

112TH CONGRESS  
1ST SESSION

# H. R. 2428

To protect the taxpayers of the United States by limiting the Federal payment of legal fees for current and former officers and affiliated parties of Fannie Mae and Freddie Mac.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 6, 2011

Mr. NEUGEBAUER (for himself, Mr. BACHUS, Mr. GARRETT, Mr. JONES, Mr. CANSECO, and Mr. POSEY) introduced the following bill; which was referred to the Committee on Financial Services

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## A BILL

To protect the taxpayers of the United States by limiting the Federal payment of legal fees for current and former officers and affiliated parties of Fannie Mae and Freddie Mac.

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 “GSE Legal Fee Reduc-

5       tion Act of 2011”.

1 **SEC. 2. LIMITATIONS ON INDEMNIFICATION OF LEGAL**  
2 **FEEES.**

3 (a) LIMITATIONS.—Section 1318 of the Federal  
4 Housing Enterprises Financial Safety and Soundness Act  
5 of 1992 (12 U.S.C. 4518) is amended by adding at the  
6 end the following new subsection:

7 “(f) PROCEDURES FOR ADVANCEMENT AND INDEM-  
8 NIFICATION OF LEGAL FEEES.—The Director shall, by reg-  
9 ulation, establish requirements prescribing the procedures  
10 and terms for advancement of amounts by an enterprise  
11 for qualified indemnification payments for the benefit of  
12 any entity-affiliated party, which shall provide as follows:

13 “(1) DETERMINATION OF REASONABLE EX-  
14 PENSES.—

15 “(A) PROPOSED CRITERIA.—If at any time  
16 an enterprise is required, pursuant to law, regu-  
17 lation, order, bylaw, or agreement or contract,  
18 to make a qualified indemnification payment for  
19 the benefit of an entity-affiliated party, the Di-  
20 rector shall require the enterprise to submit to  
21 the Director proposed criteria to be used in de-  
22 termining, at the time for the advancement of  
23 amounts for such payment, whether the liability  
24 or legal expenses for which such payment is to  
25 be made is reasonable, which shall include—

1 “(i) methods and procedures for mak-  
2 ing such determinations;

3 “(ii) a process for review and appeal  
4 of such determinations; and

5 “(iii) terms and conditions for advanc-  
6 ing amounts for liability or legal expenses  
7 determined to be reasonable.

8 “(B) REVIEW.—Upon receipt of proposed  
9 criteria submitted pursuant to subparagraph  
10 (A), the Director shall promptly review such  
11 proposed criteria and approve or disapprove  
12 such criteria based on a determination of  
13 whether such criteria will ensure that amounts  
14 are advanced only for qualified indemnification  
15 payments for liability or legal expenses that are  
16 reasonable.

17 “(2) CLAIMS OF FRAUD, MORAL TURPITUDE,  
18 AND BREACH OF FIDUCIARY DUTY.—

19 “(A) BYLAWS.—The Director shall require  
20 each enterprise to adopt bylaws requiring any  
21 entity-affiliated party accused in any claim, pro-  
22 ceeding, or action, whether administrative, civil,  
23 or criminal of fraud, moral turpitude, or breach  
24 of fiduciary duty to post collateral, security,  
25 bonding, or other assurances of repayment.

1           “(B) REQUIREMENT TO POST BOND.—The  
2 Director shall require any entity-affiliated party  
3 accused in any claim, proceeding, or action,  
4 whether administrative, civil, or criminal, of  
5 fraud, moral turpitude, or breach of fiduciary  
6 duty to post collateral, security, bonding, or  
7 other assurances of repayment.

8           “(3) PROHIBITION OF USE OF AMOUNTS BOR-  
9 ROWED FROM TAXPAYERS FOR SETTLEMENT  
10 COSTS.—

11           “(A) PROHIBITION.—The Director shall  
12 prohibit an enterprise from using any Treasury  
13 funds to satisfy any settlement, judgment,  
14 order, or penalty.

15           “(B) TREASURY FUNDS.—For purposes of  
16 subparagraph (A), the term ‘Treasury funds’  
17 means amounts obtained by an enterprise pur-  
18 suant to—

19           “(i) purchase by the Secretary of the  
20 Treasury of obligations or securities of the  
21 enterprise pursuant to—

22           “(I) subsection (c) or (g) of sec-  
23 tion 304 of the Federal National  
24 Mortgage Association Charter Act (12  
25 U.S.C. 1719);

1                   “(II) subsection (c) or (l) of sec-  
2                   tion 306 of the Federal Home Loan  
3                   Mortgage Corporation Act (12 U.S.C.  
4                   1455); or

5                   “(III) subsection (i) or (l) of sec-  
6                   tion 11 of the Federal Home Loan  
7                   Bank Act (12 U.S.C. 1431); or

8                   “(ii) any other lending, advance, sub-  
9                   sidy, payment, appropriation, or purchase  
10                  of any obligation or security, by the Fed-  
11                  eral Government or any agency or entity of  
12                  the Federal Government.

13                  “(C) ASSETS TO BE USED FOR SETTLE-  
14                  MENT COSTS.—An enterprise shall satisfy any  
15                  settlement, judgment, order, or penalty, to the  
16                  maximum extent possible, with proceeds from  
17                  the sale of assets of the enterprise, including  
18                  assets in the retained portfolio of the enterprise  
19                  and real estate owned of the enterprise and  
20                  other physical assets of the enterprise.

21                  “(4) NOTIFICATION OF SETTLEMENT.—The Di-  
22                  rector shall prohibit an enterprise from entering into  
23                  any consent decree or settlement of any claim, pro-  
24                  ceeding, or action involving an entity-affiliated party  
25                  that will result in any qualified indemnification pay-

1       ments in an aggregate amount exceeding \$1,000,000  
2       before the expiration of the 30-day period beginning  
3       upon the submission by the Director to the Com-  
4       mittee on Financial Services of the House of Rep-  
5       resentatives and the Committee on Banking, Hous-  
6       ing, and Urban Affairs of the Senate of notification  
7       of such proposed consent decree or settlement and  
8       the terms and amount of the qualified indemnifica-  
9       tion payments involved.

10           “(5) DEFINITIONS.—For purposes of this sub-  
11       section, the following definitions shall apply:

12           “(A) QUALIFIED INDEMNIFICATION PAY-  
13       MENT.—The term ‘qualified indemnification  
14       payment’ means any payment (or agreement to  
15       make any payment) by an enterprise for the  
16       benefit of any person who is or was an entity-  
17       affiliated party, to pay or reimburse such per-  
18       son for any liability or legal expense with re-  
19       gard to any claim, proceeding, or action, wheth-  
20       er administrative, civil, or criminal.

21           “(B) OTHER DEFINITIONS.—The terms ‘li-  
22       ability or legal expense’ and ‘payment’ have the  
23       meanings given such terms in subsection  
24       (e)(5).”.

1           (b) APPLICABILITY.—The amendment made by sub-  
2 section (a) shall apply with respect to any advancement  
3 of amounts for a qualified indemnification payment for the  
4 benefit of an entity-affiliated party that is made after the  
5 date of the enactment of this Act.

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