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Summary of the Housing and Economic Recovery Act of 2008

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On July 30, 2008, President Bush signed into law the "American Housing Rescue and Foreclosure Prevention Act of 2008" (H.R. 3221), commonly known as the Housing and Economic Recovery Act of 2008 (the "Act"), legislation targeted to allay public fears stemming from the U.S. housing market crisis and dwindling confidence in U.S. financial markets. The Act amends certain provisions of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 and creates several sub-acts that (1) tighten the regulation of the housing government-sponsored enterprises ("GSEs") such as Fannie Mae and Freddie Mac (prior to their being put under conservatorship by the federal government), and the Federal Home Loan Banks ("FHLB," together with the GSEs, collectively referred to in this article as the "Regulated Entities"), (2) improve the missions of the Regulated Entities, (3) allow for temporary emergency authority to the U.S. Treasury (the "Treasury"), (4) establish a standard licensing and registration system for all loan originators, mortgage brokers and loan officers; (5) expand lender disclosure requirements, (6) create an FHA program to help distressed homeowners refinance their loans, (7) reform the existing FHA program to allow additional homeowners greater access to the FHA program, (8) revise tax provisions relating to LIHTC, tax-exempt bonds, and REITs, and (9) provide temporary tax credits for first-time homebuyers and new property tax deductions for certain current homeowners. This article, however, focuses specifically on those sub-acts relating to lenders covering items (1) through (5) above.

Federal Housing Finance Regulatory Reform Act of 2008

Improvement of Safety and Soundness Supervision and of

Mission Supervision

Under the sub-act, Federal Housing Finance Regulatory Reform Act of 2008 ("Regulatory Reform Act") – a new, independent regulator – the Federal Housing Finance Agency ("FHFA") is launched to replace both the Office of Federal Housing Enterprise Oversight and the Federal Home Loan Bank Board. The Regulatory Reform Act grants the FHFA broad powers over the Regulated Entities to improve the supervision of the Regulated Entities for safety and soundness. The FHFA's authority includes, among other provisions, setting capital standards, forming prudent management and operational standards, controlling asset growth and capital distributions where a Regulated Entity is undercapitalized, placing a Regulated Entity into receivership, and approving (subject to public notice and comment) new product offerings. In addition to close oversight by the FHFA, the Regulatory Reform Act grants the Treasury the authority to buy obligations or securities of a Regulated Entity on a temporary, emergency basis when taxpayers need protection from instability in financial markets and disruption in access to mortgage loans (as further discussed below).

The Regulatory Reform Act permanently sets the general conforming loan limits and requires the FHFA to adjust such limits annually if needed. More important, in high cost areas where median home prices exceed the general conforming loan limits, it allows for an increase above the general conforming loan limits to the lesser of 115% of the area median house price for a house of comparable size or 150% of the general conforming loan limit. For example, the GSEs may provide a loan for a single family home (standard conforming loan limit of $417,000) in a high cost area of up to $625,500. The hope is that the raise in conforming loan limits in high cost areas will increase the number of homebuyers the GSEs can serve, thereby bolstering the missions of the GSEs.

GSE Housing Goals

The current affordable housing goals of the GSEs will continue through 2009; however, the FHFA may determine, within a 270-day period from the enactment of the Act, the feasibility of the current goals based on market conditions and public comment, and adjust such goals as necessary. For affordable housing goals effective in 2010, the FHFA is to establish annual targets (extending no more than three years) for the purchase by each GSE of single-family, conventional, conforming mortgages for low-income families with incomes less than 80% of the area median income, very low-income families with incomes less than 50% of the area median

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income, and families living in low-income areas. Additionally, the FHFA is to establish a goal of refinancing of mortgages for very low-income families with incomes less than 50% of the area median income. The FHFA must also set a multifamily affordable housing goal effective in 2010 for the purchase by each GSE of mortgages that finance multifamily housing units affordable to low-income families with incomes less than 80% of the area median income and to very low-income families less than 50% of the area median income. Units are deemed "affordable" if the rent set is less than 30% of the maximum income limit for low-income or very low-income families. In addition, units financed with tax-exempt or taxable bonds issued by state or local housing finance agencies may be counted toward achievement of such multifamily affordable housing goals; and units in projects that include licensed child care facilities are given additional credit. The Regulatory Reform Act specifically eliminates the duty of the GSEs to serve underserved markets. Instead, it now requires each Regulatory Entity to "provide leadership to the market" in making available mortgage products and underwriting criteria that facilitate a secondary mortgage market for very low, low, and moderate income families in such underserved markets as manufactured housing and rural markets. To further the goal of public confidence and transparency in reporting, the Regulatory Reform Act requires the FHFA to report annually to Congress the measurement on progress toward the goals of each Regulated Entity as well as to provide details of each Regulated Entity's purchase and securitization of sub-prime and non-traditional mortgages.

Treasury Authority

In addition to increasing regulatory oversight, the Regulatory Reform Act grants temporary authority through December 31, 2009 to the Treasury Secretary to increase the existing line of credit to the Regulated Entities and buy stock in such entities with the hope of stabilizing housing financial markets and boosting market confidence in the Regulated Entities. Before the Treasury Secretary exercises this authority and spending is allowed, the Treasury Secretary must make an emergency designation by certifying that he is acting to provide stability to financial markets, prevent disruptions in the availability of mortgage finance, facilitate an orderly restoration of private markets, and protect the taxpayers. In ascertaining whether exercising such authority protects the taxpayers, the Treasury Secretary considers several factors, including, but not limited to, the need for preferences or priorities regarding payments to the government and the probability of the Regulated Entity fulfilling the terms of any such obligation or other security, including repayment. Upon exercise of the emergency authority, the Treasury Secretary shall report to Congress as to the necessity for the purchase; its determination pursuant to the above considerations; and the size, terms, and probability of repayment or fulfillment of other terms of such purchase. Additionally, during this time, the Director of the FHFA has temporary authority over executive compensation of any of the Regulated Entities, whether or not the government exercises its temporary authority to purchase debt or stock.

The Treasury Secretary may also sell any obligations or securities purchased pursuant to its emergency authority. It should be noted, however, that the authority of the Treasury Secretary to hold, sell, or exercise any rights received in connection with any obligations or securities purchased is not subject to the expiration date of the Treasury Secretary's temporary authority.

Exercise of Authority

On September 9, 2008, in exercising their respective authority granted under the Act, the FHFA and the Treasury announced a four-part housing economic recovery program. First, the FHFA immediately placed both GSEs under federal conservatorship with the intent to temporarily and indefinitely operate the companies until stabilized. As a result, certain senior management, including the chief executive officers, of each GSE, have been removed. The FHFA also has suspended any political or lobbying activities by the GSEs. Second, the Treasury initially will purchase in the open market $10 billion in mortgage-backed securities credit enhanced by the GSEs ("MBS"). Further, through 2009, each GSE is allowed to grow its MBS portfolio to a limit of $850 billion. Beginning in 2010, each GSE must reduce its MBS portfolio limit at a rate of ten percent per year until it reaches $250 billion. Third, as a measure of security to current holders of MBS, senior debt and subordinated debt, the Treasury will provide capital of up to $100 billion in each GSE by purchasing stock with liquidation preferences senior to existing preferred equity and common stock. The terms of the preferred stock purchase agreement ensure that each GSE maintains a positive net worth and is able to satisfy its debt obligations, and that taxpayers receive maximum protections. In exchange, each GSE issued $1 billion in senior preferred stock and issued warrants for future purchase of senior preferred stock representing an ownership stake equal to 79.90%. To the extent the FHFA determines a particular GSE's liabilities exceeds its assets under generally accepted accounting principles, the Treasury will make a cash contribution equal to the amount of the shortfall; the amount of such contribution, in turn, will be added to the Treasury's senior preferred stock.

The agreement further allows the Treasury to receive quarterly dividend payments and eliminates all dividend payments to the existing preferred and common stockholders. Fourth, through December 31, 2009, the GSEs and the twelve FHLBs can access a new secured line of credit with the Treasury.

The S.A.F.E. Mortgage Licensing Act

In an effort to curb abusive lending practices, the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (aka S.A.F.E. Mortgage Licensing Act) sets forth procedures, requirements, education, testing, and standards, including mandatory registration and state licensing of mortgage loan originators. This sub-act encourages the states, through the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, to create a federal registry for the residential mortgage industry known as the Nationwide Mortgage Licensing System and Registry ("Nationwide Registry") that consumers can use to verify the credentials of their brokers and lenders.

The sub-act requires states to adopt licensing and registration requirements for loan originators that are consistent with the Act. For states that do not participate in the Nationwide Registry or do not establish a registration and licensing system for loan originators that meets the requirements of the Act within one to two years, as applicable, from the date of enactment of the Act, the Secretary of Housing and Urban Development ("HUD") has the authority to establish a system for licensing and registration for such state. Furthermore, the HUD Secretary has the authority and enforcement power to create its own nationwide system and registry if the Nationwide Registry fails or has not been established.

Below are brief summaries of the key licensing requirements:

National registration requirements. Individuals are prohibited from issuing loans if they have not registered with the National Registry as a registered loan originator or obtained a license and registration as a state-licensed loan originator. When applying to be a state-licensed loan originator, the applicant must, at a minimum, furnish the National Registry with basic identification and background information, including authorization for the obtaining of a credit report and any administrative, civil, or criminal findings by any governmental jurisdiction.

State licensing and registration requirements. In addition to the national requirements, state licensing and registration require that applicants: (1) have never had a loan originator license revoked by a governmental jurisdiction; (2) have no felony record (i) at any time preceding the application involving fraud, dishonesty, breach of trust, or money laundering or (ii) during the seven-year period preceding the date of application (for felonies not involving fraud, dishonesty, breach of trust, or money laundering); (3) have demonstrated financial responsibility and good character; (4) have satisfied the pre-licensing education requirements; (5) have passed the written exam developed by the Nationwide Registry; and (6) have met either a net worth or surety bond requirement, or paid into a state fund as required by that particular state.

Education requirement and test. Applicants must complete at least 20 hours of education to satisfy the pre-licensing education requirement for state-licensed loan originators, including three hours of federal law and regulations, three hours of ethics, and two hours of lending standards for nontraditional mortgage product's training. Applicants must then pass a written exam on these subjects with a score of not less than seventy-five percent.

Renewal and continuing education. State-licensed originators must continue to meet the licensing standards and satisfy the annual continuing education requirements.

Federal banking agencies. Within one year of the Act’s enactment, federal banking agencies are required to create a system for registering employees of depository institutions or subsidiaries as registered loan originators with the Nationwide Registry.

The Mortgage Disclosure Improvement Act of 2008

The Mortgage Disclosure Improvement Act of 2008 amends the Truth-in-Lending Act (“TILA”) (15 U.S.C. 1638) by requiring new disclosures for all credit transactions secured by a consumer’s dwelling. This sub-act requires that mortgage loan terms be delivered or placed in the mail within three business days after the lender receives the consumer’s written application, but no later than seven business days before closing. If the annual percentage rate of interest changes in the interim, the lender must furnish an additional corrected statement to the consumer no later than three business days before closing.

In addition to the other disclosures already required by TILA, lenders must now add in their disclosures the following language in conspicuous type size and format: "You are not required to complete this agreement merely because you have received these disclosures or signed a loan application." For variable rate mortgages, lenders must further add a payment schedule in conspicuous type size and format, "Payment Schedule: Payments Will Vary Based on Interest Rate Changes" with examples of adjustments to the regular required loan payment, such as showing the maximum monthly loan payment amount based on the maximum interest rate allowed under the loan.

Except to obtain the consumer's credit report, lenders and other creditors cannot collect closing fees until the consumer has received the disclosures. However, the consumer may waive or modify the timing requirements for the disclosures provided that (1) the consumer provides the lender a signed, dated, written statement specifically waiving or modifying the time requirements, and (2) the lender provides to the consumer at or before the time of such waiver or modification, the required final disclosures. Lenders will be subject to statutory damages for violations of the TILA disclosure provisions at a minimum penalty of $400.00 to a maximum of $4,000.00.

The disclosure requirements for fixed rate loans are effective twelve months after the enactment of this Act. The disclosure requirements for variable interest rates loans are effective on the earlier of (1) the date established by the Board; or (2) thirty months after the date of the enactment of this Act.

With these new measures for lenders as well as protections for homeowners, Congress aims not only to assuage fears both domestically and globally, but raise confidence in the U.S. housing and financial markets

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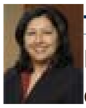

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