



REP. TOM PRICE, M.D. (R-GA), CHAIRMAN
 PAUL TELLER, EXECUTIVE DIRECTOR
 424 CANNON HOUSE OFFICE BUILDING
 WASHINGTON, DC 20515

rsc.price.house.gov

ph (202) 226-9717 / fax (202) 226-1633

Legislative Bulletin.....June 9, 2010

Contents:

H.R. 5072— FHA Reform Act of 2010

H.R. 5072—FHA Reform Act of 2010
(Rep. Waters, D-CA)

Order of Business: The House will consider H.R. 5072 on Wednesday, June 9, 2010, under a structured rule ([H.Res. 1424](#)). The rule waives all points of order against consideration of the bill except those arising under clause 9 (earmark rule) and 10 (“PAYGO”) of rule XXI. The rule provides one hour of debate equally divided between the chair and minority ranking member of the Financial Services Committee. Finally, the rule makes in order 13 amendments described on page 3.

Summary: The legislation consists of a series of reforms to the Federal Housing Administration (FHA). The Federal Housing Administration (FHA) was created by the National Housing Act of 1934. It is under the Department of Housing and Urban Development (HUD). According to CRS, the FHA is “a federally operated mortgage insurance program that primarily serves first-time and less-creditworthy homeowners. Home buyers pay mortgage insurance premiums to FHA, which insures lenders against homeowner mortgage default risk.” *Highlights* of the legislation are as follows:

Mortgage Insurance Premiums: The cap on annual premiums for FHA single-family program would increase from 0.55% to 1.55% of loan balance.

Indemnification by Mortgagees: The legislation allows the Secretary to require a mortgagee to pay an indemnity if the mortgage executed by a mortgagee was not originated or underwritten in accordance with the requirements established by the Secretary, and the Secretary pays an insurance claim with respect to the mortgage within a reasonable period specified by the Secretary.

Authority to Terminate Mortgagee Origination and Underwriting Approval: The legislation gives the Secretary of Housing and Urban Development (HUD) the ability to terminate the approval of the mortgagee to originate or underwrite single family mortgages for any area (or nationally) if the Secretary determines that the mortgagee has an excessive rate of early defaults or claims.

Deputy Assistant Secretary of FHA for Risk Management and Regulatory Affairs: The legislation creates this office, to be responsible to the Federal Housing Commissioner, “for all matters relating to managing and mitigating risk to the mortgage insurance funds of the Department and ensuring the performance of mortgages insured by the Department.”

Use of Outside Credit Risk Analysis Sources: The legislation allows the Secretary to use private credit risk analysis sources to:

- Analyze the credit risk models and practices employed by the Department in connection with such mortgages;
- Evaluate underwriting standards applicable to such mortgages insured by the Department; and
- Analyze the performance of lenders in complying with, and the Department in enforcing, such underwriting standards.

Review of Mortgagee Performance: The bill requires the Secretary to identify which mortgagees have had a significant or rapid increase in the number of early defaults and claims. The legislation authorizes “sufficient resources” for this purpose.

Use of Nationwide Mortgage Licensing System and Registry: The legislation allows the Secretary to require that FHA mortgagees:

- Obtain and maintain a unique company identifier assigned by the Nationwide Mortgage Licensing System and Registry, as established by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators;
- Obtain and maintain the identifier assigned by the Nationwide Mortgage Licensing System and Registry;

The legislation further requires the Secretary to establish protocols for information sharing with state regulatory agencies.

Reporting of Mortgagee Actions Taken Against Other Mortgagees: The legislation requires FHA mortgagees to report to the FHA any actions to terminate or discontinue purchases from other mortgages based on a determination of fraud or material misrepresentation.

Mutual Mortgage Insurance Fund Reports: The bill amends a requirement from the Housing and Economic Recovery Act of 2008 that requires quarterly reporting requirements of the FHA program. This provision would require the Secretary to include in these reports any recommendations on restoring the safety and soundness of the Mutual Mortgage Fund (as well as any projections on changes to safety and soundness of this fund).

Review of Downpayment Requirements: If the FHA increases downpayment requirements for borrowers because the Mutual Mortgage Insurance Fund (MMIF) is below 2%, this provision would require the Secretary to review the higher downpayment requirements when the MMIF is back above 2%.

Default and Origination Information by Loan Servicer and Originating Direct

Endorsement Lender: The legislation requires the Secretary to track mortgage performance by servicer.

Third Party Servicer Outreach: The legislation allows the Secretary to use independent third parties (and use taxpayer funds to reimburse for cost of this service) to make in-person contacts with mortgagors that are 60 or more days past due under covered mortgages.

AMENDMENTS MADE IN ORDER UNDER THE RULE

1. **Waters (D-CA).** The Manager's Amendment makes various technical amendments to the bill, and also makes the following changes:
 - Requires a GAO report to the Congress on the single family mortgage insurance programs of the Secretary for Housing and Urban Development (HUD) and the Mutual Mortgage Insurance Fund (MMIF).
 - Increases loan limits for certain counties surrounded by higher cost areas and experiencing growth of 15% or more over the previous 10 years (note: the amendment description describes this as "significant population growth," but this is just barely above average population growth in the U.S. as a whole).
 - Adds documentation standards for borrowers, including: 1) a valid Social Security number; 2) Proof of being a U.S. citizen or lawful resident.
2. **Cardoza (D-CA).** The underlying bill allows the Secretary to use independent third parties (and use taxpayer funds to reimburse for cost of this service) to make in-person contacts with mortgagors that are 60 or more days past due under covered mortgages. This amendment would require the Secretary to provide priority to independent third parties servicing mortgagors under covered mortgages in areas experiencing a mortgage foreclosure rate and unemployment rate higher than the national average for the most recent 12-month period for which satisfactory data is available.
3. **Cao (R-LA).** The amendment includes available counseling regarding financial management and credit risk to the loan modification information currently included in the bill.
4. **Bean (D-IL).** The amendment would give HUD the authority to establish higher minimum cash investment requirements for all mortgages, or certain classes of mortgages. The amendment also requires, within 12 months of enactment, a report from the HUD Secretary to the Congress on the implementation of the minimum cash investment requirements under the National Housing Act, and an analysis of option for changes to these requirements.
5. **Garrett (R-NJ).** The amendment would raise the FHA down payment requirement from 3.5% to 5% and prohibit closing costs from being rolled in to down payments as well. **Note:** The National Taxpayers Union (NTU) supports a "YES" vote on this amendment.

6. **Tierney (D-MA).** The amendment would require the Secretary of HUD to provide refunds of unearned premium charges paid at the time of insurance for mortgage insurance which were closed prior to December 8, 2004, but which were not endorsed until December 8, 2004 or after that date. The legislation authorizes “*such sums*” of new appropriations for this purpose.
7. **Price (R-GA).** The amendment would—beginning in FY 2012—cap the number of mortgages the FHA can insure to 10% of total loans originated in each year. Within 90 days of enactment of the underlying bill, the amendment would require the Secretary of Housing and Urban Development to submit a plan to Congress to roll back FHA market share to 10% of loans originated each year by 2012. **Note:** The National Taxpayers Union (NTU) supports a “YES” vote on this amendment.
8. **Weiner (D-NY)/Miller (R-CA).** The amendment *increases* loan limits under the FHA program for the construction or rehabilitation of multifamily housing with elevators including rentals, cooperatives, and condominiums.
9. **Turner (R-OH).** The amendment repeals the higher FHA maximum loan limits for 2010 (\$720,000) and instead sets the maximum FHA loan limit at \$500,000.
10. **Clarke (D-NY).** The amendment would direct GAO to include in its FHA report an analysis of the effectiveness of the loss mitigation home retention options of the Department of Housing and Urban Development (HUD) in assisting individuals in avoiding home foreclosures for mortgages on 1- to 4-family residences.
11. **Nye (D-VA).** The amendment requires the Federal Housing Administration to continue the Special Forbearance program, as it relates to Chinese Drywall, until the end of FY 2011.
12. **Edwards (D-TX).** The amendment requires require individuals to certify that they have not been convicted of a sex offense against a minor in order to get an FHA mortgage.
13. **Adler (D-NJ).** The amendment prohibits funds authorized under the act may be used to pay the salary of an employee who has been officially disciplined for viewing, downloading, or exchanging pornography on a federal government computer or while performing official federal duties.

Additional Information: The FHA share of the marketplace has increased from 5 percent to more than 30 percent at end of 2009. By law, the agency is required to hold a 2% capital reserve. Yet according to its most recent actuarial review, it currently holds just a quarter of that, 0.53%. It insures loans up to \$729,750, and requires a mortgage insurance premium, but only asks for a 3.5% down payment. From 2004 to 2007, subprime borrowers made up between 35 and 45% of the FHA loan portfolio.

Cost to Taxpayers: CBO estimates that the legislation would lower authorized discretionary spending (subject to appropriation) by \$2.52 billion over five years.

Committee Action: The legislation was introduced on April 20, 2010, and was subsequently considered by the House Financial Services Committee, and ordered to be reported (as amended), on May 6, 2010 by voice vote.

Administration Position: The Statement of Administration Policy comes out in favor of the bill.

Does the Bill Expand the Size and Scope of the Federal Government?: No.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: The CBO report states: “H.R. 5072 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.”

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: According to the [committee report](#): “H.R. 5072 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.”

Constitutional Authority: According to the [committee report](#): “Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).”

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