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H.R.3221

Housing and Economic Recovery Act of 2008 (Enrolled as Agreed to or Passed by Both House and Senate)

DIVISION B--FORECLOSURE PREVENTION

SEC. 2001. SHORT TITLE.

This division may be cited as the `Foreclosure Prevention Act of 2008'.

SEC. 2002. EMERGENCY DESIGNATION.

For purposes of Senate enforcement, all provisions of this division are designated as emergency requirements and necessary to meet emergency needs pursuant to section 204 of S. Con. Res. 21 (110th Congress), the concurrent resolution on the budget for fiscal year 2008.

TITLE I--FHA MODERNIZATION ACT OF 2008

SEC. 2101. SHORT TITLE.

This title may be cited as the `FHA Modernization Act of 2008'.

Subtitle A--Building American Homeownership

SEC. 2111. SHORT TITLE.

This subtitle may be cited as the `Building American Homeownership Act of 2008'.

SEC. 2112. MAXIMUM PRINCIPAL LOAN OBLIGATION.

(a) In General- Paragraph (2) of section 203(b) of the National Housing Act (12 U.S.C. 1709(b)(2)) is amended--

(1) by striking subparagraphs (A) and (B) and inserting the following:

`(A) not to exceed the lesser of--

`(i) in the case of a 1-family residence, 115 percent of the median 1-family house price in the area, as determined by the Secretary; and in the case of a 2-, 3-, or 4-family residence, the percentage of such median price that bears the same ratio to such median price as the dollar amount limitation determined under the sixth sentence of section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)) for a 2-, 3-, or 4-family residence, respectively, bears to the dollar amount limitation determined under such section for a 1-family residence; or

`(ii) 150 percent of the dollar amount limitation determined under the sixth sentence of such section 305(a)(2) for a residence of applicable size;

except that the dollar amount limitation in effect under this subparagraph for any size residence for any area may not be less than the greater of: (I) the dollar amount limitation in effect under this section for the area on October 21, 1998; or (II) 65 percent of the dollar amount limitation determined under the sixth sentence of such section 305(a)(2) for a residence of the applicable size; and

`(B) not to exceed 100 percent of the appraised value of the property.'; and

(2) in the matter following subparagraph (B), by striking the second sentence (relating to a definition of `average closing cost') and all that follows through `section 3103A(d) of title 38, United States Code.'.

(b) Treatment of Up-Front Premiums- Section 203(d) of the National Housing Act (12 U.S.C. 1709(d)) is amended--

(1) by striking `Notwithstanding any' and inserting the following: `Except as provided in paragraph (2) of this subsection, notwithstanding';

(2) by inserting `(1)' after `(d)'; and

(3) by adding at the end the following new paragraph:

`(2) The maximum amount of a mortgage determined under subsection (b)(2)(B) of this section may not be increased as provided in paragraph (1)'.

(c) Effective Date- The amendments made by subsection (a) shall take effect upon the expiration of the date described in section 202(a) of the Economic Stimulus Act of 2008 (Public Law 110-185; 122 Stat. 620).

SEC. 2113. CASH INVESTMENT REQUIREMENT AND PROHIBITION OF SELLER-FUNDED DOWN PAYMENT ASSISTANCE.

Paragraph (9) of section 203(b) of the National Housing Act (12 U.S.C. 1709(b)(9)) is amended to read as follows:

“(9) CASH INVESTMENT REQUIREMENT-

“(A) IN GENERAL- A mortgage insured under this section shall be executed by a mortgagor who shall have paid, in cash or its equivalent, on account of the property an amount equal to not less than 3.5 percent of the appraised value of the property or such larger amount as the Secretary may determine.

“(B) FAMILY MEMBERS- For purposes of this paragraph, the Secretary shall consider as cash or its equivalent any amounts borrowed from a family member (as such term is defined in section 201), subject only to the requirements that, in any case in which the repayment of such borrowed amounts is secured by a lien against the property, that--

“(i) such lien shall be subordinate to the mortgage; and

“(ii) the sum of the principal obligation of the mortgage and the obligation secured by such lien may not exceed 100 percent of the appraised value of the property plus any initial service charges, appraisal, inspection, and other fees in connection with the mortgage.

“(C) PROHIBITED SOURCES- In no case shall the funds required by subparagraph (A) consist, in whole or in part, of funds provided by any of the following parties before, during, or after closing of the property sale:

“(i) The seller or any other person or entity that financially benefits from the transaction.

“(ii) Any third party or entity that is reimbursed, directly or indirectly, by any of the parties described in clause (i).

This subparagraph shall apply only to mortgages for which the mortgagee has issued credit approval for the borrower on or after October 1, 2008.’.

SEC. 2114. MORTGAGE INSURANCE PREMIUMS.

Section 203(c)(2) of the National Housing Act (12 U.S.C. 1709(c)(2)) is amended--

(1) in the matter preceding subparagraph (A), by striking ‘or of the General Insurance Fund’ and all that follows through ‘section 234 (c),.’; and

(2) in subparagraph (A)--

(A) by striking ‘2.25 percent’ and inserting ‘3 percent’; and

(B) by striking ‘2.0 percent’ and inserting ‘2.75 percent’.

SEC. 2115. REHABILITATION LOANS.

Subsection (k) of section 203 of the National Housing Act (12 U.S.C. 1709(k)) is amended--

(1) in paragraph (1), by striking ‘on’ and all that follows through ‘1978’; and

(2) in paragraph (5)--

(A) by striking ‘General Insurance Fund’ the first place it appears and inserting ‘Mutual Mortgage Insurance Fund’; and

(B) in the second sentence, by striking the comma and all that follows through ‘General Insurance Fund’.

SEC. 2116. DISCRETIONARY ACTION.

The National Housing Act is amended--

(1) in subsection (e) of section 202 (12 U.S.C. 1708(e))--

(A) in paragraph (3)(B), by striking ‘section 202(e) of the National Housing Act’ and inserting ‘this subsection’; and

(B) by redesignating such subsection as subsection (f);

(2) by striking paragraph (4) of section 203(s) (12 U.S.C. 1709(s)(4)) and inserting the following new paragraph:

“(4) the Secretary of Agriculture;’; and

(3) by transferring subsection (s) of section 203 (as amended by paragraph (2) of this section) to section 202, inserting such subsection after subsection (d) of section 202, and redesignating such subsection as subsection (e).

SEC. 2117. INSURANCE OF CONDOMINIUMS.

(a) In General- Section 234 of the National Housing Act (12 U.S.C. 1715y) is amended--

(1) in subsection (c), in the first sentence--

(A) by striking ‘and’ before ‘(2)’; and

(B) by inserting before the period at the end the following: ‘, and (3) the project has a blanket mortgage insured by the Secretary

under subsection (d)'; and

(2) in subsection (g), by striking ` , except that' and all that follows and inserting a period.

(b) Definition of Mortgage- Section 201(a) of the National Housing Act (12 U.S.C. 1707(a)) is amended--

(1) before ` a first mortgage' insert ` (A)';

(2) by striking ` or on a leasehold (1)' and inserting ` (B) a first mortgage on a leasehold on real estate (i)';

(3) by striking ` or (2)' and inserting ` , or (ii)'; and

(4) by inserting before the semicolon the following: ` , or (C) a first mortgage given to secure the unpaid purchase price of a fee interest in, or long-term leasehold interest in, real estate consisting of a one-family unit in a multifamily project, including a project in which the dwelling units are attached, or are manufactured housing units, semi-detached, or detached, and an undivided interest in the common areas and facilities which serve the project'.

(c) Definition of Real Estate- Section 201 of the National Housing Act (12 U.S.C. 1707) is amended by adding at the end the following new subsection:

` (g) The term ` real estate' means land and all natural resources and structures permanently affixed to the land, including residential buildings and stationary manufactured housing. The Secretary may not require, for treatment of any land or other property as real estate for purposes of this title, that such land or property be treated as real estate for purposes of State taxation.'

SEC. 2118. MUTUAL MORTGAGE INSURANCE FUND.

(a) In General- Subsection (a) of section 202 of the National Housing Act (12 U.S.C. 1708(a)) is amended to read as follows:

` (a) Mutual Mortgage Insurance Fund-

` (1) ESTABLISHMENT- Subject to the provisions of the Federal Credit Reform Act of 1990, there is hereby created a Mutual Mortgage Insurance Fund (in this title referred to as the ` Fund'), which shall be used by the Secretary to carry out the provisions of this title with respect to mortgages insured under section 203. The Secretary may enter into commitments to guarantee, and may guarantee, such insured mortgages.

` (2) LIMIT ON LOAN GUARANTEES- The authority of the Secretary to enter into commitments to guarantee such insured mortgages shall be effective for any fiscal year only to the extent that the aggregate original principal loan amount under such mortgages, any part of which is guaranteed, does not exceed the amount specified in appropriations Acts for such fiscal year.

` (3) FIDUCIARY RESPONSIBILITY- The Secretary has a responsibility to ensure that the Mutual Mortgage Insurance Fund remains financially sound.

` (4) ANNUAL INDEPENDENT ACTUARIAL STUDY- The Secretary shall provide for an independent actuarial study of the Fund to be conducted annually, which shall analyze the financial position of the Fund. The Secretary shall submit a report annually to the Congress describing the results of such study and assessing the financial status of the Fund. The report shall recommend adjustments to underwriting standards, program participation, or premiums, if necessary, to ensure that the Fund remains financially sound. The report shall also include an evaluation of the quality control procedures and accuracy of information utilized in the process of underwriting loans guaranteed by the Fund. Such evaluation shall include a review of the risk characteristics of loans based not only on borrower information and performance, but on risks associated with loans originated or funded by various entities or financial institutions.

` (5) QUARTERLY REPORTS- During each fiscal year, the Secretary shall submit a report to the Congress for each calendar quarter, which shall specify for mortgages that are obligations of the Fund--

` (A) the cumulative volume of loan guarantee commitments that have been made during such fiscal year through the end of the quarter for which the report is submitted;

` (B) the types of loans insured, categorized by risk;

` (C) any significant changes between actual and projected claim and prepayment activity;

` (D) projected versus actual loss rates; and

` (E) updated projections of the annual subsidy rates to ensure that increases in risk to the Fund are identified and mitigated by adjustments to underwriting standards, program participation, or premiums, and the financial soundness of the Fund is maintained.

The first quarterly report under this paragraph shall be submitted on the last day of the first quarter of fiscal year 2008, or on the last day of the first full calendar quarter following the enactment of the Building American Homeownership Act of 2008, whichever is later.

` (6) ADJUSTMENT OF PREMIUMS- If, pursuant to the independent actuarial study of the Fund required under paragraph (4), the Secretary determines that the Fund is not meeting the operational goals established under paragraph (7) or there is a substantial probability that the Fund will not maintain its established target subsidy rate, the Secretary may either make programmatic adjustments under this title as necessary to reduce the risk to the Fund, or make appropriate premium adjustments.

` (7) OPERATIONAL GOALS- The operational goals for the Fund are--

` (A) to minimize the default risk to the Fund and to homeowners by among other actions instituting fraud prevention quality control screening not later than 18 months after the date of enactment of the Building American Homeownership Act of 2008; and

` (B) to meet the housing needs of the borrowers that the single family mortgage insurance program under this title is designed to serve.'

(b) Obligations of Fund- The National Housing Act is amended as follows:

(1) HOMEOWNERSHIP VOUCHER PROGRAM MORTGAGES- In section 203(v) (12 U.S.C. 1709(v))--

(A) by striking `Notwithstanding section 202 of this title, the' and inserting `The'; and

(B) by striking `General Insurance Fund' the first place such term appears and all that follows through the end of the subsection and inserting `Mutual Mortgage Insurance Fund'.

(2) HOME EQUITY CONVERSION MORTGAGES- Section 255(i)(2)(A) of the National Housing Act (12 U.S.C. 1715z-20(i)(2)(A)) is amended by striking `General Insurance Fund' and inserting `Mutual Mortgage Insurance Fund'.

(c) Conforming Amendments- The National Housing Act is amended--

(1) in section 205 (12 U.S.C. 1711), by striking subsections (g) and (h); and

(2) in section 519(e) (12 U.S.C. 1735c(e)), by striking `203(b)' and all that follows through `203(i)' and inserting `203, except as determined by the Secretary'.

SEC. 2119. HAWAIIAN HOME LANDS AND INDIAN RESERVATIONS.

(a) Hawaiian Home Lands- Section 247(c) of the National Housing Act (12 U.S.C. 1715z-12(c)) is amended--

(1) by striking `General Insurance Fund established in section 519' and inserting `Mutual Mortgage Insurance Fund'; and

(2) in the second sentence, by striking `(1) all references' and all that follows through `and (2)'.

(b) Indian Reservations- Section 248(f) of the National Housing Act (12 U.S.C. 1715z-13(f)) is amended--

(1) by striking `General Insurance Fund' the first place it appears through `519' and inserting `Mutual Mortgage Insurance Fund'; and

(2) in the second sentence, by striking `(1) all references' and all that follows through `and (2)'.

SEC. 2120. CONFORMING AND TECHNICAL AMENDMENTS.

(a) Repeals- The following provisions of the National Housing Act are repealed:

(1) Subsection (i) of section 203 (12 U.S.C. 1709(i)).

(2) Subsection (o) of section 203 (12 U.S.C. 1709(o)).

(3) Subsection (p) of section 203 (12 U.S.C. 1709(p)).

(4) Subsection (q) of section 203 (12 U.S.C. 1709(q)).

(5) Section 222 (12 U.S.C. 1715m).

(6) Section 237 (12 U.S.C. 1715z-2).

(7) Section 245 (12 U.S.C. 1715z-10).

(b) Definition of Area- Section 203(u)(2)(A) of the National Housing Act (12 U.S.C. 1709(u)(2)(A)) is amended by striking `shall' and all that follows and inserting `means a metropolitan statistical area as established by the Office of Management and Budget';.

(c) Definition of State- Section 201(d) of the National Housing Act (12 U.S.C. 1707(d)) is amended by striking `the Trust Territory of the Pacific Islands' and inserting `the Commonwealth of the Northern Mariana Islands'.

SEC. 2121. INSURANCE OF MORTGAGES.

Subsection (n)(2) of section 203 of the National Housing Act (12 U.S.C. 1709(n)(2)) is amended--

(1) in subparagraph (A), by inserting `or subordinate mortgage or' before `lien given'; and

(2) in subparagraph (C), by inserting `or subordinate mortgage or' before `lien'.

SEC. 2122. HOME EQUITY CONVERSION MORTGAGES.

(a) In General- Section 255 of the National Housing Act (12 U.S.C. 1715z-20) is amended--

(1) in subsection (b)(2), insert `real estate,' after `mortgagor';;

(2) by amending subsection (d)(1) to read as follows:

`(1) have been originated by a mortgagee approved by the Secretary;';

(3) by amending subsection (d)(2)(B) to read as follows:

`(B) has received adequate counseling, as provided in subsection (f), by an independent third party that is not, either directly or indirectly, associated with or compensated by a party involved in--

`(i) originating or servicing the mortgage;

`(ii) funding the loan underlying the mortgage; or

`(iii) the sale of annuities, investments, long-term care insurance, or any other type of financial or insurance product;';

(4) in subsection (f)--

(A) by striking '(f) Information Services for Mortgages-' and inserting '(f) Counseling Services and Information for Mortgages-'; and

(B) by amending the matter preceding paragraph (1) to read as follows: 'The Secretary shall provide or cause to be provided adequate counseling for the mortgagor, as described in subsection (d)(2)(B). Such counseling shall be provided by counselors that meet qualification standards and follow uniform counseling protocols. The qualification standards and counseling protocols shall be established by the Secretary within 12 months of the date of enactment of the Building American Homeownership Act of 2008. The protocols shall require a qualified counselor to discuss with each mortgagor information which shall include--'

(5) in subsection (g), by striking 'established under section 203(b)(2)' and all that follows through 'located' and inserting 'limitation established under section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act for a 1-family residence';

(6) by striking subsection (l);

(7) by redesignating subsection (m) as subsection (l);

(8) by amending subsection (l), as so redesignated, to read as follows:

(l) Funding for Counseling- The Secretary may use a portion of the mortgage insurance premiums collected under the program under this section to adequately fund the counseling and disclosure activities required under subsection (f), including counseling for those homeowners who elect not to take out a home equity conversion mortgage, provided that the use of such funds is based upon accepted actuarial principles.'; and

(9) by adding at the end the following new subsection:

(m) Authority To Insure Home Purchase Mortgage-

(1) IN GENERAL- Notwithstanding any other provision of this section, the Secretary may insure, upon application by a mortgagee, a home equity conversion mortgage upon such terms and conditions as the Secretary may prescribe, when the home equity conversion mortgage will be used to purchase a 1- to 4-family dwelling unit, one unit of which the mortgagor will occupy as a primary residence, and to provide for any future payments to the mortgagor, based on available equity, as authorized under subsection (d)(9).

(2) LIMITATION ON PRINCIPAL OBLIGATION- A home equity conversion mortgage insured pursuant to paragraph (1) shall involve a principal obligation that does not exceed the dollar amount limitation determined under section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act for a 1-family residence.

(n) Requirements on Mortgage Originators-

(1) IN GENERAL- The mortgagee and any other party that participates in the origination of a mortgage to be insured under this section shall--

(A) not participate in, be associated with, or employ any party that participates in or is associated with any other financial or insurance activity; or

(B) demonstrate to the Secretary that the mortgagee or other party maintains, or will maintain, firewalls and other safeguards designed to ensure that--

(i) individuals participating in the origination of the mortgage shall have no involvement with, or incentive to provide the mortgagor with, any other financial or insurance product; and

(ii) the mortgagor shall not be required, directly or indirectly, as a condition of obtaining a mortgage under this section, to purchase any other financial or insurance product.

(2) APPROVAL OF OTHER PARTIES- All parties that participate in the origination of a mortgage to be insured under this section shall be approved by the Secretary.

(o) Prohibition Against Requirements To Purchase Additional Products- The mortgagor or any other party shall not be required by the mortgagee or any other party to purchase an insurance, annuity, or other similar product as a requirement or condition of eligibility for insurance under subsection (c), except for title insurance, hazard, flood, or other peril insurance, or other such products that are customary and normal under subsection (c), as determined by the Secretary.

(p) Study to Determine Consumer Protections and Underwriting Standards- The Secretary shall conduct a study to examine and determine appropriate consumer protections and underwriting standards to ensure that the purchase of products referred to in subsection (o) is appropriate for the consumer.

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