LEGISLATIVE DIGEST
HOUSE REPUBLICAN CONFERENCE | CHAIRMAN ADAM PUTNAM
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House Amendments to the Senate Amendment to H.R. 3221 – Foreclosure Prevention Act of 2008

EXECUTIVE SUMMARY

The House Amendments to the Senate Amendment to H.R. 3221 is expected to be considered on May 7, 2008. H.R. 3221 was most recently passed by the Senate on April 10, 2008 by a vote of 84 to 12. The Senate utilized H.R. 3221 (a House-passed energy bill from last year) as the vehicle for its Housing legislation.

The rule for this bill makes in order a motion by Chairman Frank (D-MA), or his designee, to concur in the Senate amendment to the text with each of the 3 amendments. The Senate text will serve as the base text, and the House will vote on each of the 3 amendments separately. While there is no specific time allocated for debate on each of the amendments, there will be 3 hours of total debate – 2 hours for the House Financial Services Committee and one hour for the House Ways and Means Committee.

The House Financial Services Committee reported the FHA Housing Stabilization and Homeownership Retention Act of 2008 (H.R. 5830) on May 5, 2008, by a vote of 46 to 21. After the bill was reported from Committee, Chairman Barney Frank announced that H.R. 5830 would be part of a larger housing package that would include Government Sponsored Enterprise (GSE) Reform legislation (similar to previously passed H.R. 1427) and FHA Modernization legislation (similar to previously passed H.R. 1852 and H.R. 2139). These provisions are embodied in Amendment #1 that is detailed below.

On April 24, 2008, the House Ways and Means Committee reported the Housing Assistance Tax Act (H.R. 5720) by a vote of 35 to 5. Among other items, this legislation contains a first-time homebuyer tax credit and a low-income housing tax credit. These tax and revenue provisions are included in Amendment #2 to the Senate Amendment to H.R. 3221.

Amendment #3 to the Senate Amendment to H.R. 3221 was introduced by Representative Brad Miller (D-NC) and Representative Steven LaTourette (D-OH) and would designate State law, and not Federal law, as the primary body of law regulating the foreclosure of residential property or the treatment of foreclosed property within a State.

According to the Statement of Administration Policy, which contains a veto threat, "H.R. 3221 is overly burdensome and prescriptive. It would force FHA and taxpayers to take on excessive risk, and jeopardize FHA's financial solvency… Additionally, the bill includes a number of other objectionable provisions, such as the permanent increase to the FHA and Government Sponsored Enterprise (GSE) loan limits, a largely ineffective homeowner tax credit, an expansion of Federal Home Loan Banks' activities beyond their area of competence, and an objectionable tax offset delaying worldwide interest allocation."

Financial Services Committee Republicans also raised concerns that the bill "rewards financial irresponsibility and punishes prudence."

FLOOR SITUATION

The House Amendments to the Senate Amendment to H.R. 3221 is being considered under a closed rule. The rule:

- Provides for consideration of the Senate amendments to H.R. 3221

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- Makes in order a motion by the chairman of the Committee on Financial Services or his designee to concur in the Senate amendment to the text with each of the three amendments printed in the report of the Committee on Rules accompanying the resolution.
- Waives all points of order against the motion (except clause 10 of Rule XXI).
- Provides that the Senate amendments and the motion shall be considered as read.
- Provides three hours of debate on the motion with two hours equally divided and controlled by the chairman and ranking minority member of the Committee on Financial Service and one hour equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means.
- Provides that the Chair shall divide the question of adoption of the motion among the three House amendments.
- Provides that upon adoption of the motion specified in the first section of this resolution, a motion that the House concur in the Senate amendment to the title shall be considered as adopted.

The House Amendments to the Senate Amendment to H.R. 3221 is expected to be considered on May 7, 2008. This legislation was passed by the Senate on April 10, 2008 by a vote of 84 to 12 after replacing the original text (which was House- passed energy legislation) with legislative text that addresses the housing crunch.

BACKGROUND

The housing market in the United States is currently in a period of turmoil. In 2007, there were approximately 1.5 million foreclosures, and the U.S. Department of the Treasury is estimating that there will be 2 million foreclosures during 2008. Adjustable rate subprime mortgages account for 40 percent of these foreclosures, although they only make up 6 percent of the total mortgage market. However, according to Henry Paulson, the Secretary of the Treasury, of the 51 million American homeowners in the U.S, 92 percent are paying their mortgage payments on time every month.

In reaction to current housing market trends, the Bush Administration created FHASecure, which is a Federal Housing Authority (FHA) program that gives the FHA more flexibility when refinancing homes for people who have decent credit histories but are unable to afford payments because of higher interest rates. The FHA has been able to help almost 180,000 families to refinance their homes because of FHASecure, and anticipates helping about half of a million people by the end of 2008.

The Administration has also helped to facilitate the formation of the HOPE NOW Alliance, which is a private-sector cooperative effort among sectors of the mortgage service industry. HOPE NOW seeks to maximize assistance to struggling homeowners by providing professional counseling to homeowners and helping them to refinance or modify their existing mortgage. Today, HOPE NOW membership extends to over 90 percent of the subprime mortgage market.

On April 10, 2008, the Senate passed a Housing Bill (H.R. 3221) by a vote of 84 to 12. This bill, which is estimated to cost $10.8 billion, contains a number of housing provisions. These provisions include: 1) $10 billion in additional tax-exempt bond authority to refinance subprime loans, provide mortgages for first-time homebuyers, and for multifamily rental housing; 2) Grants a $7,000 tax credit for homebuyers purchasing homes in foreclosure, which will be used as their primary residence; 3) Provides a standard tax deduction for property taxes of $500 for single filers and $1,000 for joint filers; 4) Permanently increases FHA loan limits up to 110 percent of the region's median home price; and 5) provides $150 million for counseling to help struggling homeowners avoid foreclosure.

SUMMARY

Amendment #1 – Representative Barney Frank (D-MA)

TITLE I – FHA Housing Stabilization and Homeownership Retention

Refinance Program Oversight Board: Establishes the Refinance Program Oversight Board which will be made up of the Secretary of the Treasury, the Secretary of Housing and Urban Development, and the Chairman of the Federal Reserve.

Mortgage Refinancing: The bill authorizes $300 billion for the Federal Housing Administration to refinance certain borrowers into fixed-rate mortgages with lower principal amounts than their existing obligations. In order to qualify for the program, the borrower must have a mortgage debt-to-income ratio greater than 35%. This is not a borrower initiated program however; the investors and servicer must agree to submit loans into the program. In addition, the refinancing of an existing mortgage can not be greater than 90 percent of the current appraised value of the property. The bill requires all junior liens (HELOCs, etc) to be extinguished.

Neighborhood Reinvestment Corporation: This legislation authorizes $230 million for grants to be administered by the Neighborhood Reinvestment Corporation for counseling mortgagors on loss mitigation. It specifically provides $35 million of the amount authorized for grants to state and local legal organizations or attorneys that provide legal assistance related to homeownership preservation and home foreclosure prevention and $20 million of funds authorized for counseling veterans returning from active duty.

Housing Counseling Assistance: The bill authorizes $45 million for each of the fiscal years 2008 through 2011 for grants to State and local governments and nonprofit organizations that provide homeownership or rental counseling.

Mortgage Fraud: The bill authorizes $31.25 million for the employment of 30 additional agents of the Federal Bureau of Investigations and two additional dedicated prosecutors at the Department of Justice to coordinate the prosecution of mortgage fraud.

Title II – FHA Modernization

Title II includes language similar to H.R. 2139 which previously passed the House by voice vote on June 25, 2007. The House passed H.R. 1852 by a vote of 348-72 on September 18, 2007.

There are several changes to the FHA modernization bill that reflect some of the conference negotiations on the FHA Modernization bill. They reflect many of the things that had been agreed to, including: 1) Eliminates the affordable housing fund provision; 2) Eliminates the provisions substituting the mortgage broker audit and net worth requirement with a surety bond requirement and replaces it with a study; 3) Increases the maximum upfront fee on gift down payment loans done by nonprofits to 3 percent; 4) Restores the current FHA statutory requirement of a 3 percent cash down payment, by eliminating the bill's authority to do zero and lower down payments; 5) Moves the provisions permanently eliminating FHA reverse mortgage Home Equity Conversion Mortgage (HECM) volume caps from this bill to FHA rescue Title of the Omnibus bill; 6) Raises the bills nationwide FHA reverse mortgage HECM loan cap from he FHA conforming loan limit to 132 percent of the GSE conforming loan limit; 7) Restores a provision establishing appraisal guidelines for discounted sales to localities, and eliminates the House passed bill offset provision limiting the discounted sales program in fiscal year 2011; and 8) Eliminates the FHA multifamily high cost loan limit provision.

**Note: Several of the aforementioned changes are explained in greater detail below.*

Provisions Relating to FHA Reform (H.R. 1852)

Maximum Principal Loan Obligation: The bill authorizes an increase in FHA loan limits to the lesser of: (a) 125% of local median home prices, or (b) 175% of the nationwide GSE conforming loan limit. It also raises the nationwide loan floor from 48% to 65% of the conforming loan limit.

**Note: The nationwide GSE conforming loan limit is $417,000.*

Mutual Mortgage Insurance Fund: The bill creates a Mutual Mortgage Insurance Fund, which will be used by the Secretary to carry out the provisions of this title with respect to FHA insured mortgages. The Secretary may enter into commitments to guarantee such insured mortgages. The Secretary is given the responsibility to ensure that the Mutual Mortgage Insurance Fund remains financially sound. The bill requires an independent actuarial study of the Fund to be conducted annually, which will analyze the financial position of the Fund. The Secretary must also submit a report annually to the Congress describing the results of such study and assessing the financial status of the Fund.

Extension of Mortgage Term: The bill authorizes the extension of maximum loan terms on FHA single family loans from 35 to 40 years.

Down Payment Simplifications: Unlike H.R. 1852, this version restores the current FHA statutory requirement of a 3 percent cash down payment by eliminating the bill's authority do zero and lower down payment loans.

Note: The current loan-to-value limit for a FHA single family loan is approximately 97.75 percent of the home's value, plus the upfront FHA premium – except that there are separate loan-to-value limits for loans of lower amounts and for loans in states that do not have high closing costs.

Payment Incentives for Higher-Risk Borrowers: The bill requires the Secretary to provide payment incentives for borrowers that make on-time payments for at least the first 5 years of the loan. It establishes that for higher risk borrowers, payment incentives would result in a reduction of annual payments after such period down to the level that would have been charged had they not been higher risk, plus a refund equal to the difference between the higher upfront premium the borrower paid and the premium paid by Standard Risk Borrowers.

Borrower Protections for Higher Risk Mortgages: The bill requires pre-purchase counseling for higher risk borrowers. It also clarifies that at closing, borrowers are to be given disclosures of their payment incentive rights and rights to loss mitigation. Additionally, the bill establishes that borrowers must be provided with an option, at the time the loan is closed, to receive notice from a housing counseling agency if the borrower were to become 60 days delinquent on the loan.

Annual Reports on New Programs and Loss Mitigation: The bill requires HUD to annually report on the rates of default and foreclosure of zero and lower down payment and higher risk borrowers, as well as actions HUD has taken with respect to loss mitigation.

Conforming Loan Limit in Disaster Areas: The bill authorizes HUD, in any case in which the single family residence to be insured within a major disaster area declared by the President, for a temporary period not to exceed 36 months from the date of such Presidential declaration, to enter into agreements to insure a mortgage which involves a principal obligation of up to 100 percent of the dollar limitation determined under section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act for a single family residence, and not in excess of 100 percent of the appraised value of the property plus any initial service charges, appraisal, inspection and other fees in connection with the mortgage as approved by the Secretary.

Acceptable Identification for FHS Mortgagers: Replaces provisions in H.R. 1852 and H.R. 2139 with immigration language that conforms to current FHA policy.

Provisions Relating to FHA Manufactured Housing Loan Insurance Modernization (HR 2139)

Exception to Limitation on Financial Institution Portfolio: The bill eliminates the statutory portfolio cap that limits maximum FHA exposure to 10 percent of a lender's outstanding Title 1 loans, greatly expanding the government's liability under the program.

Maximum Loan Limits: The bill adjusts the manufactured housing loan limits:

- Maximum loan on a manufactured home only from $48,600 to 69,678.
- Maximum loan on a lot only from $16,200 to $23,226.
- Maximum loan on a home and lot combined from $64,800 to $92,904.

Insurance Premiums: The bill requires FHA to assess higher premiums in order to offset the costs of expected defaults, in an effort to ensure that the program does not have to be subsidized by federal taxpayers.

Government Accountability Office Study: The bill requires a GAO study on mitigating the risks manufactured housing residents and communities face from tornados.

TITLE III – Government Sponsored Enterprise Reform

Title III includes language similar to H.R. 1427 which passed the House on May 22, 2007, by a vote of 313 to 104.

Federal Housing Finance Agency: The bill establishes the Federal Housing Finance Agency and makes the Director of this agency the supervisory and regulatory authority over Fannie Mae, Freddie Mac, and the Federal Home Loan Banks.

Conforming Loan Limits: This legislation would raise the conforming loan limit in metropolitan areas where the median home price exceeds the current limit. In those areas, the limit would be set at the median home price. The limits would be raised to $417,000 for a mortgage secured by a single-family residence; $533,850 for a mortgage secured by a 2-family residence; $645,300 for a mortgage secured by a three-family residence; and $801,950 for a four-family residence.

Affordable Housing Fund: Establishes an affordable housing fund that would support home ownership among very low- and low- income families, to increase investment in economically distressed areas, and to increase the supply of rental and owner-occupied housing for these families. Each enterprise would be required to allocate annually to the fund 1.2 basis points of its average total mortgage portfolio during the preceding year.

Portfolio Limits: The bill authorizes the Director of the FHFA to establish standards by which portfolio holdings, or rate of growth of the portfolio holdings, of the enterprises will be deemed to be consistent with the mission and the safe and sound operations of the enterprise. It also allows the Director to make temporary adjustments to the established standards for an enterprise during times of economic distress or market disruption.

Office of Federal Housing Enterprise Oversight (OFHEO): OFHEO is abolished by this legislation. The oversight powers of OFHEO are transferred to the newly created Federal Housing Finance Agency.

Federal Housing Finance Board: The Federal Housing Finance Board is abolished by this legislation. The oversight powers of the Federal Housing Finance Board are transferred to the Federal Housing Finance Agency.

TITLE IV – Emergency Mortgage Loan Modification

Loan Modification:Unless otherwise contracted, the servicer of a loan is to act in the collective interests of all investors and holders of a pooled residential mortgage loan, and not just in the interests of an individual or party. Additionally, when a pooled loan is in default or when default is reasonably foreseeable, the servicer of a loan must take action to modify the loan or enter into a workout plan to maximize the loan's value over the value of the loan realized through foreclosure. The servicer of a loan may make modifications or enter into work out plans other than qualified loan modification or work out plans.

> ***NOTE:*** *According to the legislation, a "qualified" loan modification or work out plan is a modification that: 1) is scheduled to remain in effect until the borrower sells or refinances the property, or for at least five years after the modification was put into effect; 2) does not provide for a repayment schedule that results in an increase in the outstanding balance of the loan; and 3) does not require the borrower to pay any additional fees or points.*

Safe Harbor: The servicer of a loan is not to be held liable to any individual holding an interest in a pooled mortgage loan for modifications made to the qualified loan or work out plans entered into to avoid foreclosure when the servicer has acted in the best collective interests of the loans investors and interest holders.

TITLE V – Other Provisions

Starrett City: The bill provides for an agreement between the Starrett City Associates (the Associates) and the U.S. Department of Housing and Urban Development (HUD), the New York State Housing Finance Agency (HFA), the New York State Division of Housing and Community Renewal (DHCR), and the City of New York Department of Housing Preservation and Development (HPD). The agreement formed would keep unit rental rates affordable for those tenants currently living in the Starrett City housing complex by replacing the Associates' current Section 8 and Rental Assistance Payment (RAP) government contracts with a new project-based Section 8 contract.

> **Note: The House passed H.R. 5937, which included identical language, on May 6, 2008.*

Malden, Massachusetts: The Heritage Apartments in Malden, MA, are considered low-income housing to enable its residents to receive enhanced voucher assistance under this legislation. In addition, the bill directs the Secretary to approve the prepayment and subsequent transfer of the property without any further condition other than a restriction that the housing is restricted for occupancy by families with incomes not exceeding 80 percent of the adjusted median income for the area.

Transfer of Rental Assistance Contracts in Ohio: The bill directs the Secretary to transfer project-based rental assistance and housing assistance on housing managed by Community Properties of Ohio Management Services LLC to other properties located in Franklin County, Ohio and on housing owned by The Model Group, Inc to other properties located in Hamilton County, Ohio.

> **Note: The Massachusetts and Ohio provisions were previously passed by the House as part of the Section 8 Voucher Reform Act (H.R. 1851) on July 12, 2007, by a vote of 333 to 83.*

TITLE VI – Housing Assistance Authorization
Limitation on Use of Funds: None of the funds authorized to be appropriated under this title may be used to engage in lobbying activities.

AMENDMENT #2 – Representative Charles Rangel (D-NY)
Low-Income Housing Tax Credit: Increases the amount of low-income housing tax credits each state may allocate for projects in the state and makes numerous other changes to the credit.

First-time Homebuyer Tax Credit: Provides a refundable tax-credit for the next year equal to 10 percent of the purchase of price of the home (up to $7,500). The credit is phased out for individuals with adjusted gross income above $70,000 ($140,000 for married couples). The credit operates more like an interest-free loan, as homebuyers would be required to repay the government the amount of the tax credit over 15 years.

Property Tax Deduction: For 2008, provides an additional standard deduction (for non-itemizers) for real property taxes paid, up to $350 for individuals ($700 for married couples).

Mortgage Revenue Bonds: Provides $10 billion in additional tax-exempt bond authority to provide loans to first-time home buyers and to allow refinancing of certain current mortgages.

Municipal Bonds: Temporarily allows state and local bonds which are not issued for housing purposes to retain their tax-exempt status, even if guaranteed by the Federal Home Loan Banks (under current law, housing-related debt which is credit enhanced by the FHLBs retains its tax-exempt status, but non-housing debt does not).

Offsets: Creates mandatory cost basis reporting by brokers for transactions involving publicly traded securities, which is expected to improve taxpayer compliance in reporting and paying taxes on capital gains and raise $8 billion over ten years. It would also delay the implementation of a tax cut for certain corporations with foreign sources of income for one year, which is estimated to raise $3 billion over ten years.

Housing Programs: The bill requires the HUD Secretary to implement administrative and procedural changes to expedite approval of multifamily housing projects for which assistance is provided in conjunction with and low-income housing tax credits under Section 42 of the Internal Revenue Service.

AMENDMENT #3 - Reps. Brad Miller (D-NC)/ Steven LaTourette (R-OH)
The amendment designates State law, and not Federal law, as the primary body of law regulating the foreclosure of residential property or the treatment of foreclosed property within a State.

COST

The Congressional Budget Office has not scored the House Amendments to the Senate Amendment to H.R. 3221.

ADDITIONAL VIEWS

According to the Statement of Administration Policy, "Unlike the Administration's recent administrative efforts to broaden FHA eligibility, H.R. 3221 is overly burdensome and prescriptive. It would force FHA and taxpayers to take on excessive risk, and jeopardize FHA's financial solvency…To expand the role of FHA in this way is ill-advised. And to do so without first giving the agency the tools it needs to deal with additional risk -- such as more flexible risk-based pricing and a ban on seller funded gift down payment assistance -- would be irresponsible. Additionally, the bill includes a number of other objectionable

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provisions, such as the permanent increase to the FHA and Government Sponsored Enterprise (GSE) loan limits, a largely ineffective homeowner tax credit, an expansion of Federal Home Loan Banks' activities beyond their area of competence, and an objectionable tax offset delaying worldwide interest allocation. If H.R. 3221 were presented to the President in its current form, his senior advisors would recommend a veto."

MOTION TO RECOMMIT

Please find the Republican Motion to Recommit here.

STAFF CONTACT

For questions or further information contact Brianne Miller at (202) 226-2302.