

FHA EMERGENCY FISCAL SOLVENCY ACT OF 2012

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JUNE 20, 2012.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed  
—————

Mr. BACHUS, from the Committee on Financial Services,  
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 4264]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 4264) to help ensure the fiscal solvency of the FHA mortgage insurance programs of the Secretary of Housing and Urban Development, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

H.R. 4264, the FHA Emergency Fiscal Solvency Act of 2012, provides the Federal Housing Administration (FHA) with the tools it needs to protect the Mutual Mortgage Insurance Fund (MMIF) from becoming insolvent. The bill sets minimum annual premiums for mortgage insurance, requires lenders that committed fraud to reimburse the FHA for mortgage-insurance losses, bars unscrupulous lenders from participating in the FHA's mortgage insurance programs, and directs the FHA to implement internal fiscal oversight.

BACKGROUND AND NEED FOR LEGISLATION

The FHA was established as an agency of the Department of Housing and Urban Development (HUD) by the National Housing Act of 1934 to provide federal mortgage insurance in order to broaden homeownership, protect lending institutions, and stimulate the building industry. Before the FHA was established, home mortgages did not exceed 50 percent of home values and were short

term, lasting no longer than five years. At the end of the fifth year, homeowners had to pay their mortgages in full or roll them over into another loan. During the Great Depression, lenders were unable or unwilling to roll over loans that came due. As a result, many borrowers lost their homes to foreclosure and lenders lost money because property values declined significantly. The creation of the FHA provided stability and liquidity to the mortgage market and fostered the introduction of the 30-year mortgage and mortgage standardization.

During the housing boom of the mid-2000s through 2006, the FHA's share of the mortgage market fell to under two percent of mortgage originations (measured by dollar volume). But as housing prices began to fall, lenders tightened their underwriting criteria and the FHA began to play a larger role in the mortgage market. The Congressional Research Service reported that during FY 2010, the FHA guaranteed nearly 40 percent of the home-purchase mortgages that were originated or refinanced, which corresponds to approximately 1.1 million homebuyers. FY 2010 was the second time that the FHA has assisted more than 1 million homebuyers in a single year. As a result of these trends, the FHA is now the largest government insurer of mortgages in the world, with a mortgage portfolio of 7.4 million loans and a combined unpaid principal balance of over \$1 trillion.

The FHA is intended to be self-funded: the premiums paid by homeowners for FHA mortgage insurance are supposed to defray the costs of running the program and to cover losses when loans default. But while the FHA's market share has been growing, the FHA—like most other participants in the mortgage market—has been faced with higher default rates. The FHA thus finds itself supporting the mortgage market by insuring new home loans as it seeks to reinforce the stability of its single-family MMIF. By statute, the FHA is required to maintain the MMIF's capital reserve ratio at 2 percent or greater. The capital reserve ratio was first required in the Omnibus Budget Reconciliation Act of 1990, when there was significant concern that the FHA would deplete its capital and require federal appropriations to continue. In the years since the capital reserve ratio was adopted, the FHA's ability to meet the capital reserve requirement has served as a measure of the health of the MMIF.

On November 15, 2011, HUD released the FHA's FY 2011 Actuarial Report, prepared for HUD by an independent auditor. The Actuarial Report showed deterioration of the MMIF's capital reserve ratio, which fell to 0.24 percent in FY 2011. The FY 2011 Actuarial Report also noted that as of the end of FY 2011, the MMIF's economic value—which is the MMIF's existing capital resources plus the net present value of FHA's current book of business—was \$1.19 billion, a decrease of 77 percent from the MMIF's \$5.16 billion economic value as of the end of FY 2010. The fall in the MMIF's economic value was caused by declines in national home prices of more than five percent, more loans having elevated default potential, and uncertain economic conditions. The FY 2011 Actuarial Report concluded that under more pessimistic economic scenarios than the Actuarial Report's base-case assumptions, the MMIF's economic value may be negative beginning in FY 2012 through FY 2018.

Today, the FHA faces its most serious fiscal challenge. In its FY 2011 annual report to Congress, the FHA acknowledged that “[c]laim expenses were greater than the sum of premium revenue and property recoveries for the year.” In other words, the FHA now spends more than it collects. In February 2012, the President’s FY 2013 budget proposal confirmed the FHA’s finances were in a precarious condition, projecting that the FHA could be required to draw \$688 million in emergency funds from Treasury to build up the insurance fund.

As a result of the MMIF’s falling capital reserves, the FHA is vulnerable to further defaults. If the MMIF were exhausted and the FHA lacked funds to pay insurance claims, the Treasury would be forced to cover lenders’ claims directly. Because the FHA’s guarantees are backed by the federal government, a large number of defaults could result in significant losses to the FHA that would ultimately be borne by taxpayers. The deteriorating financial position of the FHA’s capital reserve funds raises concerns that in the same way that Fannie Mae and Freddie Mac were bailed out by taxpayers, the FHA could also expose taxpayers to further risk.

Apart from the FHA’s parlous financial condition, there is also great concern that the FHA, as of the end of 2011, controlled well over half of the mortgage insurance market. Given the consensus among policymakers that government should facilitate the return of private capital to the housing finance market, the government’s continued dominance of the mortgage insurance market remains troubling. H.R. 4264 would not only protect taxpayers from the government’s exposure to losses resulting from its presence in the mortgage insurance market, it would also, through its premium structure, level the playing field so that the private sector could provide mortgage insurance on competitive terms. In addition, H.R. 4264 gives the FHA the tools it needs to implement reforms that bolster the FHA’s reserves and reduce taxpayer risk.

#### HEARINGS

The Subcommittee on Insurance, Housing, and Community Opportunity held a hearing on May 25, 2011, titled “Legislative Proposals to Determine the Future Role of FHA, RHS and GNMA in the Single- and Multi-Family Mortgage Markets.” The following witnesses testified:

- Ms. Katherine M. Alitz, Senior Vice President, Boston Capital, on behalf of the Council for Affordable and Rural Housing
- Mr. Michael D. Berman, Chairman, Mortgage Bankers Association
- Mr. Mark A. Calabria, Director of Financial Regulation Studies, Cato Institute, Washington, DC
- Mr. Peter Carey, President and CEO, Self-Help Enterprises, on behalf of the Housing Assistance Council and the National Rural Housing Coalition
- Mr. Brian Chappelle, Partner, Potomac Partners
- Mr. Peter W. Evans, Partner, Moran & Company, on behalf of the National Multi Housing Council and the National Apartment Association
- Mr. Basil Petrou, Managing Partner, Federal Financial Analytics, Inc.

- Mr. Ron Phipps, Broker, Phipps Realty, on behalf of the National Association of Realtors
- Mr. Barry Rutenberg, First Vice Chairman, National Association of Home Builders

The Subcommittee on Insurance, Housing, and Community Opportunity held a hearing on September 8, 2011, titled “Legislative Proposals to Determine the Future Role of FHA, RHS and GNMA in the Single- and Multi-Family Mortgage Markets, Part II.” The following witnesses testified:

PANEL I

- The Honorable Johnny Isakson (R-GA), United States Senate

PANEL II

- Mrs. Carol Galante, Acting Federal Housing Administration Commissioner and Assistant Secretary for Housing, Department of Housing and Urban Development
- Ms. Tammye Trevino, Administrator, Housing and Community Facilities Programs, Department of Agriculture’s Rural Development Agency
- The Honorable Theodore “Ted” Tozer, President, Government National Mortgage Association

The Committee on Financial Services held a hearing on December 1, 2011, titled “Perspectives on the Health of the FHA Single-family Insurance Fund.” The following witnesses testified:

PANEL I

- The Honorable Shaun Donovan, Secretary, U.S. Department of Housing and Urban Development

PANEL II

- Mr. Mathew Scire, Director, Financial Markets and Community Investment, U.S. Government Accountability Office
- Dr. Andrew Caplin, Professor of Economics, Department of Economics, New York University
- Mr. Patrick Sinks, President and Chief Operating Officer, Mortgage Guaranty Insurance Corporation, on behalf of the Mortgage Insurance Companies of America
- Ms. Debra W. Still, Chairman-Elect, Mortgage Bankers Association
- Mr. Moe Veissi, President, National Association of Realtors
- Ms. Sarah Rosen Wartell, Executive Vice President, Center for American Progress

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on March 27, 2012, and ordered H.R. 4264 favorably reported to the House by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Chairman Bachus to report the bill, as amended, to the House with a favorable recommendation was agreed to by voice vote.

During consideration of H.R. 4264 by the Committee, the following amendments were considered:

1. An amendment offered by Mr. Westmoreland, no. 2, to reduce FHA's insurance guarantee from 100% of loan value to 80% for mortgages insured after date of enactment, was not agreed to by a record vote of 18 yeas and 36 nays (Record vote no. FC-65).

## RECORD VOTE NO. FC-65

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bachus .....	X	.....	.....	Mr. Frank (MA) .....	.....	X	.....
Mr. Hensarling .....	X	.....	.....	Ms. Waters .....	.....	.....	.....
Mr. King (NY) .....	.....	X	.....	Mrs. Maloney .....	.....	.....	.....
Mr. Royce .....	X	.....	.....	Mr. Gutierrez .....	.....	X	.....
Mr. Lucas .....	.....	X	.....	Ms. Velázquez .....	.....	X	.....
Mr. Paul .....	.....	.....	.....	Mr. Watt .....	.....	X	.....
Mr. Manzullo .....	.....	X	.....	Mr. Ackerman .....	.....	X	.....
Mr. Jones .....	.....	.....	.....	Mr. Sherman .....	.....	X	.....
Mrs. Biggert .....	.....	X	.....	Mr. Meeks .....	.....	.....	.....
Mr. Gary G. Miller (CA) .....	.....	X	.....	Mr. Capuano .....	.....	X	.....
Mrs. Capito .....	.....	X	.....	Mr. Hinojosa .....	.....	X	.....
Mr. Garrett .....	X	.....	.....	Mr. Clay .....	.....	X	.....
Mr. Neugebauer .....	X	.....	.....	Mrs. McCarthy (NY) .....	.....	X	.....
Mr. McHenry .....	X	.....	.....	Mr. Baca .....	.....	X	.....
Mr. Campbell .....	.....	X	.....	Mr. Lynch .....	.....	X	.....
Mrs. Bachmann .....	X	.....	.....	Mr. Miller (NC) .....	.....	X	.....
Mr. McCotter .....	X	.....	.....	Mr. David Scott (GA) .....	.....	X	.....
Mr. McCarthy (CA) .....	X	.....	.....	Mr. Al Green (TX) .....	.....	.....	.....
Mr. Pearce .....	X	.....	.....	Mr. Cleaver .....	.....	X	.....
Mr. Posey .....	.....	X	.....	Ms. Moore .....	.....	X	.....
Mr. Fitzpatrick .....	.....	X	.....	Mr. Ellison .....	.....	X	.....
Mr. Westmoreland .....	X	.....	.....	Mr. Perlmutter .....	.....	X	.....
Mr. Luetkemeyer .....	.....	X	.....	Mr. Donnelly .....	.....	X	.....
Mr. Huizenga .....	X	.....	.....	Mr. Carson .....	.....	.....	.....
Mr. Duffy .....	X	.....	.....	Mr. Himes .....	.....	X	.....
Ms. Hayworth .....	.....	X	.....	Mr. Peters .....	.....	X	.....
Mr. Renacci .....	.....	X	.....	Mr. Carney .....	.....	X	.....
Mr. Hurt .....	X	.....	.....				
Mr. Dold .....	.....	X	.....				
Mr. Schweikert .....	X	.....	.....				
Mr. Grimm .....	.....	X	.....				
Mr. Canseco .....	X	.....	.....				
Mr. Stivers .....	X	.....	.....				
Mr. Fincher .....	X	.....	.....				

2. An amendment offered by Mr. Westmoreland, no. 3, to require FHA to charge the maximum annual premium allowed, establish more stringent underwriting standards, and charge an additional risk-based annual premium, until its Mutual Mortgage Insurance Fund (MMIF) regains its statutorily required 2% minimum capital ratio, was not agreed to by a record vote of 19 yeas and 38 nays (Record vote no. FC-66).

## RECORD VOTE NO. FC-66

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Bachus .....	X	.....	.....	Mr. Frank (MA) .....	.....	X	.....
Mr. Hensarling .....	X	.....	.....	Ms. Waters .....	.....	X	.....
Mr. King (NY) .....	.....	X	.....	Mrs. Maloney .....	.....	X	.....
Mr. Royce .....	X	.....	.....	Mr. Gutierrez .....	.....	X	.....
Mr. Lucas .....	.....	X	.....	Ms. Velázquez .....	.....	X	.....
Mr. Paul .....	.....	.....	.....	Mr. Watt .....	.....	X	.....
Mr. Manzullo .....	.....	X	.....	Mr. Ackerman .....	.....	X	.....
Mr. Jones .....	.....	.....	.....	Mr. Sherman .....	.....	X	.....

## RECORD VOTE NO. FC-66—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mrs. Biggert .....		X	.....	Mr. Meeks .....			.....
Mr. Gary G. Miller (CA) .....		X	.....	Mr. Capuano .....		X	.....
Mrs. Capito .....		X	.....	Mr. Hinojosa .....		X	.....
Mr. Garrett .....	X		.....	Mr. Clay .....		X	.....
Mr. Neugebauer .....	X		.....	Mrs. McCarthy (NY) .....		X	.....
Mr. McHenry .....	X		.....	Mr. Baca .....		X	.....
Mr. Campbell .....		X	.....	Mr. Lynch .....		X	.....
Mrs. Bachmann .....	X		.....	Mr. Miller (NC) .....		X	.....
Mr. McCotter .....	X		.....	Mr. David Scott (GA) .....		X	.....
Mr. McCarthy (CA) .....	X		.....	Mr. Al Green (TX) .....			.....
Mr. Pearce .....	X		.....	Mr. Cleaver .....		X	.....
Mr. Posey .....		X	.....	Ms. Moore .....		X	.....
Mr. Fitzpatrick .....		X	.....	Mr. Ellison .....		X	.....
Mr. Westmoreland .....	X		.....	Mr. Perlmutter .....		X	.....
Mr. Luetkemeyer .....	X		.....	Mr. Donnelly .....		X	.....
Mr. Huizenga .....	X		.....	Mr. Carson .....		X	.....
Mr. Duffy .....		X	.....	Mr. Himes .....		X	.....
Ms. Hayworth .....		X	.....	Mr. Peters .....		X	.....
Mr. Renacci .....	X		.....	Mr. Carney .....		X	.....
Mr. Hurt .....	X		.....				
Mr. Dold .....		X	.....				
Mr. Schweikert .....	X		.....				
Mr. Grimm .....		X	.....				
Mr. Canseco .....	X		.....				
Mr. Stivers .....	X		.....				
Mr. Fincher .....	X		.....				

The following amendment was also considered by the Committee:

1. An amendment offered by Mr. Fitzpatrick, no. 1, to permanently remove the statutory cap on the number of Home Equity Conversion Mortgages (HECMs), was offered and withdrawn.

## COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held hearings and made findings that are reflected in this report.

## PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

The objective of H.R. 4264, the FHA Emergency Fiscal Solvency Act of 2012, is to provide the Federal Housing Administration (FHA) with the tools it needs to protect the Mutual Mortgage Insurance Fund (MMIF) from becoming insolvent. The bill sets minimum annual premiums for mortgage insurance, requires lenders that committed fraud to reimburse the FHA for mortgage-insurance losses, bars unscrupulous lenders from participating in the FHA's mortgage insurance programs, and directs the FHA to implement internal fiscal oversight.

## NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by

the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

#### COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

#### CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

#### *H.R. 4264—FHA Emergency Fiscal Solvency Act of 2012*

Summary: H.R. 4264 would make several changes to current law aimed at improving the financial safety and soundness of the Federal Housing Administration's (FHA's) single-family program. That program offers federal guarantees on certain home mortgages; cash flows associated with the loan guarantees are recorded in the budget in the Mutual Mortgage Insurance Fund (MMIF). The bill would require an independent actuarial review of the MMIF during periods when the fund's capital ratio falls below 2 percent, establish positions related to risk management at FHA and the Government National Mortgage Association (GNMA), and require FHA to make other administrative changes to the processes they use to oversee the single-family program.

CBO estimates that implementing H.R. 4264 would cost \$11 million over the 2013–2017 period, subject to the availability of appropriated funds. This legislation would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 4264 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 4264 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—					
	2013	2014	2015	2016	2017	2013–2017
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Actuarial Studies:						
Estimated Authorization Level .....	3	3	1	1	1	9
Estimated Outlays .....	3	3	1	1	1	9
Other Costs:						
Estimated Authorization Level .....	*	*	*	*	*	2
Estimated Outlays .....	*	*	*	*	*	2
Total Changes:						
Estimated Authorization Level .....	3	3	1	2	2	11
Estimated Outlays .....	3	3	1	2	2	11

Note: \* = less than \$500,000.

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted in late 2012 and that the necessary amounts will be appropriated each year.

*Actuarial studies*

Currently, an independent actuarial review of the MMIF is performed on an annual basis. H.R. 4264 would require the MMIF to be reviewed semiannually if the fund fails to maintain the statutorily mandated 2 percent capital ratio. (The capital ratio measures FHA's cash on hand relative to the number of all outstanding mortgages insured by the agency.) FHA estimates that the capital ratio has been below 2 percent since 2009; prior to that, the ratio fell below 2 percent once in 1994. Currently, FHA expects that the capital ratio will reach or exceed 2 percent by 2015. According to FHA, an actuarial review costs about \$3 million. CBO expects that under the bill additional actuarial reviews would have to be performed in 2013 and 2014, at a cost of \$6 million over those two years.

Although FHA anticipates that the capital ratio for MMIF will increase to 2 percent by 2015, there is some probability that this may not happen and that additional actuarial reviews would be necessary. CBO estimates that there is about a 20 percent chance that the capital ratio could be below 2 percent in any year, given that it has fallen below this level four times in the last 19 years. Considering the probability that additional actuarial reviews would be needed, CBO estimates that enacting this provision would cost about \$3 million over the 2015–2017 period.

*Other costs*

Implementing H.R. 4264 would change the processes used by FHA to oversee the single-family loan program. For example, the bill would require a review of any mortgages that default within 24 months of being originated. In addition, H.R. 4264 would establish two new positions: Deputy Assistant Secretary for Risk Management and Regulatory Affairs within FHA, and Chief Risk Officer within GNMA. H.R. 4264 also would require the Government Accountability Office, within one year of enactment, to produce a report on the safety and soundness of FHA's single-family program.

In total, CBO estimates that these other requirements under H.R. 4264 would cost \$2 million over the 2013–2017 period, subject to the availability of appropriated funds.

Finally, under H.R. 4264 the annual mortgage insurance premium charged by FHA could not be less than 0.55 percent or more than 2.05 percent of the outstanding loan balance. Because CBO does not anticipate that FHA's annual premiums will be adjusted over the next five years as a result of enacting this legislation, this provision would have no budgetary impact.

Pay-As-You-Go considerations: None.

Intergovernmental and private-sector impact: H.R. 4264 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal Costs: Susanne S. Mehlman; Impact on State, Local, and Tribal Governments: Elizabeth Cove Delisle; Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.



## FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

## ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

## APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

## EARMARK IDENTIFICATION

H.R. 4264 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

## SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

*Section 1. Short title and table of contents*

This Act may be cited as the “FHA Emergency Fiscal Solvency Act of 2012”.

*Section 2. FHA annual mortgage insurance premiums*

Section 2 requires the Department of Housing and Urban Development (HUD) to establish a minimum annual mortgage insurance premium of not less than 0.55 percent of the remaining insured principal balance. The section also gives HUD the discretion to charge an annual premium of up to 2.0/2.05 percent. This provision will take effect six months after the date of the bill’s enactment.

*Section 3. Indemnification by FHA mortgagees*

Section 3 permits HUD to require indemnification from a mortgagee if HUD determines that the mortgagee knew, or should have known, of a serious or material violation of HUD’s mortgage underwriting standards for FHA loans. If fraud or misrepresentation was involved in the origination or underwriting of the FHA mortgage, HUD may require the mortgagee to indemnify HUD regardless of when an insurance claim is paid. This section also requires HUD to establish a process for lenders to appeal HUD’s indemnification determinations, and to issue regulations to implement this section, to report on the number of fraudulent or improperly underwritten loans, and to report on the effect on FHA’s insurance fund when indemnification is required.

*Section 4. Early period delinquencies*

Section 4 requires HUD to analyze and report on “early period delinquencies” (defined as a mortgage that becomes 90 or more days delinquent within the first 24 months of the loan) for FHA loans and to seek indemnification from lenders for early period delinquencies.

*Section 5. Semiannual actuarial studies of MMIF during periods of capital depletion*

Section 5 requires HUD to provide an independent actuarial report on the FHA semiannually, rather than annually, if the FHA fails to maintain its 2.0% capital ratio requirement. This section also requires that HUD analyze the cost and feasibility of providing an independent actuarial study on a quarterly basis.

*Section 6. Delegation of FHA insuring authority*

To implement Section 3 of the legislation, Section 6 strikes subsection (c) of Section 256 of the National Housing Act, which authorized HUD to indemnify mortgagees for losses resulting from FHA mortgages that were not originated in accordance with HUD's requirements, or when fraud or misrepresentation were involved in the mortgage's origination.

*Section 7. Authority to terminate FHA mortgagee origination and underwriting approval*

Section 7 authorizes HUD to review mortgagee performance in a specific geographic area or across the nation, and to terminate the approval of the mortgagee to originate or underwrite FHA mortgages in a specific area or nationwide if HUD finds that a mortgagee has an excessive rate of early defaults or claims.

*Section 8. Authorization to participate in the origination of FHA-insured loans*

Section 8 states that an FHA mortgage must be originated by a mortgagee approved by HUD or by a person authorized by the HUD Secretary to originate FHA mortgages, and that the mortgage is to be held by a mortgagee approved by HUD that can service the mortgage properly. FHA reverse mortgages must also be originated by a mortgagee, person or entity approved by the HUD Secretary.

*Section 9. Reporting of mortgagee actions taken against other mortgagees*

Section 9 instructs the HUD Secretary to require lenders, as a condition of FHA approval, to report to the FHA any action to terminate other lenders based a determination of fraud or material misrepresentation in connection with the origination of FHA mortgages within 15 days of such action.

*Section 10. Default and origination information by loan servicer and originating direct endorsement lender*

Section 10 amends the FHA reporting requirements for early payment delinquencies to require the HUD Secretary to track mortgage performance by loan servicer.

*Section 11. Deputy Assistant Secretary of FHA for Risk Management and Regulatory Affairs*

Section 11 creates a position within the FHA for a Deputy Assistant Secretary for Risk Management and Regulatory Affairs. The position is to be filled by the HUD Secretary and reports to the FHA Commissioner on the management and mitigation of risk to FHA mortgage insurance funds.

*Section 12. Establishment of Chief Risk Officer for GNMA*

Section 12 establishes a position of Chief Risk Officer for the Government National Mortgage Association (GNMA). The position is to be filled by the HUD Secretary with a career appointee who must have practical experience in risk evaluation practices in large governmental entities. The Chief Risk Officer need not obtain GNMA or HUD approval before submitting reports, recommendations, and testimony to Congress.

*Section 13. Report of mortgage servicers*

Section 13 instructs the HUD Secretary to report on mortgage servicer compliance with the FHA's guidelines on loan servicing, loss mitigation, and insurance claim submission. The report must include an estimate of annual costs to FHA, since 2008, resulting from failures by mortgage servicers to comply with the FHA's guidelines. The HUD Secretary is to submit the report to Congress, including any legislative or administrative recommendations, within 120 days of the bill's enactment.

*Section 14. FHA emergency capital plan*

Section 14 directs the HUD Secretary to submit to Congress, thirty days after the bill's enactment, an emergency capital plan for the restoration of the FHA's fiscal solvency. The plan would provide a detailed explanation of how the FHA's capital assets are monitored and tracked; how to ensure the FHA's financial safety without borrowing funds from the U.S. Department of Treasury; and describe how, if necessary, the FHA would draw down funds from the Treasury. If the FHA remains below the 2.0 percent capital reserve ratio, the FHA is to submit monthly reports to Congress that assess the financial status of the FHA, outline the FHA's capital reserve ratio, and describe actions the FHA undertakes to establish a capital reserve ratio above 2.0 percent. The requirement for the FHA to submit monthly reports would terminate once the FHA achieved a capital reserve ratio of 2.0 percent.

*Section 15. FHA safety and soundness review*

Section 15 directs the Government Accountability Office to provide for an independent third party to conduct a safety and soundness review of the FHA's mortgage insurance programs and report on its findings. This one-time independent review is to be conducted in accordance with generally accepted accounting principles applicable to the private sector. The third party's report is to describe the methodology and standards used to conduct the independent review and include recommendations for restoring the FHA's reserve funds and capital.

*Section 16. FHA disclosure standards*

Section 16 directs HUD, within 90 days of the bill's enactment, to review and revise the standards and requirements for its annual actuarial report and quarterly reports to ensure that these reports provide meaningful financial information, do not contain misrepresentations, and make available all relevant information, and to prohibit material omissions in these reports that would make them misleading.

*Section 17. Report on streamlining FHA programs*

Section 17 directs HUD to study the FHA's mortgage insurance programs to assess the need for these programs, to identify insurance programs that are unused or underused, and to identify methods for streamlining, consolidating, simplifying, increasing the efficiency of, and reducing the number of these programs. HUD is required to submit this study to Congress within 12 months of the bill's enactment.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**NATIONAL HOUSING ACT**

\* \* \* \* \*

**TITLE II—MORTGAGE INSURANCE**

\* \* \* \* \*

## FEDERAL HOUSING ADMINISTRATION OPERATIONS

## SEC. 202. (a) MUTUAL MORTGAGE INSURANCE FUND.—

(1) \* \* \*

\* \* \* \* \*

**[(4) ANNUAL INDEPENDENT ACTUARIAL STUDY.—] (4) INDEPENDENT ACTUARIAL STUDY.—**

(A) *ANNUAL STUDY.*—The Secretary shall provide for an independent actuarial study of the Fund to be conducted annually, *except as provided in subparagraph (B)*, which shall analyze the financial position of the Fund. The Secretary shall submit a report annually, *except as provided in subparagraph (B)*, to the Congress describing the results of such study and assessing the financial status of the Fund. The report shall recommend adjustments to underwriting standards, program participation, or premiums, if necessary, to ensure that the Fund remains financially sound. The report shall also include an evaluation of the quality control procedures and accuracy of information utilized in the process of underwriting loans guaranteed by the Fund. Such evaluation shall include a review of the risk characteristics of loans based not only on borrower information and performance, but on risks associated with loans originated or funded by various entities or financial institutions.

(B) *SEMIANNUAL STUDIES DURING PERIODS OF CAPITAL DEPLETION.*—*During any period that the Fund fails to maintain sufficient capital to comply with the capital ratio requirement under section 205(f)(2)—*

*(i) the independent study required by subparagraph (A) shall be conducted semiannually and shall analyze the financial position of the Fund as of September 30*

and March 31 of each fiscal year during such period; and

(ii) the Secretary shall submit a report meeting the requirements of subparagraph (A) for each such semi-annual study.

\* \* \* \* \*  
 (8) PROGRAMMATIC REVIEW OF EARLY PERIOD DELINQUENCIES.—The Secretary shall establish and maintain a program—

(A) to review the cause of each early period delinquency on a mortgage that is an obligation of the Mutual Mortgage Insurance Fund;

(B) to require indemnification of the Secretary for a loss associated with any such early period delinquency that is the result of a material violation, as determined by the Secretary, of any provision, regulation, or other guideline established or promulgated pursuant to this title; and

(C) to publicly report—

(i) a summary of the results of all early period delinquencies reviewed under subparagraph (A);

(ii) any indemnifications required under subparagraph (B); and

(iii) the financial impact on the Mutual Mortgage Insurance Fund of any such indemnifications.

(9) DEFINITION OF EARLY PERIOD DELINQUENCY.—For purposes of this section, the term “early period delinquency” means, with respect to a mortgage, that the mortgage becomes 90 or more days delinquent within 24 months of the origination of such mortgage.

\* \* \* \* \*  
 (i) INDEMNIFICATION BY MORTGAGEES.—

(1) IN GENERAL.—If the Secretary determines that the mortgagee knew, or should have known, of a serious or material violation of the requirements established by the Secretary with respect to a mortgage executed by a mortgagee approved by the Secretary under the direct endorsement program or insured by a mortgagee pursuant to the delegation of authority under section 256 such that the mortgage loan should not have been approved and endorsed by the mortgagee, and the Secretary pays an insurance claim with respect to the mortgage within a reasonable period specified by the Secretary, the Secretary may require the mortgagee approved by the Secretary under the direct endorsement program or the mortgagee delegated authority under section 256 to indemnify the Secretary for the loss, irrespective of whether the violation caused the mortgage default.

(2) FRAUD OR MISREPRESENTATION.—If fraud or misrepresentation was involved in connection with the origination or underwriting and the Secretary determines that the mortgagee knew or should have known of the fraud or misrepresentation, the Secretary shall require the mortgagee approved by the Secretary under the direct endorsement program or the mortgagee delegated authority under section 256 to indemnify the Secretary for the loss regardless of when an insurance claim is paid.

(3) APPEALS PROCESS.—The Secretary shall, by regulation, establish an appeals process for mortgagees to appeal indem-

nification determinations made pursuant to paragraph (1) or (2).

(4) *REQUIREMENTS AND PROCEDURES.*—The Secretary shall issue regulations establishing appropriate requirements and procedures governing the indemnification of the Secretary by the mortgagee, including public reporting on—

(A) the number of loans that—

(i) were not originated or underwritten in accordance with the requirements established by the Secretary; and

(ii) involved fraud or misrepresentation in connection with the origination or underwriting; and

(B) the financial impact on the Mutual Mortgage Insurance Fund when indemnification is required.

(j) *NOTIFICATION OF MORTGAGEE ACTIONS.*—The Secretary shall require each mortgagee, as a condition for approval by the Secretary to originate or underwrite mortgages on single family or multi-family housing that are insured by the Secretary, if such mortgagee engages in the purchase of mortgages insured by the Secretary and originated by other mortgagees or in the purchase of the servicing rights to such mortgages, and such mortgagee at any time takes action to terminate or discontinue such purchases from another mortgagee based on any determination or evidence of fraud or material misrepresentation in connection with the origination of such mortgages, to notify the Secretary of the action taken and the reasons for such action not later than 15 days after taking such action.

INSURANCE OF MORTGAGES

SEC. 203. (a) \* \* \*

(b) To be eligible for insurance under this section a mortgage shall comply with the following:

[(1) Have been made to, and be held by, a mortgagee approved by the Secretary as responsible and able to service the mortgage properly.]

(1) *Have been made to a mortgagee approved by the Secretary or to a person or entity authorized by the Secretary under section 202(d)(1) to participate in the origination of the mortgage, and be held by a mortgagee approved by the Secretary as responsible and able to service the mortgage properly.*

\* \* \* \* \*

(c)(1) \* \* \*

(2) Notwithstanding any other provision of this section, each mortgage secured by a 1- to 4-family dwelling that is an obligation of the Mutual Mortgage Insurance Fund shall be subject to the following requirements:

(A) \* \* \*

(B) In addition to the premium under subparagraph (A), the Secretary [may] shall establish and collect annual premium payments in an amount [not exceeding 1.5 percent] *not less than 0.55 percent* of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under subparagraph (A) and without taking into account delinquent payments or prepayments) *and not exceeding 2.0 percent of such remaining insured principal balance* for the following periods:

(i) \* \* \*

(ii) For any mortgage involving an original principal obligation (excluding any premium collected under subparagraph (A)) that is greater than or equal to 90 percent of such value, for the first 30 years of the mortgage term; except that notwithstanding the matter preceding clause (i), for any mortgage involving an original principal obligation (excluding any premium collected under subparagraph (A)) that is greater than 95 percent of such value, the annual premium collected during the 30-year period under this clause may be in an amount not exceeding **1.55 percent** 2.05 percent of the remaining insured principal balance (excluding the portion of the remaining balance attributable to the premium collected under subparagraph (A) and without taking into account delinquent payments or prepayments).

\* \* \* \* \*

INSURANCE OF HOME EQUITY CONVERSION MORTGAGES FOR ELDERLY HOMEOWNERS

SEC. 255. (a) \* \* \*

\* \* \* \* \*

(d) ELIGIBILITY REQUIREMENTS.—To be eligible for insurance under this section, a mortgage shall—

**[(1) have been originated by a mortgagee approved by the Secretary;]**

*(1) have been originated by a mortgagee approved by, or by a person or entity authorized under section 202(d)(1) to participate in the origination by, the Secretary;*

\* \* \* \* \*

DELEGATION OF INSURING AUTHORITY TO DIRECT ENDORSEMENT MORTGAGEES

SEC. 256. (a) \* \* \*

\* \* \* \* \*

**[(c) ENFORCEMENT OF INSURANCE REQUIREMENTS.—**

**[(1) IN GENERAL.—**If the Secretary determines that a mortgage insured by a mortgagee pursuant to delegation of authority under this section was not originated in accordance with the requirements established by the Secretary, and the Secretary pays an insurance claim with respect to the mortgage within a reasonable period specified by the Secretary, the Secretary may require the mortgagee approved under this section to indemnify the Secretary for the loss.

**[(2) FRAUD OR MISREPRESENTATION.—**If fraud or misrepresentation was involved in connection with the origination, the Secretary may require the mortgagee approved under this section to indemnify the Secretary for the loss regardless of when an insurance claim is paid.]

**[(d)] (c) TERMINATION OF MORTGAGEE'S AUTHORITY.—**If a mortgagee to which the Secretary has made a delegation under this section violates the requirements and procedures established by the Secretary or the Secretary determines that other good cause exists, the Secretary may cancel a delegation of authority under this section to the mortgagee by giving notice to the mortgagee. Such a cancellation shall be effective upon receipt of the notice by the

mortgagee or at a later date specified by the Secretary. A decision by the Secretary to cancel a delegation shall be final and conclusive and shall not be subject to judicial review.

[(e)] (d) REQUIREMENTS AND PROCEDURES.—Before approving a delegation under this section, the Secretary shall issue regulations establishing appropriate requirements and procedures[, including requirements and procedures governing the indemnification of the Secretary by the mortgagee].

\* \* \* \* \*

#### TITLE V—MISCELLANEOUS

\* \* \* \* \*

SEC. 533. REVIEW OF MORTGAGEE PERFORMANCE AND AUTHORITY TO TERMINATE.—

(a) \* \* \*

(b) COMPARISON WITH OTHER MORTGAGEES.—For each mortgagee, the Secretary shall compare the rate of early defaults and claims for insured single family mortgage loans originated or underwritten by the mortgagee in an area *or areas or on a nationwide basis* with the rate of early defaults and claims for other mortgagees originating or underwriting insured single family mortgage loans in the area *or areas or on a nationwide basis*. For purposes of this section, the term “area” means each geographic area in which the mortgagee is authorized by the Secretary to originate insured single family mortgages.

[(c) TERMINATION OF MORTGAGEE ORIGINATION APPROVAL.—(1) Notwithstanding section 202(c) of this Act, the Secretary may terminate the approval of a mortgagee to originate or underwrite single family mortgages if the Secretary determines that the mortgage loans originated or underwritten by the mortgagee present an unacceptable risk to the insurance funds. The determination shall be based on the comparison required under subsection (b) and shall be made in accordance with regulations of the Secretary. The Secretary may rely on existing regulations published before this section takes effect.]

[(2) The Secretary]

(c) TERMINATION OF MORTGAGEE ORIGINATION AND UNDERWRITING APPROVAL.—

(1) TERMINATION AUTHORITY.—*If the Secretary determines, under the comparison provided in subsection (b), that a mortgagee has a rate of early defaults and claims that is excessive, the Secretary may terminate the approval of the mortgagee to originate or underwrite single family mortgages for any area, or areas, or on a nationwide basis, notwithstanding section 202(c) of this Act.*

(2) PROCEDURE.—*The Secretary shall give a mortgagee at least 60 days prior written notice of any termination under this subsection. The termination shall take effect at the end of the notice period, unless the Secretary withdraws the termination notice or extends the notice period. If requested in writing by the mortgagee within 30 days of the date of the notice, the mortgagee shall be entitled to an informal conference with the official authorized to issue termination notices on behalf of the Secretary (or a designee of that official). At the informal conference, the mortgagee may present for consideration specific*



factors that it believes were beyond its control and that caused the excessive default and claim rate.

\* \* \* \* \*

INFORMATION REGARDING EARLY DEFAULTS AND FORECLOSURES ON INSURED MORTGAGES

SEC. 540. (a) \* \* \*

(b) CONTENTS.—

(1) \* \* \*

(2) OTHER INFORMATION.—Information collected under this section shall also include the following:

(A) \* \* \*

\* \* \* \* \*

(C) For each entity that services insured mortgages, data on the number of claims paid to each servicing mortgagee during each calendar quarter occurring during the applicable collection period.

\* \* \* \* \*

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ACT

\* \* \* \* \*

UNDER SECRETARY AND OTHER OFFICERS AND OFFICES

SEC. 4. (a) \* \* \*

(b)(1) There shall be in the Department a Federal Housing Commissioner, who shall be one of the Assistant Secretaries, who shall head a Federal Housing Administration within the Department, who shall have such duties and powers as may be prescribed by the Secretary, and who shall administer, under the supervision and direction of the Secretary, departmental programs relating to the private mortgage market. The Secretary shall ensure, to the extent practicable, that managers of Federal Housing Administration programs, at each level of the Department, shall be accountable for program operation, risk management, management of cash and other Federal assets, and program financing related to activities over which such managers have responsibility.

(2) There shall be in the Department, within the Federal Housing Administration, a Deputy Assistant Secretary for Risk Management and Regulatory Affairs, who shall be appointed by the Secretary and shall be responsible to the Federal Housing Commissioner for all matters relating to managing and mitigating risk to the mortgage insurance funds of the Department and ensuring the performance of mortgages insured by the Department.

\* \* \* \* \*

(h) There shall be in the Department a Chief Risk Officer for the Government National Mortgage Association, who shall—

(1) be designated by the Secretary;

(2) be responsible to the President of the Association for all matters related to evaluating, managing, and mitigating risk to the programs of the Association;

(3) be in the competitive service or the senior executive service;

*(4) be a career appointee;*

*(5) be designated from among individuals who possess demonstrated ability in general management of, and knowledge of and extensive practical experience in risk evaluation practices in large governmental or business entities;*

*(6) shall not be required to obtain the prior approval, comment, or review of any officer or agency of the United States before submitting to the Congress, or any committee or subcommittee thereof, any reports, recommendations, testimony, or comments if such submission include a statement indicating that the views expressed therein are those of the Chief Risk Officer of the Association and do not necessarily represent the views of the Secretary.*

\* \* \* \* \*

## DISSENTING VIEWS

FHA helps to ensure credit availability to underserved borrowers and the broader market when private sector lending recedes, as occurred particularly during the height of the housing crisis. While FHA contributes to the stabilization of the market, it must balance this role with the need to protect and preserve the Mutual Mortgage Insurance Fund (MMI Fund), which has experienced significant stress as a result of the recession, unemployment, and a failure on the part of many lenders to appropriately follow FHA servicing and origination guidelines.

Since 2009, FHA has taken a number of critical steps, including tightening underwriting requirements, increasing premiums, and strengthening lender accountability, to alter the trajectory of the MMI Fund and better position FHA for the future. The books of business insured in the few years before 2009 have largely driven the high number of claims to the MMI Fund. Recent systematic tightening of risk controls, increased premiums to stabilize near-term finances, and expanded usage of loss mitigation workout assistance to avoid unnecessary claims, have led to the highest quality of loans FHA has seen in its history. Many of these changes are due in large part to Congressional leadership and support for providing greater flexibility to FHA in setting premiums and protecting FHA from the impacts of unscrupulous or non-compliant lenders. With respect to FHA premium increases to strengthen the Fund, FHA recently announced a series of additional premium changes, including a 75 bps increase in upfront premiums, which will increase receipts to FHA by \$1 billion in fiscal years 2012 and 2013. In addition, the Administration's FY 2013 Budget submission includes the implementation of a 10 bps increase to annual mortgage insurance premiums for all FHA-insured forward mortgages, as mandated by Congress in the Temporary Payroll Tax Cut Continuation Act of 2011 (P.L. 112-78) enacted in December, as well as an additional 25 bps annual premium increase on "jumbo" loans, making the total increase for these larger loans 35 bps.

Moreover, it is important that FHA's currently expanded role in the nation's housing finance system be temporary, and that it should return to its traditional role in the market in accordance with the recovery of private lending. However, although the government footprint in the nation's mortgage markets must shrink, it is important not to impose dramatic changes in the availability of credit that would negatively impact FHA's ability to maintain its critical and long established mission could pose significant harm to the progress that is being made in recovery of the housing market and broader economy.

H.R. 4264 contains several key provisions, sought for several years by HUD and contained in legislation passed by a previous Congress, which will enhance FHA's ability to protect and stabilize

the MMI Fund. These provisions include: Section 3, which, under certain circumstances, permits HUD to seek indemnification from a mortgagee that participates in FHA's Direct Endorsement program; Section 7, which expands HUD's authority to terminate the approval of a mortgagee to originate or underwrite loans for FHA insurance in a particular area, or on a nationwide basis; and Section 8, which allows mortgage originators not explicitly approved by FHA, but which are sponsored by FHA-approved mortgagees, to close loans in their own names. These provisions represent an important set of tools which will allow FHA to protect the MMI Fund while ensuring broad availability of mortgage credit for qualified borrowers. They were also key components of H.R. 5072, FHA legislation which passed the House with an overwhelming bipartisan majority in 2010.

However, there are also some primarily technical provisions in the bill and detailed below that must be addressed before the bill can move forward. As discussed during the committee markup, resolution of the following issues will continue in the coming weeks with the goal of developing a bill that can receive strong bipartisan support. These issues involve maintaining critically important oversight and accountability measures and at the same time ensuring that FHA is not subjected to excessive reporting requirements or to an independent review using accounting standards that are not applicable to any other federal credit agency.

#### REQUIREMENT FOR MONTHLY REPORT THAT INCLUDES CAPITAL RESERVE RATIO

Because of the complexity of the calculation and the availability of data, the ratio cannot realistically be produced on a monthly basis. Even if it could be calculated, it would not be meaningful in terms of understanding longer term economic developments. There is also the concern that given the language in the bill that currently calls for semiannual actuarial studies, along with the existing quarterly reports and other information already provided by FHA to Congress, requiring a more frequent calculation of the ratio is unnecessary and costly. We believe that a better approach to obtaining additional real time information is to require HUD to expand upon information that is already available on a more frequent basis, and to require that the agency provide such information to Congress.

#### REQUIREMENT FOR USE OF GENERALLY ACCEPTED ACCOUNTING PRINCIPLES THAT APPLY TO THE PRIVATE SECTOR

We support an accurate accounting of FHA's financial situation. However, we note that there are significant differences between fair value accounting used by the private sector and the approach to accounting used for federal programs, like FHA, which are not subject to private sector costs of capital. As such, we are uncertain that a wholesale adoption of private sector accounting principles is appropriate in view of FHA's governmental structure.

## EARLY PERIOD DELINQUENCY DEFINITION

The bill calls for the review of early period delinquencies on FHA-insured loans, and requires FHA to pursue indemnification if violations of FHA guidelines are found. Early period delinquency is defined in the bill as a loan that becomes 90 days delinquent within 24 months of origination. The industry standard for early period delinquencies is 6 months, which is also FHA's standard. The 6 month timeframe is most useful for identifying loans for which the delinquency is likely attributable to failures to adhere to FHA underwriting standards. HUD reports that it becomes more difficult to isolate instances of non-compliance using the 24 month definition, as the possible causes of delinquency increase significantly over such a period to include life events, such as unemployment, divorce, or unforeseen medical expenses.

BARNEY FRANK.  
WM. LACY CLAY.  
MELVIN L. WATT.  
LUIS V. GUTIERREZ.  
ANDRÉ CARSON.  
GWEN MOORE.  
MAXINE WATERS.  
MICHAEL E. CAPUANO.  
RUBÉN HINOJOSA.  
CAROLYN B. MALONEY.  
GREGORY W. MEEKS.  
GARY L. ACKERMAN.  
BRAD MILLER.

