



## Summary of the “Housing and Economic Recovery Act of 2008”

On July 30, President Bush signed major housing legislation, HR 3221, the “Housing and Economic Recovery Act of 2008.” The bill restructures regulation of the Government Sponsored Enterprises (GSEs) including the Federal Home Loan Banks, authorizes Treasury investments in the GSEs, authorizes a new foreclosure prevention program under the Federal Housing Administration, and includes ICBA-backed tax provisions.

*Some of the highlights of the bill are:*

- **Higher loan limits** – permanently raises the GSE, FHA and VA single-family loan limits;
- **GSE stabilization** – establishes new powers and authorities to stabilize the GSEs in the event of a financial crisis;
- **GSE regulatory restructuring** – creates a new regulator and regulatory requirements for the GSEs;
- **Federal Home Loan Bank CFI program** – community financial institutions up to \$1 billion in assets are made eligible for advances backed by small business and agricultural loans;
- **FHA Rescue plan** – authorizes a new FHA “Hope for Homeowners” program to refinance existing borrowers into fixed rate FHA loans;
- **FHA modernization** – modernizes FHA programs and policies;
- **Licensing for loan originators** – encourages a nationwide licensing and registry system for non-bank loan originators by setting minimum qualifications; what about bank originators?
- **Redevelopment of abandoned and foreclosed homes** – authorizes \$3.92 billion in block grant funds to states and localities for the purchase and redevelopment of foreclosed properties;
- **Truth-In-Lending Act (TILA)** – adds new mortgage disclosure requirements; and,
- **Tax Incentives** – establishes tax incentives including a first-time homebuyer tax credit and the treatment of bonds guaranteed by the Federal Home Loan Banks.

Note: The legislation is divided into three major divisions: A. Housing Finance Reform; B. Foreclosure Prevention; and, C. Tax Provisions.

### Division A “Federal Housing Finance Regulatory Reform Act of 2008”

This division revises the regulation of the housing government- sponsored enterprises – Fannie Mae and Freddie Mac (the enterprises) and the Federal Home Loan Banks (FHLBs or Banks) – and expands the housing mission of these GSEs. It also includes Treasury’s emergency authority to invest in the GSEs and mortgage broker licensing and registration.

## **Safety and Soundness Regulation of the Housing GSEs**

The "Federal Housing Finance Regulatory Reform Act of 2008" establishes a new, independent regulator for Fannie Mae, Freddie Mac, and the Federal Home Loan Banks to ensure the safe and sound operations of the GSEs, including the power to:

- establish capital standards;
- establish prudential management standards, including internal controls, audits, risk management, and management of the portfolio;
- enforce its orders through cease and desist authority, civil money penalties, and the authority to remove officers and directors;
- restrict asset growth and capital distributions for undercapitalized institutions;
- put a regulated entity into receivership; and
- review and approve (subject to notice and comment) new product offerings of the enterprises.

## **Mission of the GSEs**

**Affordable housing/loan limits:** The new legislation also significantly enhances the affordable housing component of the GSEs' mission, and raises the loan limits in high cost areas above the standard conforming limit to 115 percent of median house price up to 150 percent of the conforming loan limit. Currently, this would be \$625,500. The limit will be adjusted for inflation.

For Fannie and Freddie, the legislation tightens targeting requirements of the affordable housing goals, and rewrites those goals to ensure Fannie/Freddie provide liquidity to both ownership and rental housing markets for low and very-low income families. The legislation requires them to serve a variety of underserved markets, such as rural areas, manufactured housing, and the preservation market.

**FHLB CFI Program:** The legislation increases the size of bank eligible for the FHLB Community Financial Institutions program from approximately \$600 million in assets (as adjusted for inflation) to \$1 billion.

**FHLB Affordable Housing Goals:** The new law requires new affordable housing goals similar to those that apply to Fannie/Freddie for FHLB mortgage purchase programs. The legislation also requires the FHLBs to create a public use database for such programs. Treasury-certified Community Development Financial Institutions (CDFIs) are made eligible to join FHLBs. Finally, community financial institution members of the FHLBs may use FHLB advances for community development purposes.

**Recognition of FHLB Structure.** ICBA fought for provisions that ensure that the new regulator will respect the unique cooperative structure of the FHLB System. These provisions include a separate deputy director for FHLB regulation and a requirement that regulations take into account the ownership structure, mission, capital structure, and joint and several liability of the Banks.

## **Treasury Emergency Authority**

To shore up the confidence of the financial markets in Fannie Mae, Freddie Mac, and the Federal Home Loan Banks, the legislation grants Treasury temporary authority to December 31, 2009 to:

- purchase debt securities issued by the GSEs
- purchase common stock of the enterprises with the agreement of the companies.

Before exercising these temporary powers, the Treasury would have to determine that the actions are necessary to:

- protect the taxpayer;
- provide stability to the financial markets; and,
- prevent disruptions in the availability of mortgages.

The Treasury would set the terms and conditions regarding any use of the temporary authority, including requiring that repayments to the government receive priority or preference. In addition, the Director of the Federal Housing Finance Agency (FHFA) would have authority over executive compensation, whether or not the government exercises its temporary authority to purchase debt or stock.

Finally, the legislation requires the new Director to consult with the Federal Reserve on capital, portfolio, and prudential management standards, taking into consideration the risks posed by the regulated entities to the financial system. This requirement also expires on December 31, 2009.

### **Mortgage Broker and Originator Licensing**

The “Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act) establishes a uniform licensing and registration system for all loan originators, including mortgage brokers and loan officers. All loan originators at depository institutions will have to be registered (but not licensed) through the nationwide system, and all other loan originators will be required to be licensed by the State or through a HUD-backup system if a state does not establish a licensing system.

Within 12 months, states will have to develop licensing requirements to ensure applicants meet minimum standards including educational requirements, background checks, and testing. If a state does not establish a licensing system that meets the minimum requirements, HUD is directed to establish a licensing system for loan originators in the state. Borrowers and lending institutions will be able to access information about all loan originators, including their background and history as a loan originator.

## **Division B “HOPE for Homeowners Act of 2008”**

The “HOPE for Homeowners Act of 2008” creates a new, temporary, voluntary program within FHA to back FHA-insured mortgages to distressed borrowers. The new mortgages offered by FHA-approved lenders will refinance the loans of owner-occupants at risk of losing their homes to foreclosure. In exchange, homeowners will share future price appreciation with FHA. This division also includes permanent changes in FHA and increased mortgage disclosure.

**Program Oversight.** The new program will be overseen by a Board made up of the Secretary of HUD, the Secretary of the Treasury, the Chairman of the Federal Reserve Board, and the Chairman of the Federal Deposit Insurance Corporation (FDIC). The Board will have the authority to develop standards within the framework of the legislation.

**Eligible Borrowers.** Only owner-occupants who are unable to afford their mortgage payments are eligible for the program. No investors or investor properties will qualify. Homeowners must certify, under penalty of law, that they have not intentionally defaulted on their loan to qualify for the program and must have a mortgage debt-to-income ratio greater than 31 percent as of March 1, 2008. Lenders must document and verify borrowers' income with the IRS.

**New Loan Amount.** The size of the new FHA-insured loan will be the lesser of the amount the borrower can afford to repay, as determined by the current affordability requirements of FHA, or 90 percent of the current value of the home. Loans must be 30-year, fixed rate loans.

**Equity & Appreciation Sharing.** In order to avoid a windfall to the borrower created by the new 90% loan-to-value FHA-insured mortgage, the borrower must share the newly-created equity and future appreciation equally with FHA. This obligation will continue until the borrower sells the home or refinances the FHA-insured mortgage. Moreover, the homeowner's access to the newly created equity will be phased-in over 5 years.

**Eligible Mortgages.** In order to protect against adverse selection, the program prohibits the Secretary from paying an insurance claim whenever the representations and warranties required to be made by lenders are violated, or in cases in which a borrower has an early payment default and misses the first payment. The Act provides the Board the authority to establish other protections against adverse selection, such as requiring "seasoning" for certain higher risk loans before they can be insured under the program. Appraisers of property insured by FHA must be certified by the state where the property is located, or by a nationally recognized professional appraisal organization, and have "demonstrated verifiable education" in FHA appraisal requirements.

**Existing Subordinate Liens.** Before participating in this program, all subordinate liens must be extinguished. This will have to be done through negotiation with the first lien holder.

**Qualified Safe Harbor.** The legislation provides servicers with an incentive to participate in the program by offering a safe harbor against legal liability.

**Program Size.** The program is authorized to insure up to \$300 billion in mortgages and is expected to serve approximately 400,000 homeowners.

**Program Sunset.** The program will begin October 1, 2008 and sunset on September 30, 2011.

## **"Foreclosure Prevention Act of 2008"**

The Foreclosure Prevention Act contains the following provisions:

- **FHA Modernization.** The FHA loan limit is increased from 95 percent to 115 percent of area median home price with a cap at 150% of GSE limit (currently, \$625,500), allowing families in all areas of the country to access homeownership through FHA. Downpayments of 3.5 percent

will be required for any FHA loan and counseling requirements are enhanced to help provide for stable homeownership. The bill prohibits seller-funded downpayment assistance.

- **Assisting Communities Devastated by Foreclosures.** To ensure communities can mitigate the harmful effects of foreclosures, \$3.92 billion in block grant funds is provided to communities hardest hit by foreclosures and delinquencies. These funds can be used to purchase foreclosed homes, at a discount, and rehabilitate or redevelop the homes to stabilize neighborhoods and stem the significant losses in house values of neighboring homes.

- **Providing Pre-Foreclosure Counseling for Families in Need.** The legislation provides \$150 million in additional funding for housing counseling. In addition, \$30 million is provided to help provide legal services to distressed borrowers.

- **Enhancing Mortgage Disclosure.** The legislation expands the types of home loans subject to early disclosures (within three days of application) under the Truth In Lending Act (TILA) to include all mortgages, including refinances and home equity loans. Disclosures must be provided no later than 7 days prior to closing, so borrowers can shop for another loan if not satisfied with the terms. The bill requires a new disclosure that informs borrowers of the maximum monthly payments possible under their loan, and also doubles the range of statutory damages for TILA violations.

- **Preserving the American Dream for Our Nation's Veterans.** The bill lengthens the time a lender must wait before starting foreclosure from three months to nine months after a soldier returns from service and also provides returning soldiers with one year relief from increases in mortgage interest rates. In addition, the Department of Defense is required to establish a counseling program to ensure veterans and active service members can access assistance if facing financial difficulties. Also included is a provision to increase the VA loan guarantee amount.

## **Division C**

### **Tax Relief Incentives and Revenue Offsets**

Included among the major tax incentive and revenue provisions are:

- **Refundable first-time homebuyer tax credit.** The legislation provides a refundable tax credit that is generally equivalent to a 15-year interest-free loan equal to 10 percent of the purchase of a home (up to \$7,500) by first-time home buyers. The provision applies to homes purchased on or after April 9, 2008 and before July 1, 2009. Taxpayers receiving this tax credit must repay any amount received back to the government over 15 years in equal installments. The credit phases out for individuals with adjusted gross income between \$75,000 and 95,000 (\$150,000-\$170,000 for joint filers). A taxpayer is a first-time homebuyer if they had no ownership interest in a principal residence in the U.S. for three years before the purchase of the home to which the credit applies.

ICBA first recommended a similar first-time homebuyer tax credit in its 9-point stimulus plan presented to Congress in January.

- **Municipal bonds guaranteed by Federal Home Loan Banks eligible for treatment as tax-exempt bonds.** Under current law, municipal bonds guaranteed by Federal Home

Loan Banks cannot qualify as tax-exempt bonds unless the bonds are used to finance housing programs. State and local governments currently face significant costs when issuing tax-exempt municipal bonds to finance state and local projects. The legislation helps these municipalities by temporarily allowing bonds guaranteed by FHLBs to be eligible for treatment as tax-exempt bonds regardless of whether the bonds are used to finance housing programs. This helps State and local governments obtain financing for necessary projects (e.g., constructing roads, repairing bridges, building and renovating schools and hospitals, funding college loans, etc) at a lower cost. This provision expires at the end of 2010.

- **Additional standard deduction for real property taxes.** The legislation provides home owners who claim the standard deduction with an additional standard deduction for State and local real property taxes. The maximum amount that may be claimed is \$500 (\$1,000 for joint filers). This proposal applies for tax year 2008.
- **Temporary increase in mortgage revenue bonds.** Under current law, there is a national limitation on the annual amount of tax-exempt housing bonds each state may issue. Many states have reached their limit. The legislation increases this limit for both small and large population states in 2008 to allow for the issuance of an additional \$11 billion of tax-exempt bonds to provide loans to first-time home buyers and to finance the construction of low-income rental housing.
- **Low-Income Housing Tax Credit.** Temporarily expands the volume cap for the low income housing tax credit. It also would include a package that modernizes the program.
- **Property Tax Break.** Provides a \$500 tax deduction (\$1,000 for joint filers) for homeowners who pay state and local real property taxes but do not itemize deductions.
- **Tax-Exempt Housing Bonds.** Repeals alternative minimum tax limit for tax-exempt housing bonds to help expand this market.
- **Information reporting on payment card and third-party transactions.** The legislation requires entities that make payments to merchants in settlement of payment card transactions to report annually to the IRS and to the payee the gross amount of reportable payment transactions, as well as the name, address, and TIN of the participating payees.

ICBA and a coalition of small business groups expressed specific concerns about this reporting requirement and worked to minimize any burden on small businesses. Notably, the provisions for information reporting were delayed until calendar year 2011.