

112TH CONGRESS
1ST SESSION

H. R. 1977

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

IN THE HOUSE OF REPRESENTATIVES

MAY 24, 2011

Ms. WATERS (for herself, Mr. FRANK of Massachusetts, and Mr. GUTIERREZ) 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 AND TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “FHA Reform Act of 2011”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title and table of contents.
- Sec. 2. Indemnification by mortgagees.
- Sec. 3. Delegation of insuring authority.
- Sec. 4. Authority to terminate mortgagee origination and underwriting approval.

- Sec. 5. Deputy Assistant Secretary of FHA for Risk Management and Regulatory Affairs.
- Sec. 6. Review of mortgagee performance.
- Sec. 7. Coordination with State regulatory agencies.
- Sec. 8. Reporting of mortgagee actions taken against other mortgagees.
- Sec. 9. Review of downpayment requirements.
- Sec. 10. Authorization to participate in the origination of FHA-insured loans.
- Sec. 11. Default and origination information by loan servicer and originating direct endorsement lender.
- Sec. 12. Third party servicer outreach.
- Sec. 13. Maximum mortgage amount limits for multifamily housing.
- Sec. 14. Mortgage insurance premium refunds.

1 SEC. 2. INDEMNIFICATION BY MORTGAGEES.

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) INDEMNIFICATION BY MORTGAGEES.—

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

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

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

13 **SEC. 3. DELEGATION OF INSURING AUTHORITY.**

14 Section 256 of the National Housing Act (12 U.S.C.
15 1715z-21) is amended—

16 (1) by striking subsection (c);

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

20 (3) by redesignating subsections (d) and (e) as
21 subsections (c) and (d), respectively.

22 **SEC. 4. AUTHORITY TO TERMINATE MORTGAGEE ORIGINA-**
23 **TION AND UNDERWRITING APPROVAL.**

24 Section 533 of the National Housing Act (12 U.S.C.
25 1735f-11) is amended—

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

4 (2) in subsection (c), by striking “(c)” and all
 5 that follows through “The Secretary” in the first
 6 sentence of paragraph (2) and inserting the fol-
 7 lowing:

8 “(c) **TERMINATION OF MORTGAGEE ORIGINATION**
 9 **AND UNDERWRITING APPROVAL.—**

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

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

19 **SEC. 5. DEPUTY ASSISTANT SECRETARY OF FHA FOR RISK**
 20 **MANAGEMENT AND REGULATORY AFFAIRS.**

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

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

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

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

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

19 **SEC. 6. REVIEW OF MORTGAGEE PERFORMANCE.**

20 Section 533 of the National Housing Act (12 U.S.C.
21 1735f–11) is amended—

22 (1) in subsection (a), by inserting after the pe-
23 riod at the end the following: “For purposes of this
24 subsection, the term ‘early default’ means a default
25 that occurs within 24 months after a mortgage is

1 originated or such alternative appropriate period as
2 the Secretary shall establish.”;

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

12 (3) by adding at the end the following new sub-
13 sections:

14 “(d) SUFFICIENT RESOURCES.—There is authorized
15 to be appropriated to the Secretary for each of fiscal years
16 2012 through 2016 the amount necessary to provide addi-
17 tional full-time equivalent positions for the Department,
18 or for entering into such contracts as are necessary, to
19 conduct reviews in accordance with the requirements of
20 this section and to carry out other responsibilities relating
21 to ensuring the safety and soundness of the Mutual Mort-
22 gage Insurance Fund.

23 “(e) REPORTING TO CONGRESS.—Not later than 90
24 days after the date of enactment of the FHA Reform Act
25 of 2011 and not less often than annually thereafter, the

1 Secretary shall make available to the Committee on Finan-
2 cial Services of the House of Representatives and the
3 Committee on Banking, Housing, and Urban Affairs of
4 the Senate any information and conclusions pursuant to
5 the reviews required under subsection (a). Such report
6 shall not include detailed information on the performance
7 of individual mortgages.”.

8 **SEC. 7. COORDINATION WITH STATE REGULATORY AGEN-**
9 **CIES.**

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

14 “(j) INFORMATION SHARING WITH STATE REGU-
15 LATORY AGENCIES.—

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

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

6 **SEC. 8. REPORTING OF MORTGAGEE ACTIONS TAKEN**
7 **AGAINST OTHER MORTGAGEES.**

8 Section 202 of the National Housing Act (12 U.S.C.
9 1708(e)), as amended by the preceding provisions of this
10 Act, is further amended by adding at the end the following
11 new subsection:

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

1 taking such action, shall notify the Secretary of the action
2 taken and the reasons for such action.”.

3 **SEC. 9. REVIEW OF DOWNPAYMENT REQUIREMENTS.**

4 Section 205 of the National Housing Act (12 U.S.C.
5 1711) is amended by adding at the end the following new
6 subsection:

7 “(g) REVIEW OF DOWNPAYMENT REQUIREMENTS.—
8 If, at any time when the capital ratio (as such term is
9 defined in subsection (f)) of the Mutual Mortgage Insur-
10 ance Fund does not comply with the requirement under
11 subsection (f)(2), the Secretary establishes a cash invest-
12 ment requirement, for all mortgages or mortgagors or with
13 respect to any group of mortgages or mortgagors, that ex-
14 ceeds the minimum percentage or amount required under
15 section 203(b)(9), thereafter upon the capital ratio first
16 complying with the requirement under subsection (f)(2)
17 the Secretary shall review such cash investment require-
18 ment and, if the Secretary determines that such percent-
19 age or amount may be reduced while maintaining such
20 compliance, the Secretary may subsequently reduce such
21 requirement by such percentage or amount as the Sec-
22 retary considers appropriate.”.

1 **SEC. 10. AUTHORIZATION TO PARTICIPATE IN THE ORIGI-**
2 **NATION OF FHA-INSURED LOANS.**

3 (a) SINGLE FAMILY MORTGAGES.—Section 203(b) of
4 the National Housing Act (12 U.S.C. 1709(b)) is amended
5 by striking paragraph (1) and inserting the following new
6 paragraph:

7 “(1) Have been made to a mortgagee approved
8 by the Secretary or to a person or entity authorized
9 by the Secretary under section 202(d)(1) to partici-
10 pate in the origination of the mortgage, and be held
11 by a mortgagee approved by the Secretary as re-
12 sponsible and able to service the mortgage prop-
13 erly.”.

14 (b) HOME EQUITY CONVERSION MORTGAGES.—Sec-
15 tion 255(d) of the National Housing Act (12 U.S.C.
16 1715z–20(d)) is amended by striking paragraph (1) and
17 inserting the following new paragraph:

18 “(1) have been originated by a mortgagee ap-
19 proved by, or by a person or entity authorized under
20 section 202(d)(1) to participate in the origination
21 by, the Secretary;”.

22 **SEC. 11. DEFAULT AND ORIGINATION INFORMATION BY**
23 **LOAN SERVICER AND ORIGINATING DIRECT**
24 **ENDORSEMENT LENDER.**

25 (a) COLLECTION OF INFORMATION.—Paragraph (2)
26 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. 12. THIRD PARTY SERVICER OUTREACH.**

19 (a) AUTHORITY.—The Secretary of Housing and
20 Urban Development may, to the extent any amounts for
21 fiscal year 2012 or 2013 are made available in advance
22 in appropriation Acts for reimbursements under this sec-
23 tion, provide reimbursement to servicers of covered mort-
24 gages (as such term is defined in subsection (f)) for costs
25 of obtaining the services of independent third parties

1 meeting the requirements under subsection (b) of this sec-
2 tion to make in-person contact with mortgagors under cov-
3 ered mortgages whose payments under such mortgages are
4 60 or more days past due, solely for the purposes of pro-
5 viding information to such mortgagors regarding—

6 (1) available counseling by housing counseling
7 agencies approved by the Secretary;

8 (2) available mortgage loan modification, refi-
9 nance, and assistance programs; and

10 (3) available counseling regarding financial
11 management and credit risk.

12 (b) QUALIFIED INDEPENDENT THIRD PARTIES.—An
13 independent third party meets the requirements of this
14 subsection if the third party—

15 (1) is an entity, including a housing counseling
16 agency approved by the Secretary, that meets stand-
17 ards, qualifications, and requirements (including re-
18 garding foreclosure prevention training, quality mon-
19 itoring, safeguarding of non-public information) es-
20 tablished by the Secretary for purposes of this sec-
21 tion for in-person contact about available mortgage
22 loan modification, refinance, and assistance pro-
23 grams; and

24 (2) does not charge any fees or require other
25 payments, directly or indirectly, from any mortgagor

1 for making in-person contact and providing informa-
2 tion and documents under this section.

3 (c) TREATMENT OF PERSONAL, NON-PUBLIC, AND
4 CONFIDENTIAL INFORMATION.—An independent third
5 party whose services are obtained using amounts made
6 available for use under this section and the mortgage
7 servicer obtaining such services shall not use, disclose, or
8 distribute any personal, non-public, or confidential infor-
9 mation about a mortgagor obtained during an in-person
10 contact with the mortgagor, except for purposes of engag-
11 ing in the process of modification or refinance of the cov-
12 ered mortgage.

13 (d) DATE OF CONTACT AND DISCLOSURES.—Each
14 independent third party whose services are obtained by a
15 mortgage servicer using amounts made available for use
16 under this section shall—

17 (1) initiate in-person contact with a mortgagor
18 not later than 10 days after the date upon which
19 payments under the covered mortgage of the mort-
20 gagor become 60 days past due; and

21 (2) upon making in-person contact with a mort-
22 gagor, provide the mortgagor with a written docu-
23 ment that discloses—

1 (A) the name of, and contact information
2 for, the independent third party and the mort-
3 gage servicer;

4 (B) that the independent third party has
5 contracted with the mortgage servicer to pro-
6 vide the in-person contact at no charge to the
7 mortgagor;

8 (C) that the independent third party is an
9 agent of the mortgage servicer;

10 (D) that the in-person contact with the
11 mortgagor consists of providing information
12 about available counseling by a housing coun-
13 seling agency approved by the Secretary and
14 available mortgage loan modification, refinance,
15 and assistance programs;

16 (E) that the independent third party and
17 the mortgage servicer are prohibited from the
18 use, disclosure, or distribution of personal, non-
19 public, and confidential information about the
20 mortgagor, obtained during the in-person con-
21 tact, except for purposes of engaging in the
22 process of modification or refinance of the cov-
23 ered mortgage;

24 (F) any other information that the Sec-
25 retary determines should be disclosed.

1 (e) PRIORITY.—In providing reimbursements under
 2 this section, the Secretary of Housing and Urban Develop-
 3 ment shall provide priority to independent third parties
 4 serving mortgagors under covered mortgages in areas ex-
 5 periencing a mortgage foreclosure rate and unemployment
 6 rate higher than the national average for the most recent
 7 12-month period for which satisfactory data are available.

8 (f) DEFINITION OF COVERED MORTGAGE.—For pur-
 9 poses of this section, the term “covered mortgage” means
 10 a mortgage on a 1- to 4-family residence insured under
 11 the provisions of subsection (b) or (k) of section 203, sec-
 12 tion 234(c), or 251 of the National Housing Act (12
 13 U.S.C. 1709, 1715y, 1715z–16).

14 **SEC. 13. MAXIMUM MORTGAGE AMOUNT LIMITS FOR MUL-**
 15 **TIFAMILY HOUSING.**

16 (a) ELEVATOR-TYPE STRUCTURES.—

17 (1) AMENDMENTS.—The National Housing Act
 18 is amended in each of the provisions specified in
 19 paragraph (2)—

20 (A) by inserting “with sound standards of
 21 construction and design” after “elevator-type
 22 structures” the first place such term appears;
 23 and

24 (B) by striking “to not to exceed” and all
 25 that follows through “sound standards of con-

1 struction and design” each place such terms ap-
2 pear and inserting “by not more than 50 per-
3 cent of the amounts specified for each unit
4 size”.

5 (2) PROVISIONS AMENDED.—The provisions of
6 the National Housing Act specified in this para-
7 graph are as follows:

8 (A) Subparagraph (A) of section 207(c)(3)
9 (12 U.S.C. 1713(c)(3)(A)).

10 (B) Subparagraph (A) of section 213(b)(2)
11 (12 U.S.C. 1715e(b)(2)(A)).

12 (C) Subclause (I) of section
13 220(d)(3)(B)(iii) (12 U.S.C.
14 1715k(d)(3)(B)(iii)(I)).

15 (D) In section 221(d) (12 U.S.C.
16 1715l(d))—

17 (i) subclause (I) of paragraph (3)(ii);

18 and

19 (ii) subclause (I) of paragraph (4)(ii).

20 (E) Subparagraph (A) of section 231(c)(2)
21 (12 U.S.C. 1715v(c)(2)(A)).

22 (F) Subparagraph (A) of section 234(e)(3)
23 (12 U.S.C. 1715y(e)(3)(A)).

1 (b) EXTREMELY HIGH-COST AREAS.—Section 214 of
2 the National Housing Act (12 U.S.C. 1715d) is amend-
3 ed—

4 (1) in the first sentence—

5 (A) by inserting “, or with respect to
6 projects consisting of more than four dwelling
7 units located in an extremely high-cost area as
8 determined by the Secretary” after “or the Vir-
9 gin Islands” the first place such term appears;

10 (B) by inserting “, or to construct projects
11 consisting of more than four dwelling units on
12 property located in an extremely high-cost area
13 as determined by the Secretary” after “or the
14 Virgin Islands” the second place such term ap-
15 pears; and

16 (C) by inserting “, or with respect to
17 projects consisting of more than four dwelling
18 units located in an extremely high-cost area as
19 determined by the Secretary” after “or the Vir-
20 gin Islands” the third place such term appears;

21 (2) in the second sentence—

22 (A) by inserting “, or with respect to a
23 project consisting of more than four dwelling
24 units located in an extremely high-cost area as
25 determined by the Secretary,” after “or the Vir-

1 gin Islands” the first place such term appears;
2 and

3 (B) by inserting “, or in the case of a
4 project consisting of more than four dwelling
5 units in an extremely high-cost area as deter-
6 mined by the Secretary, in such extremely high-
7 cost area,” after “or the Virgin Islands” the
8 second place such term appears; and

9 (3) in the section heading, by striking “AND
10 THE VIRGIN ISLANDS” and inserting “THE VIRGIN
11 ISLANDS, AND EXTREMELY HIGH-COST AREAS”.

12 (c) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to mortgages insured under title
14 II of the National Housing Act after September 30, 2011.

15 **SEC. 14. MORTGAGE INSURANCE PREMIUM REFUNDS.**

16 (a) AUTHORITY.—The Secretary of Housing and
17 Urban Development shall, to the extent that amounts are
18 made available pursuant to subsection (c), provide refunds
19 of unearned premium charges paid at the time of insur-
20 ance for mortgage insurance under title II of the National
21 Housing Act (12 U.S.C. 1707 et seq.) to or on behalf of
22 mortgagors under mortgages described in subsection (b).

23 (b) ELIGIBLE MORTGAGES.—A mortgage described
24 in this section is a mortgage on a one- to four-family
25 dwelling that—

1 (1) was insured under title II of the National
2 Housing Act (12 U.S.C. 1707 et seq.);

3 (2) is otherwise eligible, under the last sentence
4 of subparagraph (A) of section 203(c)(2) of such Act
5 (12 U.S.C. 1709(c)(2)(A)), for a refund of all un-
6 earned premium charges paid on the mortgage pur-
7 suant to such subparagraph, except that the mort-
8 gage—

9 (A) was closed before December 8, 2004;

10 and

11 (B) was endorsed on or after such date.

12 (c) AUTHORIZATION OF APPROPRIATIONS.—There is
13 authorized to be appropriated for each fiscal year such
14 sums as may be necessary to provide refunds of unearned
15 mortgage insurance premiums pursuant to this section.

○