

111TH CONGRESS
2^D SESSION

H. R. 5072

To improve the financial safety and soundness of the FHA mortgage insurance program.

IN THE HOUSE OF REPRESENTATIVES

APRIL 20, 2010

Ms. WATERS (for herself, Mrs. CAPITO, Mr. FRANK of Massachusetts, and Mr. AL GREEN of Texas) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To improve the financial safety and soundness of the FHA mortgage insurance program.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “FHA Reform Act of
5 2010”.

6 **SEC. 2. MORTGAGE INSURANCE PREMIUMS.**

7 Subparagraph (B) of section 203(c)(2) of the Na-
8 tional Housing Act (12 U.S.C. 1709(c)(2)(B)) is amend-
9 ed—

10 (1) in the matter preceding clause (i)—

1 (A) by striking “shall” and inserting
2 “may”; and

3 (B) by striking “0.50 percent” and insert-
4 ing “1.5 percent”; and

5 (2) in clause (ii), by striking “shall be in an
6 amount not exceeding 0.55 percent” and inserting
7 “may be in an amount not exceeding 1.55 percent”.

8 **SEC. 3. INDEMNIFICATION BY MORTGAGEES.**

9 Section 202 of the National Housing Act (12 U.S.C.
10 1708) is amended by adding at the end the following new
11 subsection:

12 “(i) INDEMNIFICATION BY MORTGAGEES.—

13 “(1) IN GENERAL.—If the Secretary determines
14 that a mortgage executed by a mortgagee approved
15 by the Secretary under the direct endorsement pro-
16 gram or insured by a mortgagee pursuant to the del-
17 egation of authority under section 256 was not origi-
18 nated or underwritten in accordance with the re-
19 quirements established by the Secretary, and the
20 Secretary pays an insurance claim with respect to
21 the mortgage within a reasonable period specified by
22 the Secretary, the Secretary may require the mort-
23 gagee approved by the Secretary under the direct en-
24 dorsement program or the mortgagee delegated au-

1 thority under section 256 to indemnify the Secretary
2 for the loss.

3 “(2) FRAUD OR MISREPRESENTATION.—If
4 fraud or misrepresentation was involved in connec-
5 tion with the origination or underwriting, the Sec-
6 retary may require the mortgagee approved by the
7 Secretary under the direct endorsement program or
8 the mortgagee delegated authority under section 256
9 to indemnify the Secretary for the loss regardless of
10 when an insurance claim is paid.

11 “(3) REQUIREMENTS AND PROCEDURES.—The
12 Secretary shall issue regulations establishing appro-
13 priate requirements and procedures governing the
14 indemnification of the Secretary by the mortgagee.”.

15 **SEC. 4. DELEGATION OF INSURING AUTHORITY.**

16 Section 256 of the National Housing Act (12 U.S.C.
17 1715z–21) is amended—

18 (1) by striking subsection (e);

19 (2) in subsection (e), by striking “, including”
20 and all that follows through “by the mortgagee”;
21 and

22 (3) by redesignating subsections (d) and (e) as
23 subsections (c) and (d), respectively.

1 **SEC. 5. AUTHORITY TO TERMINATE MORTGAGEE ORIGINA-**
2 **TION AND UNDERWRITING APPROVAL.**

3 Section 533 of the National Housing Act (12 U.S.C.
4 1735f–11) is amended—

5 (1) in the first sentence of subsection (b), by in-
6 serting “or areas or on a nationwide basis” after
7 “area” each place such term appears; and

8 (2) in subsection (c), by striking “(c)” and all
9 that follows through “The Secretary” in the first
10 sentence of paragraph (2) and inserting the fol-
11 lowing:

12 “(c) **TERMINATION OF MORTGAGEE ORIGINATION**
13 **AND UNDERWRITING APPROVAL.—**

14 “(1) **TERMINATION AUTHORITY.—**If the Sec-
15 retary determines, under the comparison provided in
16 subsection (b), that a mortgagee has a rate of early
17 defaults and claims that is excessive, the Secretary
18 may terminate the approval of the mortgagee to
19 originate or underwrite single family mortgages for
20 any area, or areas, or on a nationwide basis, not-
21 withstanding section 202(c) of this Act.

22 “(2) **PROCEDURE.—**The Secretary”.

1 **SEC. 6. DEPUTY ASSISTANT SECRETARY OF FHA FOR RISK**
2 **MANAGEMENT AND REGULATORY AFFAIRS.**

3 (a) ESTABLISHMENT OF POSITION.—Subsection (b)
4 of section 4 of the Department of Housing and Urban De-
5 velopment Act (42 U.S.C. 3533(b)) is amended—

6 (1) by inserting “(1)” after “(b)”; and

7 (2) by adding at the end the following new
8 paragraph:

9 “(2) There shall be in the Department, within the
10 Federal Housing Administration, a Deputy Assistant Sec-
11 retary for Risk Management and Regulatory Affairs, who
12 shall be appointed by the Secretary and shall be respon-
13 sible to the Federal Housing Commissioner for all matters
14 relating to managing and mitigating risk to the mortgage
15 insurance funds of the Department and ensuring the per-
16 formance of mortgages insured by the Department.”.

17 (b) TERMINATION.—Upon the appointment and con-
18 firmation of the initial Deputy Assistant Secretary for
19 Risk Management and Regulatory Affairs pursuant to sec-
20 tion 4(b)(2) of the Department of Housing and Urban De-
21 velopment Act, as amended by subsection (a) of this sec-
22 tion, the position of chief risk officer within the Federal
23 Housing Administration, filled by appointment by the
24 Federal Housing Commissioner, is abolished.

1 **SEC. 7. USE OF OUTSIDE CREDIT RISK ANALYSIS SOURCES.**

2 Section 202 of the National Housing Act (12 U.S.C.
3 1708) is amended by adding at the end the following new
4 subsection:

5 “(i) USE OF OUTSIDE CREDIT RISK ANALYSIS
6 SOURCES.—The Secretary may obtain the services of, and
7 enter into contracts with, private and other entities out-
8 side of the Department in—

9 “(1) analyzing credit risk models and practices
10 employed by the Department in connection with
11 such mortgages;

12 “(2) evaluating underwriting standards applica-
13 ble to such mortgages insured by the Department;
14 and

15 “(3) analyzing the performance of lenders in
16 complying with, and the Department in enforcing,
17 such underwriting standards.”.

18 **SEC. 8. REVIEW OF MORTGAGEE PERFORMANCE.**

19 Section 533 of the National Housing Act (12 U.S.C.
20 1735f–11) is amended—

21 (1) in subsection (a), by inserting after the pe-
22 riod at the end the following: “For purposes of this
23 subsection, the term ‘early default’ means a default
24 that occurs within 24 months after a mortgage is
25 originated or such alternative appropriate period as
26 the Secretary shall establish.”;

1 (2) in subsection (b), by inserting after the pe-
2 riod at the end of the first sentence the following:
3 “The Secretary shall also identify which mortgagees
4 have had a significant or rapid increase, as deter-
5 mined by the Secretary, in the number or percentage
6 of early defaults and claims on such mortgages, with
7 respect to all mortgages originated by the mortgagee
8 or mortgages on housing located in any particular
9 geographic area or areas”; and

10 (3) by adding at the end the following new sub-
11 sections:

12 “(d) SUFFICIENT RESOURCES.—There is authorized
13 to be appropriated to the Secretary for each of fiscal years
14 2010 through 2014 the amount necessary to provide addi-
15 tional full-time equivalent positions for the Department,
16 or for entering into such contracts as are necessary, to
17 conduct reviews in accordance with the requirements of
18 this section and to carry out other responsibilities relating
19 to ensuring the safety and soundness of the Mutual Mort-
20 gage Insurance Fund.

21 “(e) REPORTING TO CONGRESS.—Not later than 90
22 days after the date of enactment of the FHA Reform Act
23 of 2010 and not less often than annually thereafter, the
24 Secretary shall make available to the Committee on Finan-
25 cial Services of the House of Representatives and the

1 Committee on Banking, Housing, and Urban Affairs of
2 the Senate any information and conclusions pursuant to
3 the reviews required under subsection (a). Such report
4 shall not include detailed information on the performance
5 of individual mortgages.”.

6 **SEC. 9. USE OF NATIONWIDE MORTGAGE LICENSING SYS-**
7 **TEM AND REGISTRY.**

8 (a) USE BY MORTGAGEES, OFFICERS, AND OWNERS;
9 USE FOR INSURED MORTGAGES.—

10 (1) MORTGAGEES, OFFICERS, AND OWNERS.—

11 Section 202 of the National Housing Act (12 U.S.C.
12 1708), as amended by the preceding provisions of
13 this Act, is further amended by adding at the end
14 the following new subsections:

15 “(j) USE OF NATIONWIDE MORTGAGE LICENSING
16 SYSTEM AND REGISTRY FOR MORTGAGEES, OFFICERS,
17 AND OWNERS.—The Secretary may require, as a condition
18 for approval of a mortgagee by the Secretary to originate
19 or underwrite mortgages on single family that are insured
20 by the Secretary, that the mortgagee—

21 “(1) obtain and maintain a unique company
22 identifier assigned by the Nationwide Mortgage Li-
23 censing System and Registry, as established by the
24 Conference of State Bank Supervisors and the

1 American Association of Residential Mortgage Regu-
2 lators; and

3 “(2) obtain and maintain, as relates to any and
4 all officers or owners of the mortgagee who are sub-
5 ject to the requirements of the S.A.F.E. Mortgage
6 Licensing Act of 2008, or are otherwise required to
7 register with the Nationwide Mortgage Licensing
8 System and Registry, the unique identifier assigned
9 by the Nationwide Mortgage Licensing System and
10 Registry, as established by the Conference of State
11 Bank Supervisors and the American Association of
12 Residential Mortgage Regulators.”.

13 (2) INSURED MORTGAGES.—Section 203 of the
14 National Housing Act (12 U.S.C. 1709) is amended
15 by adding at the end the following new subsection:

16 “(y) USE OF NATIONWIDE MORTGAGE LICENSING
17 SYSTEM AND REGISTRY FOR INSURED LOANS.—The Sec-
18 retary may require each mortgage insured under this sec-
19 tion to include the unique identifier (as such term is de-
20 fined in section 1503 of the S.A.F.E. Mortgage Licensing
21 act of 2008 (12 U.S.C. 5102)) and any unique company
22 identifier assigned by the Nationwide Mortgage Licensing
23 System and Registry, as established by the Conference of
24 State Bank Supervisors and the American Association of
25 Residential Mortgage Regulators.”.

1 (b) COORDINATION WITH STATE REGULATORY
2 AGENCIES.—Section 202 of the National Housing Act (12
3 U.S.C. 1708), as amended by the preceding provisions of
4 this Act, is further amended by adding at the end the fol-
5 lowing new subsection:

6 “(k) INFORMATION SHARING WITH STATE REGU-
7 LATORY AGENCIES.—

8 “(1) JOINT PROTOCOL ON INFORMATION SHAR-
9 ING.—The Secretary shall, through consultation with
10 State regulatory agencies, pursue protocols for infor-
11 mation sharing, including the appropriate treatment
12 of confidential or otherwise restricted information,
13 regarding either actions described in subsection
14 (c)(3) of this section or disciplinary or enforcement
15 actions by a State regulatory agency or agencies
16 against a mortgagee (as such term is defined in sub-
17 section (c)(7)).

18 “(2) COORDINATION.—To the greatest extent
19 possible, the Secretary and appropriate State regu-
20 latory agencies shall coordinate disciplinary and en-
21 forcement actions involving mortgagees (as such
22 term is defined in subsection (c)(7)).”.

1 **SEC. 10. REPORTING OF MORTGAGEE ACTIONS TAKEN**
2 **AGAINST OTHER MORTGAGEES.**

3 Section 202 of the National Housing Act (12 U.S.C.
4 1708(e)), as amended by the preceding provisions of this
5 Act, is further amended by adding at the end the following
6 new subsection:

7 “(k) NOTIFICATION OF MORTGAGEE ACTIONS.—The
8 Secretary shall require each mortgagee, as a condition for
9 approval by the Secretary to originate or underwrite mort-
10 gages on single family or multifamily housing that are in-
11 sured by the Secretary, if such mortgagee engages in the
12 purchase of mortgages insured by the Secretary and origi-
13 nated by other mortgagees or in the purchase of the serv-
14 icing rights to such mortgages, and such mortgagee at any
15 time takes action to terminate or discontinue such pur-
16 chases from another mortgagee based on any determina-
17 tion, evidence, or report of fraud or material misrepresen-
18 tation in connection with the origination of such mort-
19 gages, the mortgagee shall, not later than 15 days after
20 taking such action, shall notify the Secretary of the action
21 taken and the reasons for such action.”.

22 **SEC. 11. ANNUAL ACTUARIAL STUDY AND QUARTERLY RE-**
23 **PORTS ON MUTUAL MORTGAGE INSURANCE**
24 **FUND.**

25 Subsection (a) of section 202 of the National Hous-
26 ing Act (12 U.S.C. 1708(a)) is amended—

1 (1) in the second sentence of paragraph (4), by
2 inserting before the period at the end the following:
3 “, any changes to the current or projected safety
4 and soundness of the Fund since the most recent re-
5 port under this paragraph or paragraph (5), and
6 any risks to the Fund”; and

7 (2) in paragraph (5)—

8 (A) in subparagraph (D), by striking
9 “and” at the end;

10 (B) in subparagraph (E), by striking the
11 period at the end and inserting “; and”;

12 (C) by adding at the end the following:

13 “(F) any other factors that are likely to
14 have an impact on the financial status of the
15 Fund or cause any material changes to the cur-
16 rent or projected safety and soundness of the
17 Fund since the most recent report under para-
18 graph (4).

19 The Secretary may include in the report under this
20 paragraph any recommendations not made in the
21 most recent report under paragraph (4) that may be
22 needed to ensure that the Fund remains financially
23 sound”.

1 **SEC. 12. REVIEW OF DOWNPAYMENT REQUIREMENTS.**

2 Section 205 of the National Housing Act (12 U.S.C.
3 1711) is amended by adding at the end the following new
4 subsection:

5 “(g) REVIEW OF DOWNPAYMENT REQUIREMENTS.—

6 If, at any time when the capital ratio (as such term is
7 defined in subsection (f)) of the Mutual Mortgage Insur-
8 ance Fund does not comply with the requirement under
9 subsection (f)(1), the Secretary establishes a cash invest-
10 ment requirement, for all mortgages or mortgagors or with
11 respect to any group of mortgages or mortgagors, that ex-
12 ceeds the minimum percentage or amount required under
13 section 203(b)(9), thereafter upon the capital ratio first
14 complying with the requirement under subsection (f)(1)
15 the Secretary shall review such cash investment require-
16 ment and, if the Secretary determines that such percent-
17 age or amount may be reduced while maintaining such
18 compliance, the Secretary shall subsequently reduce such
19 requirement by such percentage or amount as the Sec-
20 retary considers appropriate.”.

21 **SEC. 13. DEFAULT AND ORIGINATION INFORMATION BY**
22 **LOAN SERVICER AND ORIGINATING DIRECT**
23 **ENDORSEMENT LENDER.**

24 (a) COLLECTION OF INFORMATION.—Paragraph (2)
25 of section 540(b) of the National Housing Act (12 U.S.C.

1 1712 U.S.C. 1735f–18(b)(2)) is amended by adding at the
2 end the following new subparagraph:

3 “(C) For each entity that services insured
4 mortgages, data on the performance of mort-
5 gages originated during each calendar quarter
6 occurring during the applicable collection pe-
7 riod, disaggregated by the direct endorsement
8 mortgagee from whom such entity acquired
9 such servicing.”.

10 (b) APPLICABILITY.—Information described in sub-
11 paragraph (C) of section 540(b)(2) of the National Hous-
12 ing Act, as added by subsection (a) of this section, shall
13 first be made available under such section 540 for the ap-
14 plicable collection period (as such term is defined in such
15 section) relating to the first calendar quarter ending after
16 the expiration of the 12-month period that begins on the
17 date of the enactment of this Act.

18 **SEC. 14. GAO REPORTS ON FHA AND GINNIE MAE.**

19 Not later than the expiration of the 12-month period
20 beginning on the date of the enactment of this Act, the
21 Comptroller General of the United States shall submit to
22 the Congress the following reports:

23 (1) FHA REPORT.—A report on the single fam-
24 ily mortgage insurance programs of the Secretary of
25 Housing and Urban Development and the Mutual

1 Mortgage Insurance Fund established under section
2 202(a) of the National Housing Act (12 U.S.C.
3 1708(a)) that—

4 (A) analyzes such Fund, the economic net
5 worth, capital ratio, and unamortized insur-
6 ance-in-force (as such terms are defined in sec-
7 tion 205(f)(4) of such Act (12 U.S.C.
8 1711(f)(4))) of such Fund, the risks to the
9 Fund, how the capital ratio of the Fund affects
10 the mortgage insurance programs under the
11 Fund and the broader housing market, the ex-
12 tent to which the housing markets are more de-
13 pendent on mortgage insurance provided
14 through the Fund since the financial crisis
15 began in 2008, and the exposure of the tax-
16 payers for obligations of the Fund;

17 (B) analyzes the methodology of the cap-
18 ital ratio for the Fund under section 205(f) of
19 such Act and examines other alternative meth-
20 odologies with respect to which methodology is
21 most appropriate to meet the operational goals
22 of the Fund under section 202(a)(7);

23 (C) analyzes the effects of the increases in
24 the limits on the maximum principal obligation
25 of mortgages made by the FHA Modernization

1 Act of 2008 (title I of division B of Public Law
2 110–289), section 202 of the Economic Stim-
3 ulus Act of 2008 (Public Law 110–185; 122
4 Stat. 620), section 1202 of division A of the
5 American Recovery and Reinvestment Act of
6 2009 (Public Law 111–5; 123 Stat. 225), and
7 section 166 of the Continuing Appropriations
8 Resolution, 2010 (as added by section 104 of
9 division B of Public Law 111–88; 123 Stat.
10 29723) on—

11 (i) the risks to and safety and sound-
12 ness of the Fund;

13 (ii) the impact on the affordability
14 and availability of mortgage credit for bor-
15 rowers for loans authorized under such
16 higher loan limits;

17 (iii) the private market for residential
18 mortgage loans that are not insured by the
19 Secretary of Housing and Urban Develop-
20 ment; and

21 (iv) the Federal National Mortgage
22 Association and the Federal Home Loan
23 Mortgage Corporation; and

24 (D) analyzes the impact on affordability to
25 FHA borrowers, and the impact to the Fund,

1 of seller concessions or contributions to a bor-
2 rower purchasing a residence using a mortgage
3 that is insured by the Secretary.

4 (2) GINNIE MAE.—A report on the Government
5 National Mortgage Association that identifies—

6 (A) the volume and share of the residential
7 mortgage market that consists of mortgages
8 that back securities for which the payment for
9 principal and interest is guaranteed by such As-
10 sociation and how the Association has been af-
11 fected by the economic recession, credit crisis,
12 and downturn in the housing markets occurring
13 during 2008, 2009, and 2010;

14 (B) the capacity of the Association to man-
15 age the volume of business it conducts and se-
16 curities it guarantees, particularly with regard
17 to the recent dramatic increase in such volume,
18 including the ability of the Association to con-
19 duct appropriate oversight of contractors and
20 issuers of securities for which the payment of
21 principal and interest is guaranteed by the As-
22 sociation and to determine whether the charac-
23 teristics of various mortgage products con-
24 stitute appropriate collateral for the federally
25 guaranteed securities for which payment of

1 principal and interest is guaranteed by such As-
2 sociation;

3 (C) the impacts, if any, resulting from
4 such increased volume of business conducted by
5 the Association and securities it guarantees and
6 the challenges such increased volume poses to
7 the internal controls of the Association; and

8 (D) the existing capital net worth of the
9 various aggregators of mortgages that issue se-
10 curities that are based on or backed by such
11 mortgages and payment of principal and inter-
12 est on which is guaranteed by such Association
13 and recommends an appropriate required level
14 of net worth for such aggregators and issuers
15 to protect the financial interests of the Federal
16 Government and the taxpayers.

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