

Legislative Bulletin.....May 19, 2009

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S. 896 – Helping Families Save Their Homes Act of 2009

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Order of Business: The bill is scheduled to be considered on May 19, 2009 under a motion to suspend the rules and pass the bill.

Background: In recent years, there has been a significant rise in home foreclosures and bankruptcies. This rise can be attributed to many factors including, but not limited to: the economic downturn; a crisis in the housing market caused by subprime loans (loans with more risks associated with them) given to unqualified individuals; and subprime loans that allow borrowers a low monthly payment for the first few years, but then raise the payments exponentially for the remaining years. As interest rates rise in this situation, borrowers are often unable to meet their mortgage payments. Furthermore, when government sponsored enterprises (GSEs) like Freddie Mac and Fannie Mae began securitizing more subprime and non-traditional loans, they relaxed their underwriting standards, creating more risk-prone loans.

On March 5, 2009, the House passed [H.R. 1106](#), the Helping Families Save Their Homes Act of 2009, by a vote of [234-191](#). The Senate passed legislation (S. 896), which contained some of the same provisions as the House-passed bill (but of note did *not* contain cramdown), on May 6, 2009 by a vote of [91 to 5](#).

The legislation that the House will vote on today is an amended version of the Senate legislation, but is substantially very similar to the Senate-passed bill, and thus does *not* include cramdown.

Summary:

Title I—Prevention of Mortgage Foreclosures

Guaranteed Rural Housing Loans: S. 896 requires mortgagees to engage in loss mitigation actions (intended to provide an alternative to foreclosure) as prescribed by the Secretary. The legislation allows the Secretary to authorize the modifications of mortgages, and establish a program for payment of a partial claim to a mortgagee that agrees to apply the claim amount to

payment of a mortgage on a 1- to 4-family residence for mortgages that are in default (or face imminent default).

The legislation requires that:

- the amount of the partial claim payment shall not exceed an amount equivalent to 30% of the unpaid principal balance of the mortgage and any costs that are approved by the Secretary;
- the amount of the partial claim payment be applied first to any outstanding indebtedness on the mortgage, including any arrearage, but may also include principal reduction;
- the mortgager agree to repay the amount of the partial claim to the Secretary upon terms and conditions acceptable to the Secretary;
- expenses related to a partial claim or modification are not to be charged to the borrower;
- the Secretary may authorize compensation to the mortgagees for lost income on monthly mortgage payments due to interest rate reduction;
- the Secretary may reimburse the mortgagee from the appropriate guaranty fund in connection with any activities that the mortgagee is required to undertake concerning repayment by the mortgagor of the amount owed to the Secretary; and
- the Secretary may authorize payments to the mortgagee on behalf of the borrower, under such terms and conditions as are defined by the Secretary, based on successful performance under the terms and of the mortgage modification, which shall be used to reduce the principal obligation under the modified mortgage.

The legislation establishes a program to allow the Secretary to authorize the modification of mortgages with terms extended up to 40 years from the date of modification.

Modification of Housing Loans Guaranteed by the Department of Veterans Affairs: S. 896 establishes the starting point, for purposes of calculating the maturity date of a loan guaranteed by the Department of Veterans Affairs, as the date of origination.

Authorizations for HUD Programs: S. 896 authorizes spending subject to appropriation for:

- \$10 million in FY 2010 and FY 2011 (a total of \$20 million) for a *public awareness campaign on mortgage scams and counseling assistance*.
- \$50 million in FY 2010 and FY 2011 (a total of \$100 million) for the *housing counseling assistance program*.
- \$5 million in FY 2010 and FY 2011 (a total of \$10 million) for hiring new federal employees at the *Office of Fair Housing and Equal Opportunity*.

Within 60 days of enactment, the legislation requires the Comptroller of the Currency and the Director of the Office of Thrift Supervision to issue certain mortgage modification data collection and reporting requirements for certain institutions covered by the legislation.

Neighborhood Stabilization Program: S. 896 expands the allowable uses for states to spend Neighborhood Stabilization program dollars.

Title II—Foreclosure Mitigation and Credit Availability

Service Safe Harbor for Mortgage Loan Modifications: The provision is intended to protect mortgage servicers from liability if the servicer makes mortgage loan modifications under conditions specified in the bill. The “safe harbor” under the legislation is available if default on a mortgage has occurred or is likely to occur, and the servicer reasonably believes that the anticipated recovery on the principal outstanding obligation of the mortgage under the modification plan will exceed money collected via foreclosure.

The legislation further requires that any servicer that engages in loan modifications or workout plans based on the safe harbor provided in the bill fulfill certain reporting requirements.

This provision would apply to all mortgage servicers, even where a contract currently exists between the mortgage servicer and investors that explicitly prohibits loan modifications. The provision would apply for modifications, workouts, and other loss mitigation plans entered into before December 31, 2012.

Changes to Hope for Homeowners Program: The Hope for Homeowners Program was created by the Housing and Economic Recovery Act of 2008. The program authorizes \$300 billion of FHA loan guarantees.

In general, this section of the bill is intended to increase the number of loans refinanced through the Hope for Homeowners program. Originally CBO projected that 400,000 Americans would take advantage of the program, but so far less than 25 loans have been closed. This section of the bill would:

- put the Secretary of Labor in charge of running the program, and give the program’s board an advisory role;
- eliminate the requirement that an individual receiving assistance under this program verify their income by providing income tax return information—instead, the legislation allows the Secretary of Labor to create alternative procedures and standards;
- reduce the upfront fee for the program from 3% to “not more than 3%,” and reduce the annual fee from 1.5% to 1%;
- allow the Secretary to make payments of up to \$1,000 for each loan made by the servicer; and
- require the Secretary (“if feasible”), with the concurrence of the board, to create an auction process to refinance eligible mortgages on a wholesale or bulk basis.

The bill prohibits anyone with a net worth of more than \$1 million from participating in the program.

The legislation also reduces the \$700 billion of TARP (Troubled Asset Relief Program—or “bailout”) funding under the Emergency Economic Stabilization Act by \$1.224 billion.

Requirements for FHA-Approved Mortgagees: The bill prohibits any person or entity that is not approved by the Secretary to serve as a mortgagee. In order to be approved by the Secretary, an applicant mortgagee must not have any officer, partner, director, principal, or employee who meets one of several conditions listed on pages 33-34 of the bill.

Increase to FDIC Cap/Borrowing Authority: The bill temporarily extends, from 2010-2013, the limit on deposits insured by the Federal Deposit Insurance Corporation (FDIC) and the National Credit Union Administration (NCUA) to \$250,000. The Emergency Economic Stabilization Act ([H.R. 1424](#)) increased the limit from \$100,000 to \$250,000 through December 31, 2009. However, under current law, the limit goes back down to \$100,000 beginning in 2010. The bill also increases the FDIC's borrowing authority from \$30 billion to \$100 billion, and increases the NCUA's borrowing authority from \$100 million to \$6 billion. Finally, S. 896 allows the FDIC to temporarily increase the FDIC's borrowing authority to \$500 billion (with approval of two-thirds of the Federal Reserve) and the Secretary of the Treasury. The NCUA would be given the authority to temporarily increase its lending authority to \$30 billion on the same basis.

The legislation also creates a National Credit Union Share Insurance Fund Restoration Plan to allow the Federal Reserve to establish and implement a restoration plan within 90 days if an existing fund is projected to fall below thresholds sets by the bill. The bill also creates a Temporary Corporate Credit Union Stabilization Fund.

GSE Conforming Loan Limit to Mortgages Assisted with TARP Funds: The legislation requires the Secretary to provide that the limitation on the maximum original principal obligation of a mortgage be not less than the principal obligation of a mortgage that may be purchased by the Federal Home Loan Mortgage Corporation.

Title III—Sense of Congress on Mortgage Fraud Task Force

Sense of Congress on Mortgage Fraud Taskforce: The legislation provides a sense of the Congress that the Department of Justice should establish a Nationwide Mortgage Fraud Task Force.

Title IV—Foreclosure Moratorium Provisions

Requires any program created by the federal government to create a public-private investment fund to:

- impose “strict conflict of interest rules on managers of public-private investment funds to ensure that securities bought by the funds are purchased in arms-length transactions,” that fiduciary duties to public and private investors in the fund are not violated, and there is a full disclosure of relevant facts; and
- require each public-private investment fund to make a quarterly report to the Secretary of the Treasury.

The legislation requires the Secretary of the Treasury to consult with the Special Inspector General and issue regulations governing the interaction of the Public-Private Investment Program and the Term-Asset Backed Securities Loan Facility Program. The legislation makes available (from funding provided by the Emergency Economic Stabilization Act of 2008), \$15 million to the Special Inspector General.

The legislation also reduces the \$700 billion of TARP (Troubled Asset Relief Program—or “bailout”) funding under the Emergency Economic Stabilization Act by \$1.259 billion.

Title V—Farm Loan Restructuring Report

Congressional Oversight Panel Special Report: The legislation requires the Congressional Oversight Panel, within 60 days of enactment, to submit a special report on farm loan restructuring.

Title VI—Enhanced Oversight of the Troubled Asset Relief Program

Enhanced Oversight of the Troubled Asset Relief Program: Among other things, this title of the bill requires the Secretary of the Treasury to provide the GAO Comptroller General with appropriate space and facilities in the Department of the Treasury to facilitate oversight of TARP, and to have access to various TARP records.

Title VII—Protecting Tenants at Foreclosure Act

Effect of Foreclosure on Preexisting Tenancy: The legislation gives a tenant (except under certain exceptions spelled out in the bill) the right to stay through the end of a lease in the case of any foreclosure.

Division B—McKinney-Vento Homeless Reauthorization

S. 896 reauthorizes the McKinney-Vento Homeless program. The authorized funding level for the program is set at \$2.2 billion in FY 2010 and “such sums” in FY 2011. The legislation also makes numerous amendments to the program that expand eligibility.

Conservative Concerns:

Attempted Expansion of Hope for Homeowners Program: Many conservatives may oppose expansion of the Hope for Homeowners Program. For example, the Minority Views of the Committee Report for H.R. 787 (legislation also aimed at expanding the Hope for Homeowners program) states in part:

*“H.R. 787, as now estimated by CBO, would improve the efficacy of the HOPE for Homeowners program by serving 25,000 distressed households but at a cost of \$670 million dollars, or \$27,000 per assisted family. **We believe that Congress should eliminate this program because it is ineffective, costly and does not maximize the taxpayer's investment in providing foreclosures mitigation to distressed homeowners.**”*

Instead, we believe that Congress should start anew with private and existing public initiatives that have a proven record and will not expose taxpayers to costly remedies while doing little to improve conditions in the housing market.”

Committee Action: S. 896 was introduced on April 24, 2009, and passed the Senate by a vote of [91 to 5](#) on May 6, 2009.

Administration Position: No Statement of Administration Policy (SAP) is available.

Cost to Taxpayers: No CBO score is available.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes. The bill would impose numerous new regulations on the private sector and expand authorized funding levels for some programs.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: No CBO score is available.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: No committee report citing compliance with the House’s earmark rule is available.

RSC Staff Contact: Brad Watson, brad.watson@mail.house.gov, (202) 226-9719
