without loss of privilege or confidentiality protection. [Section 1512]

### *Liability*

The Secretary of HUD, State officials and agencies, and the Federal banking agencies, and the administrator of the Nationwide Mortgage Licensing System and Registry, and their officers and employees are not liable in any civil action for monetary damages by reason of the good faith action or omission of any officer or employee acting within the scope of office or employment, relating to the collection, furnishing or dissemination of information about loan originators or applicants. Note that similar liability protection is not afforded to the Farm Credit Administration and employees thereof. [Section 1513]

### *HUD Examination and Enforcement Authority under Back-up System*

If the Secretary of HUD creates a back-up system, the statute authorizes HUD to make examinations of loan originators and to take various enforcement actions for violation of the statute or implementing regulations. [Section 1514]

### *State Examinations*

A State licensing agency may conduct an examination or investigation of any entity that is licensed or is required to be licensed under these provisions. [Section 1515]

### *Reports and Recommendations to Congress*

No later than July 30, 2009, and annually thereafter, the Secretary of HUD is to make a report to Congress on the effectiveness of these provisions accompanied by legislative recommendations, if any, relating to such things as, consumer protection, examination standards, and performance based bonding requirements for mortgage originators. [Section 1516]

### *RESPA Study*

Within 6 months after enactment, the Secretary of HUD is to make recommendations to Congress of legislative reforms to RESPA that are appropriate to promote more transparent disclosures, allowing consumers to better shop and compare mortgage loan terms and settlement costs. [Section 1516]

### *Report on Defaults and Foreclosures*

The Secretary of HUD is to conduct an extensive study of the root causes of default and foreclosures of home loans, using as much empirical data as is available. A preliminary report is due within 6 months of enactment. A final report is due by July 30, 2009. [Section 1517]

## **TITLE VI – MISCELLANEOUS**

### *Study and Report on Guarantee Fees*

The Director is to conduct an ongoing study of fees charged by the Enterprises for guaranteeing mortgages, and will submit an annual report to Congress on the amount of such fees and the criteria used by the Enterprises to determine the fees. [Section 1601]

### *Study and Report on Default Risk Evaluation*

The Director is to study ways to improve the overall default risk evaluation for mortgage loans, and, in particular, methods to standardize the measurement of risk. A report is to be submitted to Congress by July 30, 2009. [Section 1602]

### *Conversion of Specific Multifamily Project*

The Secretary of HUD may convert certain contracts relating to a specific multifamily housing project to “project-based rental assistance,” and treat the “contemplated resulting contract” as if it were a contract for renewal. To the extent that



assisted dwelling units in the project serve low-income families, the units shall be considered to be in compliance with all income targeting requirements. All existing tenants in an assisted dwelling unit shall be considered to meet all income eligibility requirements. [Section 1603]

#### *Bridge Bank Authority*

The FDIC's authority to charter a new bank or a bridge bank as part of the process of resolving a failed or failing institution is broadened to permit the agency to charter a bank or a savings association, without the formality of applying to the Office of Thrift Supervision. New and bridge savings associations are made equivalent to bridge banks, and the terminology is changed to new or bridge depository institutions.

Under prior law, if the FDIC transferred any insured deposits to a bridge bank, it had to transfer all insured deposits to that bank or to another depository institution. This requirement is deleted.

The new law clarifies that a Federal Reserve Bank may make advances to a bridge depository institution notwithstanding its capital level. Since bridge depository institutions do not have to be capitalized, this amendment clarifies that the restriction on Federal Reserve lending to an undercapitalized institution is not relevant. [Section 1604]

#### *Non-Interference with Local Requirements Regarding Foreclosed Property*

It is the "Sense of the Senate" that the Senate supports a policy of noninterference regarding local government requirements for holders of foreclosed properties to maintain such properties. [Section 1605]

### **DIVISION B – FORECLOSURE PREVENTION**

#### **TITLE I – FHA MODERNIZATION**

##### **Subtitle A – Building American Homeownership**

#### *Maximum FHA Loan Size*

Effective as of January 1, 2009, the maximum loan size for a single family mortgage eligible for FHA insurance is set at the lower of 115 percent of the area median price, 150 percent of the GSE conforming loan amount (\$625,500 for 2009), or the appraised value of the home. [Section 2112]

#### *Minimum FHA Loan Size*

The loan size eligible for FHA insurance may not be less than the loan size limit in effect in the area on October 21, 1998, or 65 percent of the GSE conforming loan amount (\$271,050 in 2009), whichever is higher. [Section 2112]

### *Adjustment for Up-Front Premiums*

The amount of any up-front FHA premium may be used to increase the maximum loan amount, except that it may not be used to increase the loan to an amount in excess of 100 percent of the appraised value of the property. [Section 2112]

### *Cash Investment*

In order to qualify for FHA insurance, the borrower must make a cash investment for the purchase of the property in an amount equal to at least 3.5 percent of the appraised value, or a larger amount as the Secretary of HUD may determine. Funds for this purpose may be borrowed from family members, but not by the seller, any other person that will benefit financially from the transaction, or by any third party that is reimbursed by the seller or other financial beneficiary. This limitation is effective for loans that have received credit approval on or after October 1, 2008. [Section 2113]

### *Mortgage Insurance Premiums*

The FHA is given the authority to assess an initial up-front premium of up to 3.0 percent of the amount of the insured principal. Prior to this amendment, the initial premium was capped at 2.25 percent. For first time homebuyers who complete an approved financial and homeownership counseling program, the initial premium limit is raised from 2.0 percent to 2.75 percent. [Section 2114]

### *Insurance of Condominiums*

FHA insurance on condominium loans is limited to take out financing for multifamily blanket mortgages insured by the FHA. The statute also clarifies that a loan secured by a fee interest or long-term leasehold interest in a condominium unit qualifies for insurance, even if such interest is not considered to be real property under State tax laws. [Section 2117]

### *Mutual Mortgage Insurance Fund*

The Mutual Mortgage Insurance Fund (MMIF) is re-established to carry out FHA insurance programs under Section 203 of the National Housing Act. The Secretary has a fiduciary responsibility to ensure that the MMIF remains financially sound. The Secretary must provide for an annual independent actuarial study of the MMIF, and a report must be submitted to Congress describing the status of the Fund. Quarterly reports are also required that provide various data, including projected and actual loss rates. [Section 2118]

### *Premium Adjustments*

If the Secretary determines that the MMIF is not meeting its operational goals or there is a substantial probability that the Fund will not maintain its target subsidy rate, the Secretary may make program changes or premium adjustments. [Section 2118]

### *Operational Goals*

The operational goals of the Fund are to:

- Minimize default risk to the Fund and homeowners by, among other actions, instituting fraud prevention quality control screening; and
- Meet the housing needs of borrowers.

### *Second Mortgages on Condominiums and Cooperatives*

FHA insurance is authorized for subordinate mortgage loans secured by eligible condominium and cooperative units. [Section 2121]

### *Reverse Mortgages*

The authority of the FHA to insure reverse mortgages is modified in the following ways:

- Prior to executing the mortgage, the homeowner must have received counseling provided by a HUD approved independent counselor. The counselor cannot be compensated by or associated with the lender, loan originator, loan servicer, or any party providing annuities, investments, long-term health care, or other types of financial or insurance products. Counseling standards and qualifications are to be established by HUD.
- The maximum loan amount is set at the GSE conforming loan limit.
- The Secretary of HUD may fund counseling programs from premiums collected under this program.
- Authorizes FHA insurance for reverse mortgages when the proceeds of the reverse mortgage are used to purchase a 1- to 4-family dwelling unit, one unit of which the mortgagor will occupy as a primary residence.
- 

The Secretary of HUD must approve all parties that participate in the origination of a reverse mortgage that will be insured. In addition, the lender (and any other party participating in the origination of a reverse mortgage) is subject to one of the following conflict of interest provisions:

- The lender or other party participating in the loan origination may not participate in or be associated with or employ any person that participates in or is associated with any other financial or insurance activity; or

- The lender or other party participating in the loan origination must demonstrate to the Secretary that firewalls will be maintained to ensure that individuals participating in the origination of reverse mortgages have no involvement with any other financial or insurance product, and that the homeowner will not be required, as a condition of obtaining a reverse mortgage, to purchase any other financial or insurance product.

Another provision states that the lender may not require the homeowner to purchase an insurance, annuity, or similar product as a requirement for the reverse mortgage, except for title, hazard, flood, or other peril insurance, or other products customary and normal as determined by the Secretary.

The statute limits origination fees on reverse mortgages to be insured by FHA. The limit is based on the maximum claim amount. For claim amounts up to \$200,000, the limit on origination fees is set at 2.0 percent. Thereafter, the origination fee is limited to 1 percent of the claim amount in excess of \$200,000, up to a maximum of \$6,000. The Secretary may modify this limit based on costs to mortgagors and the impact on the reverse mortgage market.

The bill mandates several studies.

- The Secretary is to determine appropriate consumer protections and underwriting standards.
- The Secretary is to determine if the purchase of insurance, annuities or similar products is appropriate for the consumer.
- The GAO is to study the costs and availability of credit under reverse mortgage programs for elderly homeowners in order to assist Congress in determining whether to limit the costs and fees of such programs. The report is due by July 30, 2009. [Section 2122]

#### *Energy Efficient Mortgage Program*

The statute increases the size of energy efficiency loans (e.g., loans to make energy saving improvements on residential buildings) to the greater of 5 percent of the FHA loan limit or 2 percent of the value of the property. The number of energy efficiency loans that may be insured in any year cannot exceed 5 percent of the number of 1- to 4-family mortgage loans insured by the FHA in the preceding year. [Section 2123]

#### *Pilot Program for Homebuyers with Insufficient Credit Histories*

A pilot program is established in which the Secretary of HUD is to develop an automated process for providing alternative credit ratings to borrowers who have insufficient credit histories. The alternative program may rely on such data as rent and utilities payment histories, insurance payments, and similar information. In any fiscal year the aggregate number of loans insured under this pilot program may not exceed 5 percent of the 1- to 4-family mortgages insured in the preceding year. The pilot program

ends on July 30, 2013. The GAO is to issue a report on the program by July 30, 2010. [Section 2124]

#### *Homeownership Preservation*

The Secretary of HUD and the FHA Commissioner, in consultation with industry experts, the Neighborhood Reinvestment Corporation, and other entities involved in foreclosure prevention, is to develop a plan to improve FHA loss mitigation processes, and report the plan to the Congress. [Section 2125]

#### *Use of FHA Savings for FHA Administrative Improvements*

The statute authorizes \$25 million per year, from 2009 through 2013, from the negative credit subsidy generated by the FHA insurance program, for purposes of improving the technology, processes, program performance, eliminating fraud, and to increase staffing. The authorization is not effective unless the Secretary of HUD has issued a determination (under the APA's rulemaking process) that the premiums being charged are sufficient to maintain the required capital ratio of the MMIF and to ensure the safety of the other mortgage insurance funds. The Secretary is issue a report to Congress by July 30, 2009. [Section 2126]

#### *Post-Purchase Housing Counseling*

The existing program to provide grants for homeownership counseling is expanded to cover individuals that have a significant reduction in income due to death or divorce, or a significant increase in expenses due to medical needs, divorce, property damage, or a property tax increase. [Section 2127]

#### *Pre-Purchase Counseling Demonstration Program*

The Secretary is to establish a "demonstration program" to provide eligible homebuyers with pre-purchase counseling through telephone discussions, in-person counseling, web-based counseling, classes, or other forms. The Secretary may provide incentives to participate in this program, including reductions in FHA premiums. Only first time homebuyers approved for a loan with an LTV of between 97 and 98.5 percent are eligible. [Section 2128]

#### *Limitation on FHA Premium Increases for Multifamily Mortgages*

From July 30, 2008, and until October 1, 2009, FHA premiums for insurance of multifamily housing mortgages may not be increased above the levels in effect on October 1, 2006, unless the Secretary of HUD determines that without an increase an appropriation would be necessary. [Section 2130]

### *Moratorium on Risk-Based Premiums*

Beginning on October 1, 2008, and until October 1, 2009, the Secretary of HUD may not take any action to implement the risk-based premium regulation developed by the FHA, or any other risk-based premium where the premium is based on a borrower's "decision credit score." [Section 2132]

### **Subtitle B – Manufactured Housing Loan Modernization**

#### *FHA Insurance Program for Loans Secured by Manufactured Housing*

This subtitle makes modifications to the FHA insurance program for loans secured by manufactured housing:

- Under prior law, FHA cannot insure loans for home improvement, construction, and manufactured housing in excess of 10 percent of an institution's total portfolio of such loans. This limit is removed for loans secured by manufactured housing.
- Raises the loan limit for manufactured housing loans to \$92,400 to finance the home and a suitable lot. Limit is indexed for inflation.
- Initial FHA premium cannot exceed 2.25 percent of the amount insured, and annual premiums cannot exceed 1.0 percent of the remaining insured amount.
- Secretary may exceed premium caps only if necessary to maintain a negative credit subsidy.
- Secretary is to develop underwriting standards for these loans.
- RESPA anti-kickback rules are applied to transactions for the sale of manufactured housing financed with an FHA insured loan.
- Secretary of HUD is to prohibit unfair or deceptive acts or practices in connection with the purchase or sale of manufactured housing financed with an FHA insured loan.

### **TITLE II – MORTGAGE FORECLOSURE PROTECTIONS FOR SERVICEMEMBERS**

#### *Temporary Increase in Maximum Loan Guarantee Amount*

The amount of the Government guarantee for home construction or for home purchase loans taken by an eligible veteran is increased until December 31, 2008. [Section 2201]

#### *Counseling*

The Secretary of Defense is to develop a program to counsel servicemembers who are returning from active duty abroad on actions to prevent or forestall foreclosures. [Section 2202]

### *Stay in Mortgage Foreclosure Proceedings*

The automatic stay in the foreclosure of a servicemember's home is extended from 90 days after the termination of military service to 9 months. The 9 month extension provision expires on December 31, 2010. [Section 2203]

### *Interest Rate Limitation*

Under existing law, the interest rate that may be charged to a servicemember for loans entered into before the servicemember entered the military is 6 percent during the period of military service. This statute extends the 6 percent limit for one year after military service in the case of a mortgage loan. The extension expires on December 31, 2010. [Section 2203]

## **TITLE III – EMERGENCY ASSISTANCE FOR THE REDEVELOPMENT OF ABANDONED AND FORECLOSED HOMES**

### *Emergency Assistance*

The statute appropriates \$3.92 billion in fiscal year 2008 to assist the States and local governments in the redevelopment of abandoned and foreclosed upon homes. Recipients have 18 months to use grants to purchase and redevelop such properties. Properties may only be purchased at a discount to current market appraised value. During the first 5 years, any profit derived from the resale of a property shall be used to further the purposes of this section. After 5 years, any profit from such resale will be returned to the Treasury. [Section 2301]

### *Counseling Intermediaries*

The statute appropriates \$180 million for counseling services. Not less than 15 percent of that amount is for counseling minority and low-income homeowners. In addition, \$30 million is to be used by the Neighborhood Reinvestment Corporation to make grants to counseling organizations or to hire attorneys to assist homeowners in foreclosure proceedings, delinquencies or short sales. [Section 2401]

#### **TITLE IV – HOUSING COUNSELING RESOURCES**

##### *Additional Funds for the NRC*

The statute appropriates \$100 million to remain available until December 31, 2008 for the Neighborhood Reinvestment Corporation to provide foreclosure mitigation activities. [Section 2401]

##### *Credit Counseling*

Entities approved by the Neighborhood Reinvestment Corporation or the Secretary of HUD and State housing finance entities will work to identify and coordinate with non-profit organizations operating nationwide or statewide toll-free foreclosure prevention hotlines. [Section 2402]

#### **TITLE V – MORTGAGE DISCLOSURE IMPROVEMENT**

##### *Enhanced Mortgage Disclosures*

The Truth-in-Lending Act is amended by providing a new disclosure that must be made at least 7 business days before the loan is closed. Disclosures are deemed to have been received by a consumer 3 business days after posting in the mail. This disclosure applies to any loan that is secured by a dwelling of a consumer. The disclosure must be made before paying any fee, other than a bona fide and reasonable fee for a credit report. A consumer may waive the 7 day prior notice requirement if necessary due to a bona fide personal emergency, as defined by the Federal Reserve Board. These requirements are to be effective as of July 30, 2009. Special disclosures required for variable rate products are effective after a compliance date established by the Federal Reserve Board, or 30 months after the date of enactment, whichever is earlier. [Section 2502]

##### *Community Development Investment Authority for Banks*

National banks and State member banks may make investments in activities or entities that are designed primarily to promote the public welfare. [Section 2503]