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CRS Report for Congress

Housing and Economic Recovery Act of 2008

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Housing and Economic Recovery Act of 2008

Summary

The Housing and Economic Recovery Act of 2008, P.L. 110-289, is likely to affect most owner-occupied housing in the United States through a variety of channels.

The act creates a new, stronger, unified regulator for Fannie Mae, Freddie Mac, and the Federal Home Loan Banks (the housing GSEs). As a result of various provisions in the act, the secondary mortgage market is likely to be broadly affected. For example, the Secretary of the Treasury is given (until December 31, 2009) the authority to lend or invest in the housing GSEs on whatever terms the Secretary determines to be appropriate. Starting in 2009, the maximum high cost conforming loan limit is increased to 150% of the conforming loan limit; based on 2008 limits, this would be $625,500. For the first time, Fannie Mae and Freddie Mac can go into receivership.

The act also modernizes many aspects of the Federal Housing Administration (FHA). In high-cost areas, the maximum loan that the FHA can insure is identical to the maximum mortgage amount that the housing GSEs can purchase. The minimum downpayment on FHA-insured mortgages is increased from 3% to 3.5%, seller-assisted downpayment assistance is prohibited, and there is a moratorium until October 31, 2009, on the FHA's implementation of risk-based insurance premiums.

HOPE for Homeowners authorizes the FHA to insure up to $300 billion in mortgages that refinance homeowners who are unable to pay their current high interest rate mortgages. As a condition of the borrower being eligible for the program, the current lender must agree to write down the principal of the existing mortgage to achieve a 90% loan-to-value ratio.

Other provisions lengthen from 90 days to 9 months the stay of foreclosure on service members' homes and provide additional support for disabled veterans with special needs. The act appropriates $4 billion for state and local governments to purchase and rehabilitate abandoned and foreclosed housing. This housing would be sold or rented to low- and moderate-income individuals and families.

Tax provisions in the act include a refundable tax credit based on 10% of the price of a home purchased by a first time homebuyer. The maximum tax credit is $7,500 and the homebuyer pays back the credit over 15 years. This is roughly equivalent to a price reduction to one-third of the amount of the credit ($2,500). Homeowners who do not itemize on their tax returns can deduct state and local property taxes up to $500 ($1,000 on joint returns).

This report will not be updated.

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Housing and Economic Recovery Act of 2008

Introduction[1]

The Housing and Economic Recovery Act of 2008, P.L. 110-289, changes many laws that affect both the housing and mortgage markets. Included in the act are provisions to strengthen and to unify oversight of the housing government-sponsored enterprises (GSEs — Fannie Mae, Freddie Mac and the Federal Home Loan Banks). The Treasury is authorized to lend or invest an unlimited amount of money in any of the regulated entities in the event of financial or mortgage market emergencies.[2] Other provisions address mortgage licensing, revise Federal Housing Administration (FHA) operations, protect (for a limited time) service members against home foreclosures, promote redevelopment of abandoned and foreclosed homes, and assist disabled veterans with special housing needs. The act also contains housing related tax provisions. This report surveys the most important of these changes.

GSE Oversight

In recent years, Fannie Mae and Freddie Mac, which are congressionally chartered stockholder-owned companies, have faced a series of accounting and financial problems. Some of the Federal Home Loan Banks (FHLBs), which are congressionally chartered member-owned companies, have also had financial problems. Collectively, these problems led many in Congress to conclude that Fannie Mae, Freddie Mac, and the FHLBs need a stronger regulator. P.L. 110-289 creates the Federal Housing Finance Agency (FHFA) to be the new regulator for the housing GSEs, replacing the Office of Federal Housing Enterprise Oversight (OFHEO) and the Federal Housing Finance Board (FHFB). The task of setting mission goals is moved to FHFA from the Department of Housing and Urban Development (HUD).[3]

P.L. 110-289 gives FHFA broad authority to regulate the housing GSEs. FHFA is given the responsibility to review and to approve new types of mortgages. FHFA has the authority to take over and reorganize an insolvent Fannie Mae or Freddie

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[1] Meredith Peterson, an information research specialist in the CRS Knowledge Services Group, contributed to this report.

[2] The legislation uses "regulated entity" to refer to Fannie Mae, Freddie Mac, and the FHLBs. It uses "enterprise" to refer to Fannie Mae and Freddie Mac.

[3] The GSE provisions are in Division A, Titles I-III. CRS Report RL33940, *Reforming the Regulation of Government-Sponsored Enterprises in the 110th Congress*, by Mark Jickling, Edward Vincent Murphy, and N. Eric Weiss has more details on the GSE provisions.

Mac, and it has greater authority to set capital requirements for the housing GSEs. FHFA can now require the GSEs to dispose of assets and limit their portfolio sizes.

FHFA also has broad regulatory powers over the FHLBs, and is required by law to recognize the differences between Fannie Mae and Freddie Mac and the FHLBs. For example, both enterprises must continue to exist, whereas the 12 FHLBs can merge, and FHFA can require FHLBs to merge. FHFA has all the powers of the FHFB, which formerly regulated the FHLBs, including conservatorship and receivership.

In the event of mortgage and financial market emergencies, P.L. 110-289 gives the Secretary of the Treasury the authority to lend or invest as much money as necessary to the regulated entities and to set the terms of the loan. This authority expires December 31, 2009. The Congressional Budget Office (CBO) has estimated the expected federal budgetary costs at $25 billion based on a less than 50% probability of Treasury having to use this authority before the authority expires at the end of December 2009.[4] The act authorizes the Federal Reserve and Treasury to consult with FHFA on safety and soundness issues including use of the loan authority.

HOPE for Homeowners

Concerns over rising rates of delinquency, default, and foreclosure as well as other mortgage market conditions prompted some members to seek a way to help homeowners who are at risk of losing their homes. The act creates a voluntary program with an authorization level of $300 billion in FHA-insured mortgages to refinance mortgages of homeowners unable to pay their current mortgages.[5] Homeowners who meet certain conditions can refinance into a FHA-insured mortgage if the current lender(s) agrees to write down the principal of the current loan to achieve a 90% loan-to-value ratio and to pay a 3% insurance premium. CBO projects that 400,000 homeowners with $68 billion in new mortgages will take advantage of this program.[6]

Mortgage Licensing

Weak enforcement oversight of mortgage originators in some states and the lack of such laws in other states has sometimes made it difficult to take legal action against those who allegedly violated various state and federal laws. Moreover, it has made it difficult for mortgage originators to investigate fully the background of individuals that they are considering hiring. The act seeks to create uniformity in

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[4] Letter from Peter R. Orszag, director, Congressional Budget Office, to John M. Spratt, chairman, Budget Committee, House of Representatives, July 22, 2008. CBO estimated that there was almost a 5% chance that the losses would total more than $100 billion.

[5] Division A, Title IV. For further information, see CRS Report RL33879, *Housing Issues in the 110th Congress*, by Libby Perl et al.

[6] Congressional Budget Office, *Cost Estimate: Federal Housing Finance Regulatory Reform Act of 2008*, June 2, 2008, p. 6-11.

mortgage originator licensing and registration. It will result in the creation of a national database of mortgage originators. The act encourages states to develop a system to license and register anyone who originates a home mortgage.[7] HUD is to create a backup system, which would apply in states that fail to meet the requirements of this title.

FHA Modernization

Earlier in the 110th Congress, the FHA asked for congressional approval to modernize its lending practices to allow it to compete with private sector lenders. The FHA has said that these changes would allow it to better serve homeowners and to help more renters become homeowners. The act increases FHA loan limits, prohibits seller-funded downpayment assistance with FHA-insured loans, raises the loan limit on home equity conversion mortgages (HECMs) to the conforming and high cost loan limits, increases the minimum downpayment on FHA mortgages from 3% to 3.5%, and prohibits HUD from implementing risk-based insurance premiums.[8]

The new FHA loan limit in high-cost areas is the lesser of 115% of the local area median home price or 150% of the GSE conforming loan limit ($417,000 x 150% = $625,500 based on the 2008 conforming loan limit).

Increased VA Guarantee Limits and Service Member Home Foreclosure

The Economic Stimulus Act of 2008, P.L. 110-185, created a temporary new high-cost exception to the conforming loan limit and increased the maximum size loan that the FHA can insure. It did not change the guarantee limit for the Department of Veterans Affairs (VA). The Housing and Economic Recovery Act of 2008, P.L. 110-289, increases the maximum mortgage that the VA can guarantee to the FHA's maximum until December 31, 2008. P.L. 110-289 also requires the Department of Defense to develop a counseling program for service members who are likely to face home foreclosure.[9] It increases the current stay of foreclosure for service members from 90 days to 9 months from the end of active duty.

Redeveloping Abandoned and Foreclosed Homes

Some Members of Congress and housing advocates have been concerned that high concentrations of foreclosed and abandoned homes can have an adverse impact on neighborhoods. P.L. 110-289 appropriates $4 billion in community development block grants (CDBG) to state and local governments for the redevelopment of

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[7] Division A, Title V.

[8] Division B, Title I. For additional information see CRS Report RS22662, *H.R. 1852 and Revisiting the FHA Premium Pricing Structure: Proposed Legislation in the 110th Congress*, by Darryl E. Getter; CRS Report RS22934, *Treatment of Seller-Funded Downpayment Assistance in FHA-Insured Home Loans*, by Bruce E. Foote; and CRS Report RS20530, *FHA Loan Insurance Program: An Overview*, by Bruce E. Foote and Meredith Peterson.

[9] Division B, Title II.

abandoned and foreclosed homes.[10] HUD is to develop an allocation formula within 60 days of enactment that considers the percentage of foreclosed homes, the percentage of homes with subprime mortgages, and the percentage of loans in default or delinquent. Participating governments must purchase the homes at a discount from current market appraised value.

Assisting Disabled Veterans with Special Housing Needs

Under prior law, the VA Specially Adapted Housing for Disabled Veterans program made grants to seriously injured veterans to construct or modify housing to accommodate their disabilities.[11] Veterans were eligible for up to $50,000 in assistance if they (1) had lost the use of both lower extremities, (2) were blind and had lost the use of one lower extremity, (3) had lost the use of one lower extremity together with either organic disease or the loss of one upper extremity, or (4) had lost the use of both upper extremities at or above the elbows. Veterans were eligible for up to $10,000 in assistance if they (1) were blind, or (2) had lost the use of both hands.

P.L. 110-289 makes active duty members of the Armed Forces, as well as veterans, eligible for the program. In addition, the law makes a new disability category — individuals with severe burn injuries — eligible for assistance. It raises the amounts for which disabled individuals are eligible to $60,000 and $12,000, depending on the type of disability. The act also authorizes the Defense Department to pay for a wider range of improvements and structural changes to the homes of service members with permanent disabilities.

Housing-Related Tax Provisions

Some members of Congress have been concerned that the turmoil in the housing and financial markets has made it more difficult for renters to purchase their first homes and that increasing property taxes are hurting homeowners who do not itemize. P.L. 110-289 authorizes a refundable tax credit of up to $7,500 for first-time homebuyers.[12] The act allows homeowners who do not itemize on their tax returns to deduct up to $500 in property taxes (up to $1,000 for joint filers). It places restrictions on the homeowner capital gains exclusion on houses originally purchased as second homes.

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[10] Division B, Title III. For additional information on this aspect, see CRS Report RS22919, *Community Development Block Grants: Legislative Proposals to Assist Communities Affected by Home Foreclosures* by Eugene Boyd and Oscar R. Gonzales.

[11] Division B, Title V.

[12] Division C, Title I. For additional information on housing and taxation, see CRS Report RS22389, *An Introduction to the Design of the Low-Income Housing Tax Credit*, by Mark P. Keightley; CRS Report RS22917, *The Low-Income Housing Tax Credit Program: The Fixed Subsidy and Variable Rate*, by Mark P. Keightley; CRS Report RL32978, *The Exclusion of Capital Gains for Owner-Occupied Housing*, by Jane G. Gravelle and Pamela J. Jackson; and CRS Report RS22841, *Mortgage Revenue Bonds: Analysis of Sections 3021 and 3022 of the Housing and Economic Recovery Act of 2008*, by Mark P. Keightley and Erika Lunder.

Key Provisions

The remainder of this report summarizes key provisions of the act. It does not provide exhaustive coverage of the legislation. The legislative history of H.R. 3221 is in **Appendix A**. A list of CRS experts who assisted with this report is in **Appendix B**, and **Appendix C** contains a list of acronyms used in this report.

Reform of the Government Sponsored Enterprises (Division A, Title I-III)

This division is entitled the Federal Housing Finance Regulatory Reform Act of 2008. (Section 1001)

Title I, Subtitle A — Improvement of Safety and Soundness Supervision.

The act creates the Federal Housing Finance Agency (FHFA) as an independent federal agency with general supervisory and regulatory authority over Fannie Mae, Freddie Mac, and the Federal Home Loan Bank system. (Section 1101)

General Authority. FHFA is headed by a director, appointed by the President, with advice and consent of the Senate, for a five-year term. The director is to oversee the operations of each regulated entity and require them to operate in a safe and sound manner to foster a liquid, efficient, competitive, and resilient national housing finance market to minimize the cost of housing finance (including for housing for low- and moderate-income families). FHFA is authorized to issue any regulations, guidelines, or orders that are necessary to carry out the authorizing statutes.

The FHFA reviews and can reject acquisition or transfer of a controlling interest in a regulated entity. It can administer conservatorship or receivership through litigation without Department of Justice involvement. FHFA makes certain that the regulated entities operate in the public interest and that the entities remain adequately capitalized.

FHFA is to establish standards for each regulated entity for internal controls, audits, and risk management. (Sections 1101, 1102, 1107, and 1108)

The prohibition (in prior law) against excessive executive compensation is enhanced by permitting FHFA to take into account wrongdoing on the part of the executive, and to hold pay in escrow while a determination is made. (Sections 1113 and 1114)

Treasury and Federal Reserve. In the event of a financial or mortgage market emergency, the Treasury is given the authority to stabilize the housing finance system by purchasing obligations and securities of the housing GSEs in unlimited amounts under terms and conditions determined by Treasury. This authority expires December 31, 2009. (Section 1117)

FHFA is to confer with the Board of Governors of the Federal Reserve System about the risks posed to the financial system by the housing GSEs. FHFA must consult with the Chairman of the Board of Governors before placing Fannie Mae or Freddie Mac in receivership or conservatorship. This requirement expires December 31, 2009. (Section 1118)

Capital Requirements. FHFA is to establish risk-based and minimum capital requirements for the enterprises to ensure safe and sound operation and maintenance of sufficient capital and reserves to support risk exposure. (Sections 1110 and 1111)

Portfolio Limits. FHFA is to promulgate regulations to govern the portfolio holdings of the enterprises, to ensure that the holdings are backed by sufficient capital, and are consistent with the mission and the safe and sound operations of the enterprises. These criteria shall take into consideration the ability of the enterprises to provide a liquid secondary market through securitization activities and their portfolio holdings in relation to the overall mortgage market. FHFA may order an enterprise to dispose of or acquire any asset. (Section 1109)

If FHFA finds that a regulated entity has failed to meet any prudential standard, the entity must submit a corrective plan within 30 days, and FHFA may prohibit any increase in total assets of the entity, require an increase in regulatory capital, or take other actions until the deficiency is corrected. FHFA shall take one or more of these actions if the entity fails to meet prescribed standards, if the deficiency is not corrected, and if the entity underwent extraordinary growth in the 18 months prior to the date when it first failed to meet the standard. (Section 1108)

Federal Housing Finance Oversight Board. The act creates the Federal Housing Finance Oversight Board to advise the Director on overall strategies and policies. Board members are the Secretaries of the Treasury and of Housing and Urban Development (HUD), the Chairman of the Securities and Exchange Commission (SEC), and the FHFA Director, who chairs the Board. (Section 1103)

Funding. The FHFA is funded by assessments collected from the enterprises. Assessments collected from the Federal Home Loan Banks are to be used only for their supervision. (Section 1106)

Office of Minority and Women Inclusion. Each regulated entity shall create an Office of Minority and Women Inclusion to ensure the inclusion and utilization of minorities and women in all levels of business activities. (Section 1116)

Title I, Subtitle B — Improvement of Mission Supervision.

New Product Approval. HUD's authority for new product approval and housing goals is transferred to the FHFA. New products must be consistent with the enterprise's charter, be in the public interest, and be consistent with the safety and soundness of the enterprise and the mortgage finance system. Requests for new product approval are published in the *Federal Register* with a 30-day public comment period. The request must be approved or denied within 30 days after the

close of the comment period. Temporary approval may be given without public comment under exigent circumstances. (Sections 1121, 1122, and 1123)

Conforming Loan Limit. The conforming loan limit will increase to reflect the annual change in a housing price index maintained by FHFA. The limit cannot decline; decreases are "banked" and used against later increases. In high-cost housing areas, defined as areas where the median home price exceeds the conforming loan limit, the limit is increased to the lesser of 115% of area median or 150% of the national conforming loan limit. For example, using 2008's conforming loan limit of $417,000, the maximum high-cost limit would be $625,500. According to the legislation, the Sense of Congress is that loans above the national conforming loan should not be held in a GSE's portfolio, but should be securitized.[13] (Secion 1124)

Housing Goals. The authority to establish and monitor housing goals for the enterprises is moved to the FHFA from HUD. There are four single-family housing goals and one multifamily housing goal. In addition, the enterprises are required to provide FHFA with sufficient information to determine if minorities are charged a different interest rate than nonminorities.

FHFA is to set annual goals for each enterprise's purchase of conventional, conforming, single-family, owner-occupied, purchase money mortgages financing housing for (1) low-income families, (2) very low-income families, and (3) families that reside in low-income areas. A fourth goal is to be created for the purchase of refinance mortgages by low-income families.

Low-income areas are census tracts or block numbering areas in which the median income does not exceed 80% of the area median income, and includes families having incomes not greater than 100% of the area median income who reside in minority census tracts.

Very low-income is defined for owner-occupied units as income not in excess of 50% of area median income; and for rental units, it is income not in excess of 50% of area median income, adjusted for family size.

Extremely low-income owner-occupied units are owned by families with incomes not in excess of 30% of the area median income, or rented by families whose income is not in excess of 30% of the area median income, with adjustments for family size.

There is an annual multifamily special affordable housing goal for mortgages on multifamily housing that is affordable to low-income families. There is a subgoal for units affordable to very low-income families. Units financed with state housing finance agency bonds will count. Within the multifamily special affordable housing

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[13] CRS Report RL34236, *Fannie Mae and Freddie Mac: Proposals to Regulate Their Mortgage Portfolio Size in the 110th Congress*, by N. Eric Weiss, analyzes the systemic risks that might be caused by the GSEs' retained mortgage portfolios and earlier legislative proposals.

goal, FHFA is to establish additional requirements for the smaller multifamily housing projects.

A regulated entity may petition the Director to reduce the level of any goal. (Sections 1128, 1129, and 1134)

If it appears that an enterprise will not meet any housing goal and that the goal is feasible, FHFA has a number of tools at its disposal: it can require a corrective plan from the enterprise, it can issue a cease and desist order, impose civil fines, or prohibit any new products until the enterprise complies. (Sections 1129 and 1130)

Duty to Serve Underserved Markets. The act explicitly states that the enterprises are obligated to serve underserved markets as long as this provides a reasonable economic return (that may be less than the return earned on other activities). The enterprises are also obligated to improve the liquidity of, and the distribution of capital available for, mortgage financing for underserved markets. Underserved markets are manufactured housing purchased by very low-, low-, and moderate-income families, affordable housing preservation, and rural housing for very low-, low-, and moderate-income families and for any other market that FHFA determines to be underserved. In 2009, the 2008 housing goals previously set for HUD apply, unless FHFA modifies them.

Housing Trust Fund. A Housing Trust Fund is created to increase housing opportunities among very low-income families and families in low-income areas. Grants can be used for (1) the production, preservation, and rehabilitation of rental housing for the benefit of extremely and very low-income families, and (2) the production, preservation, and rehabilitation of housing for homeownership (including such forms as downpayment assistance, closing cost assistance, and assistance for interest-rate buy-downs) for extremely and very low-income first-time home buyers.

Grants cannot be used for political activities, advocacy, lobbying, counseling services, travel expenses or preparing or providing advice on tax returns. FHFA shall issue regulations that grant amounts may not be used for administrative, outreach, or other costs of the grantee or any recipient of such grant amounts, except that grant amounts may be used for administrative costs of the grantee of carrying out the program required under this section.

Each enterprise is to contribute to the Housing Trust Fund 4.2 basis points (0.042%) of the unpaid principal balances of its total new business purchases. If this had been in effect in calendar year 2007 when Fannie Mae and Freddie Mac purchased $1.2 trillion in mortgages, the enterprises would have contributed $500.8 million to the trust.[14] The contributions can be suspended if they would cause severe financial problems for an enterprise.

Each year, 25% of the housing trust fund goes to support a reserve fund for HOPE for Homeowners bonds. During the first three years, a decreasing percentage

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[14] Mortgage purchases are reported in Office of Federal Housing Enterprise Oversight, *2008 Report to Congress*, p. 111.

(100%, 50%, 25%) of the other 75% will go for the HOPE program. Of this other 75% (as adjusted in the first three years), 65% goes to the Housing Trust Fund; 35% goes to a Capital Magnet Fund to provide competitively awarded grants to support affordable housing for primarily extremely low-, very low-, and low-income families. **Table 1** shows how these percentages work out.

Table 1. Housing Trust Fund Allocations, 2009-2012

Year	HOPE Bond Reserve Fund	HOPE Program	Housing Trust Fund	Capital Magnet Fund	Total
2009	25%	75% (100% of 75%)	0%	0%	100%
2010	25%	37.50% (50% of 75%)	24.375% (65% of 37.50%)	13.125% (35% of 37.50%)	100%
2011	25%	18.75% (25% of 75%)	36.56% (65% of 56.25%)	19.69 (35% of 56.25%)	100%
2012	25%	0%	48.75% (65% of 75%)	26.25% (35% of 75%)	100%

Source: Section 1331 and CRS calculations.

HUD is to create a formula to distribute the fund's money to states and Indian tribes, who must establish and publish their own plans for distributing grants each year. The minimum allocation for states and the District of Columbia is $3 million.

If future legislation creates another affordable housing trust fund used only for affordable rental and owner-occupied housing, this fund will be merged into the new fund. (Section 1131)

Title I, Subtitle C — Capital.

FHFA is to set capital classification standards for the FHLB, Fannie Mae, and Freddie Mac that reflect the differences in operations between the banks and the enterprises. (Section 1142)

FHFA may downgrade the capital classification of a regulated entity (1) whose conduct could rapidly deplete core or total capital, or (in the case of an enterprise) whose mortgage assets have declined significantly in value, (2) which is determined (after notice and opportunity for a hearing) to be in an unsafe or unsound condition, or (3) which is engaging in an unsafe or unsound practice.[15]

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[15] Capital classifications are adequately capitalized, undercapitalized, significantly (continued...)

No growth in total assets is permitted for an undercapitalized GSE, unless (1) FHFA has accepted the GSE's capital restoration plan, (2) an increase in assets is consistent with the plan, and (3) the ratio of both total capital to assets and tangible equity to assets is increasing. An undercapitalized entity is subject to heightened scrutiny and supervision.

If a regulated entity is significantly undercapitalized, FHFA must take one or more of the following actions: new election of Directors, dismissal of Directors and/or executives, and hiring of qualified executive officers, or other actions. Without prior written approval, executives of a significantly undercapitalized regulated entity may not receive bonuses or pay raises. In addition, FHFA may appoint a receiver or conservator for several specified causes related to financial difficulty and/or violations of law or regulation.

Mandatory receivership requires FHFA to appoint itself as the receiver if a regulated entity's assets are (and have been for 60 days) less than its obligations to its creditors, or if the regulated entity has (for 60 days) not been generally paying its debts as they come due. (Sections 1142 and 1143)

Title I, Subtitle D — Enforcement Authority.

FHFA may issue subpoenas and cease-and-desist orders against a regulated entity, or a regulated entity-affiliated party (such as corporate officers), for safety and soundness reasons, but not for failure to comply with housing goals. FHFA may impose fines ranging from $10,000 to $2 million per day. In certain extreme cases, FHFA may suspend or remove regulated entity-affiliated parties and may also issue industry-wide suspensions; these actions may be appealed to the courts. Criminal penalties apply to anyone who participates, directly or indirectly, in the affairs of a regulated entity while it is under suspension or order of removal.

FHFA may apply to U.S. District Court for an injunction to enforce cease and desist orders, or any other order. (Sections 1151, 1152, 1153, 1155, 1156, and 1158)

Title I, Subtitle E — General Provisions.

The act eliminates the five presidentially appointed members of the boards of directors of Fannie Mae, Freddie Mac, and the FHLBs and reduces the size of their boards from 18 to 13, or such number as FHFA establishes. (Sections 1162 and 1202)

Title II — Federal Home Loan Banks.

While FHFA is given regulatory oversight of all the housing GSEs, it is directed to take into account differences between the enterprises and the FHLBs in taking supervisory or enforcement actions. (Section 1201)

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[15] (...continued)
undercapitalized, and critically undercapitalized. (Sec. 1142)

Board of Directors. Each FHLB will be managed by a board of 13 directors, or other number as FHFA determines. The President no longer appoints members to the boards. The majority of each board must be officers of member banks, and at least two-fifths of board members must be independent directors. Directors are elected by the member banks. (Section 1202)

FHLB Reorganization and Voluntary Merger. FHLBs may merge with other FHLBs with the approval of FHFA. The number of FHLB districts may be reduced to fewer than eight as a result of voluntary mergers or liquidation of a bank; prior to the act, the minimum number of FHLB districts was eight. (Sections 1209 and 1210)

SEC. FHLBs are exempt from some SEC reporting regulations, including ownership of capital stock in the FHLB, tender offers related to FHLB capital stock, and reporting related party transactions in the FHLB system. Shares of FHLB capital stock are defined as "exempted securities" for the purposes of defining a government securities broker or a government securities dealer. Nevertheless, the FHFBs have individually agreed to file reports with the SEC. (Section 1208)

Community Financial Institution Members. Community Financial Institution members must have total assets of $1 billion. The earlier minimum was $500 million. (Section 1211)

Refinancing Authority. FHLBs are given authority to refinance mortgages on primary residences of families at or below 80% of area median income. (Section 1218)

Title III — Transfer of Functions, Personnel, and Property of OFHEO and the FHFB.

OFHEO and FHFB are abolished one year after enactment. HUD's authority to set housing goals is transferred to FHFA upon enactment. Employees are given lateral transfers to FHFA. (Sections 1133, 1301, and 1311-1314)

HOPE for Homeowners (Division A, Title IV)

This title, also called the "HOPE for Homeowners Act of 2008," creates a program to help financially distressed homeowners to refinance into more affordable FHA-insured mortgages. HOPE is a voluntary program that requires borrowers and current lenders to take certain actions.

To be eligible for the HOPE program, borrowers must provide two years of tax returns and certify that

- they are not intentionally defaulting;
- as of March 31, 2008, their debt-to-income ratio was greater than 31%, or as Board determines;
- this is their primary residence, and that it is a single-family home (1-4 units); and
- they have not been convicted of mortgage fraud.

The current lender(s) must agree to certain conditions:

- To pay a 3% one-time insurance fee to FHA;
- To write down the mortgage to achieve a 90% loan-to-value ratio, if necessary;
- To waive prepayment penalties on the existing mortgage; and
- To release all existing claims, such as second mortgages. HUD may facilitate coordination with subordinate lien holders.

The new loans carry certain restrictions:

- The new loan may not exceed 90% of current appraised value of the property;
- The maximum loan amount is 132% of the Freddie Mac limit (in 2007, $417,000 x 132% = $550,440); (Section 1402)
- Second liens will not be allowed for the first five years, except as permitted by regulation; and
- The interest rate must be fixed for the life of the loan, which cannot exceed 30 years.

When the mortgage is issued, a single insurance premium of 3% from proceeds to mortgage holder is charged. There are annual insurance premiums of 1.5%.

Shared Appreciation. When an owner sells or refinances a mortgage, HOPE and the borrower share any equity created as a direct result of such sale or refinance:

- Less than 1 Year, HOPE gets 100%;
- Year 1-2, HOPE gets 90%;
- Year 2-3, HOPE gets 80%;
- Year 3-4, HOPE gets 70%;
- Year 4-5, HOPE gets 60%; and
- Year 5+, HOPE gets 50%.

When a property is sold, the program and borrower shall each get 50% of any appreciation in the appraised value that occurs after the time that the mortgage was insured.

Treasury may issue up to $300 billion in bonds to finance these mortgages, and Ginnie Mae is authorized to package them into mortgage-backed securities for sale in the secondary market.

Mortgages in this program may be issued from October 1, 2008, to September 20, 2011. (Section 1402)

HOPE Safe Harbor. The act creates a safe harbor for loan modifications that enable homeowners to refinance in the HOPE program. Absent provisions to the contrary, loan servicers have a duty to maximize total funds to the loan pool, not a duty to individual investors. (Section 1403)

Truth in Lending Act (TILA). TILA is amended in several ways. Section 1403 of the act provides legal protections to certain mortgage servicers that provide loan modifications as a part of the Hope for Homeowners program. Additionally, Division B — Foreclosure Prevention expands the definition of mortgages that are subject to Truth in Lending disclosures, while also enhancing the disclosure requirements for those mortgages. The main impetus of these enhanced disclosures relates to adjustable interest rates and how they may affect monthly payments. The bill also increases penalties for certain TILA violations.

S.A.F.E. Mortgage Licensing Act (Division A, Title V)

This title, also known as Secure and Fair Enforcement for Mortgage Licensing Act of 2008 or S.A.F.E. Mortgage Licensing Act of 2008, provides for state or federal licensing or registration of anyone originating a home mortgage. States, acting through the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, are to establish a nationwide mortgage licensing and registry system for residential mortgage loan originators.

Within one year of enactment, the federal banking agencies, through the Federal Financial Institutions Examination Council and the Farm Credit Administration, are to develop a system for registering employees of depository institutions and their subsidiaries as registered loan originators. (Section 1507)

HUD is to create a backup system for loan originators in states that do not implement a licensing and registration system. If at any time HUD determines that the Nationwide Mortgage Licensing System and Registry is failing to meet the requirements of the S.A.F.E. Mortgage Licensing Act, HUD is directed to establish and maintain such a system.

FHA Modernization Provisions (Division B, Title I)

This title is also called FHA Modernization Act of 2008. The FHA high cost area loan limit is increased to the lesser of 115% of the median price of a single-family residence, as determined by the HUD Secretary, or 150% of the Freddie Mac conforming loan limit. In 2008, this would have been $525,500 (150% of the conforming loan limit, $417,000). The FHA loan obligation is not to exceed 100% of the appraised value of the property. These limits are effective upon expiration of the Economic Stimulus Act of 2008 (January 1, 2009). (Section 2112)

FHA Premiums. The law increases the FHA upfront mortgage insurance premium from 2.5% to 3% of the mortgage amount, and for a borrower that has received homeownership counseling, the upfront mortgage insurance premium is increased from 2% to 2.75% of the mortgage amount. The act places a 12-month moratorium on FHA's planned implementation of risk-based premiums as set forth in a notice published in the *Federal Register* on September 20, 2007. (Section 2133)

Minimum Cash Downpayment. To obtain an FHA-insured loan, prior law required borrowers to contribute at least 3% in cash or its equivalent to the cost of acquiring the property. The act increases the cash requirement to 3.5%. Loans from

family members are considered as cash for this purpose. If the borrowed amount is secured by a lien (i.e., a second mortgage), the lien must be subordinate to the mortgage. The sum of the lien and the mortgage may not exceed 100% of the appraised value of the property. Prohibited sources of funding for the required funds include (1) the seller, (2) any entity that financially benefits from the transaction, or (3) any third party that is directly or indirectly reimbursed by the parties in (1) or (2). (Section 2113)

Home Equity Conversion Mortgages (HECMs). The act removes the limit on the aggregate number of HECMs that may be originated. It establishes a HECM loan limit equal to the Freddie Mac conforming loan limit or the high cost loan limit and requires that the borrower must receive counseling by an independent third party that is not associated with, or compensated by, the party that is involved in funding, originating, or servicing the mortgage; or the sale of annuities, investments or other financial or insurance products. (Section 2122)

It permits HECMs to be used for home purchase and on cooperatives. Origination fees are limited to 1.5% of the maximum claim amount. (Section 2122)

Lenders cannot require borrowers to purchase insurance, an annuity, or other product as a condition of eligibility of for a HECM. (Section 2122)

Mutual Mortgage Insurance (MMI) Fund. The act rewrites the section of law governing the MMI fund to (1) limit loan commitments to the amount specified in appropriations acts for each fiscal year; (2) establish that HUD has the fiduciary responsibility to ensure that the MMI fund remains financially sound; (3) require an annual independent actuarial study of the fund; (4) require quarterly reports to Congress; (5) require the adjustment of insurance premiums when needed; (6) establish operational goals for the Fund; and (7) provide that the Homeownership Voucher program and the home equity conversion program become obligations of the MMI Fund instead of the General Insurance Fund. (Section 2118)

FHA Improvements. The act authorizes $25 million in each year from FY2009 until FY2013 to improve the technology, processes, program performance, elimination of fraud and staffing at FHA. (Section 2126)

Increased Veterans Affairs Guarantee Limit and Mortgage Foreclosure Protection for Service Members (Division B, Title III)

Temporary Increase in Maximum Loan Guaranty Amount. The VA guarantees mortgage payments by a veteran to the lender in case of borrower default. Prior to the act, the maximum guaranty was 25% of the Freddie Mac conforming loan limit. The Economic Stimulus Act of 2008 increased the Freddie Mac conforming loan limits through December 31, 2008, to the higher of the 2008 conforming loan limits, or 125% of the median home price for the area in which the property is located, but in no case could the loan limit exceed 175% of the Freddie Mac limit. It was later discovered that these increased limits did not apply to home loans guaranteed by the Department of Veterans Affairs because of the way the language

of the act was drafted. The VA guarantee is determined by the "permanent" conforming loan limits. The act provides that through December 31, 2008, the maximum VA guaranty amount is 25% of the Freddie Mac loan limit as increased by the Economic Stimulus Act. (Section 2201)

Counseling. The Department of Defense is directed to develop and implement mortgage foreclosure counseling for members of the Armed Forces returning from active duty abroad. (Section 2202)

Protections for Service Members Relating to Mortgages and Mortgage Foreclosures. The act prevents lenders from foreclosing on a veteran's home within nine months after the end of military service. Similarly, any proceedings on the home or property of a service member can be stayed for nine months after the end of military service. The interest rate on a mortgage created before entering military service can be no higher than 6% during the term of military service and one year thereafter. (Section 2203)

The provisions of this title are effective immediately and expire on December 31, 2010. (Section 2204)

Emergency Assistance for Redevelopment of Abandoned and Foreclosed Homes (Division B, Title II)

The act appropriates $4 billion for assistance to state and local governments for the redevelopment of abandoned and foreclosed homes. HUD is to develop a formula within 60 days of enactment to allocate these funds based on (1) the number and percentage of home foreclosures in each state or unit of general local government; (2) the number and percentage of homes financed by a subprime mortgage related loan in each State or unit of general local government; and (3) the number and percentage of homes in default or delinquency in each State or unit of general local government.

State and local governments may use the funds to purchase and redevelop foreclosed and abandoned homes, including soft-seconds, loan loss reserves, and shared-equity loans for low- and moderate-income homebuyers; establish land banks for foreclosed homes; demolish blighted structures; and redevelop demolished or vacant properties. State and local governments must purchase these properties at a discount from current appraised value. These funds may be not be used to acquire property by eminent domain for projects that primarily benefit private entities. Each state is to receive at least 0.5% of the $4 billion appropriated ($20 million).

There are restrictions on the sale of these homes.

Neighborhood Reinvestment Corporation. The act appropriates $100 million for the Neighborhood Reinvestment Corporation for foreclosure mitigation activities. (Section 2401)

Veterans Housing Matters (Division B, Title VI)[16]

The act authorizes VA to furnish home improvements and structural alterations for service members hospitalized or receiving outpatient care, medical services, or treatment, and for service members likely to be discharged or released from service due to a total and permanent injury incurred or aggravated while on active duty. (Section 2601)

The act amends existing law to allow service members on active duty, as well as veterans (who are currently eligible), to qualify for home improvements pursuant to the Specially Adapted Housing program for veterans with severe disabilities. The act adds severe burn injuries to the current categories of disabilities that qualify for assistance to modify homes to accommodate disabilities.

Grants for veterans with service-connected disabilities to obtain specially adapted homes are increased to a maximum of $60,000 from $50,000. These grants provide "wheelchair" homes to veterans with loss, or loss of use of the upper or lower extremities and who need braces, canes, crutches or wheelchairs for locomotion.

Maximum grants for veterans whose service-connected disabilities include blindness in both eyes or loss, or loss of use, of both hands to make special housing adaptations are increased to $12,000 from $10,000. VA is to increase both of these maximum grant amounts annually based on the cost of construction.

Definition of Income for Assisted Housing. The act excludes lump sum disability payments to veterans from the definition of income for the Section 8 and public housing programs. (Section 2608)

Housing Preservation (Division B, Title VIII)[17]

Affordable Housing. The act has provisions that apply to certain affordable housing projects. Specifically, the act

- makes certain provisions of the Deficit Reduction Act of 2005 (P.L. 109-171) relating to HUD's ability to provide below-market sales of foreclosed properties not applicable to a property in Michigan (Section 2801);
- makes a multifamily housing property in Massachusetts eligible for Section 8 enhanced voucher assistance (Section 2802);
- Makes a multifamily housing property in California eligible for Section 8 voucher assistance and directs that the property be provided with such assistance (Section 2805);

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[16] Elizabeth Perl, analyst in housing policy, contributed this section.

[17] Maggie McCarty, specialist in housing policy, contributed this section.

- permits the transfer of rental assistance contracts, use restrictions, and debt from two properties in Ohio to other properties in Ohio, at the request of the owners (Section 2803);
- strikes a provision in public housing law authorizing a set-aside of funds for disaster recovery (Section 2804);
- allows grantees funded through HUD's Shelter Plus Care program to enter into 15 year contracts with building owners or lessors of permanent supportive housing for homeless individuals (Section 2835); and
- permits HUD to convert a rental assistance payment contract to a Section 8 project-based rental assistance contract for a multifamily housing property in New York. This provision is in Division A, Title VI (Section 1603).

Small PHA Paperwork Reduction Act. The act amends the public housing authority (PHA) annual plan requirement for certain small PHAs. It includes language clarifying that exempted PHAs are still required to file certain civil rights certifications, hold public hearings and supply information from such hearings, and convene resident advisory boards. (Section 2701-2702)

Tax Provisions (Division C, Title I)

This title may be cited as the Housing Tax Credit Coordination Act of 2008.

First-Time Home Buyer Credit. First time home buyers of a primary residence are eligible for a refundable, repayable tax credit of 10% of purchase price, up to $7,500. This is the equivalent of an interest-free loan and also is equivalent to reducing the purchase price of the home by an estimated one-half to one-third of the credit amount.[18] The credit applies to residences purchased on or after April 9, 2008 and before July 1, 2009, in taxable years ending on or after such date. (Section 3011)

Low Income Housing Tax Credit (LIHTC). The act increases the 2008 and 2009 per capita credit allocation to states by $0.20 above 2008's $2.00 per capita, and also increases the minimum state credit allocation by 10%. The LIHTC is used to subsidize new or substantially rehabilitated housing that low-income families can afford. The act changes the LIHTC rate for non-federally subsidized new buildings to not less than 9%. The LIHTC credit rate has varied monthly between 7.69% and 9.27% since the program was first introduced. The LIHTC rate for projects placed in service in August 2008 is 7.94%. State housing credit agencies may treat a building as in a difficult to develop area in order to ensure the project's viability. (Section 3003)

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[18] This is based on the net present value of the tax credit at a discount (mortgage) rate of 6.5%. The credit is claimed by the first time homebuyer the year after the house is purchased. This assumes that the home is kept for 15 years. If the homebuyer moves sooner, the net present value of the credit declines. For example, if the homebuyer moves in year six, the credit is worth less than 25% of the face value.

Additional Standard Deduction for Real Property for Nonitemizers. This provision allows nonitemizers to take an additional standard deduction for state and local property taxes not to exceed $500 (or $1000 on joint returns) in tax year 2008. There is no restriction on jurisdictions that increase property taxes. (Section 3012)

Homeowner Capital Gains Exclusion. This section of the act, actually included as a revenue raiser, reduces the ability of a homeowner to exclude capital gains on a second home. This change will affect those who purchase a home and do not initially use the house as their principal residence. It modifies the law that requires a homeowner to live in the home for two of the last five years in the case of a home not initially used as a principal residence. The modification adjusts the $250,000 ($500,000) exclusion for single (married) taxpayers by the ratio of time that the house was the taxpayer's principal residence to the time that the taxpayer owned the house. (Section 3092)

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Appendix A. Legislative History (110th Congress)

August 4, 2007. On August 4, 2007, the House passed H.R. 3221 as an energy package.

Senate Passage April 10, 2008. The Senate's amendment in the nature of a substitute to the House-passed energy bill would have addressed foreclosures by reforming the Federal Housing Administration (FHA); encouraging counseling; providing communities funds to acquire foreclosed properties; and providing tax incentives to encourage house sales. The FHA provisions would have enabled FHA to refinance some troubled loans if the lenders agreed to write-down the value of the loans so that the outstanding balance was significantly below the current appraised value of the house. The bill also would have provided $4 billion through the Community Development Block Grant program to allow state and local governments to purchase and rehabilitate foreclosed homes. Additional funds would have been provided for housing counseling for at-risk borrowers. In addition, the bill would have provided a $7,000 tax credit for the purchase of foreclosed homes and newly constructed homes and extends the carryback period for net operating losses.

House Passage May 8, 2008. The House added several additional housing-related bills to the Senate's April 10 framework. In addition to FHA-refinances, community funds, borrower counseling, and tax incentives, the House version incorporated bills for the FHA loan program (H.R. 5830), Government Sponsored Enterprise (GSE) reform (H.R. 1427), FHA modernization (H.R. 1852), liability protection for loan servicers who modified loans (H.R. 5579), foreclosure protections for service members (H.R. 4883), changes to the Low Income Housing Tax Credit program (H.R. 5720), a temporary first-time home-buyer tax credit, and clarified that the provisions of H.R. 3221, as well as provisions of the National Bank Act and the Home Owner's Loan Act, does not preempt state laws regulating the foreclosure of residential real property or the treatment of foreclosed property.

Senate Passage July 11, 2008. The Senate received the greatly expanded House-passed version of H.R. 3221 and referred the bill to committee. The Senate Committee on Banking, Housing, and Urban Affairs again amended the bill with a manager's amendment (S.Amdt. 4983). The Senate then passed a new version addressing many of the bills rolled into H.R. 3221 by the House, including GSE reform, an affordable housing fund, FHA modernization, first-time home buyer tax credits, and protections for service members.

House Passage July 23, 2008. The House agreed with an amendment to the Senate amendment to the House amendments to the Senate by a vote of 272-152.

Senate Passage July 26, 2008. The Senate agreed to the motion to concur in House amendment to Senate amendment to House amendments to Senate amendment to the bill by vote of 72-13.

Enactment. President George W. Bush signed H.R. 3221, the Housing and Economic Recovery Act, into law on July 30, 2008. It became P.L. 110-289.

Appendix B. CRS Experts

Table B1 lists CRS experts in areas related to this report.

Table B1. CRS Housing Experts

Name	Expertise	Telephone	Email
N. Eric Weiss	Government Sponsored Enterprises	7-6209	eweiss@crs.loc.gov
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Mark P. Keightley	Housing Taxes	7-1049	mkeightley@crs.loc.gov
Maggie McCarty	Public and Assisted Housing	7-2163	mmccarty@crs.loc.gov
Edward Vincent Murphy	Government Sponsored Enterprises, Subprime and Alt-A Mortgages	7-6201	tmurphy@crs.loc.gov
Libby Perl	Housing for Special Populations, including the Elderly, Disabled, Homeless	7-7806	eperl@crs.loc.gov

Appendix C. Acronyms

CBO	Congressional Budget Office
CDBG	Community Development Block Grants
FHA	Federal Housing Administration
FHFA	Federal Housing Finance Agency
FHFB	Federal Housing Finance Board
FHLB	Federal Home Loan Bank
GSE	Government-sponsored Enterprises
HECM	Home Equity Conversion Mortgage
HUD	Department of Housing and Urban Development
LIHTC	Low Income Housing Tax Credit
MMI	Mutual Mortgage Insurance
OFHEO	Office of Federal Housing Enterprise Oversight
PHA	Public Housing Authority
SEC	Securities and Exchange Commission
TILA	Truth in Lending Act
VA	Department of Veterans Affairs

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