

NAHMAanalysis

NATIONAL AFFORDABLE HOUSING MANAGEMENT ASSOCIATION

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Legislation to Reform the Housing Finance Industry

Background

On September 6, 2008, the director of the Federal Housing Finance Agency (FHFA) announced that the home mortgage giants Fannie Mae and Freddie Mac would be placed into conservatorship. As mortgage defaults spiked, these government sponsored agencies (GSEs) had a combined loss of nearly \$15 billion, and there were serious market concerns about their ability to raise capital. The Treasury Department committed \$200 billion in preferred stock to keep the two GSEs solvent. Placing the GSEs into conservatorship helped prevent an all out collapse of the U.S housing market, but some lawmakers are concerned that another sudden decrease in home values may require an additional bailout for the GSEs.

Members of Congress have been working towards legislation that would eventually close the GSEs and reform the housing market. However, winding down Fannie and Freddie is a massive and complex job, and the transition being contemplated would be the largest such undertaking in history. Fannie and Freddie currently hold slightly more than \$5 trillion in mortgage-related assets and since the sudden and steep decline in private mortgage finance that occurred in 2008, the two GSEs have been responsible for more than 60% of new mortgage originations¹.

Additionally, the GSEs are responsible for financing many multifamily mortgages as private lending is not always as readily available. The GSE's multifamily divisions had strong performance throughout the financial crisis with default rates for multifamily loans below one percent. Yet record low interest rates and robust performance by the multifamily market have attracted private entities back to multifamily lending. As a result of traditional multifamily lenders re-entering the market, the GSEs' market share in terms of dollars have returned to pre-2008 levels.

Still, NAHMA's main concern in GSE reform is the availability of lending for affordable housing preservation and development in the transition to private capital reliance in the housing market. Interest rates are expected to rise, which may drive lenders to avoid multifamily and affordable housing in favor of more profitable loans. Any reforms to the GSEs and housing finance structure should preserve the GSEs' outstanding multifamily success and increase incentives for private investment.

¹ "2012-2014 Enterprise Housing Goals; Final Rule" 77 *Federal Register* no. 219 (13 November 2012) pp. 67550-67557

Affordable Housing Goals

Current law requires that the FHFA establish annual housing goals for mortgages purchased by Fannie and Freddie. These goals target multifamily housing affordable to low-income families, and very low-income families as defined in the Housing and Economic Recovery Act of 2008 (HERA). While the GSEs are in conservatorship, all of their activities, including those in support of affordable housing, must be consistent with the requirements of conservatorship under the Safety and Soundness Act. If the FHFA determines that the housing goals cannot be achieved consistently with the goals and requirements of conservatorship, the FHFA may take additional action, including suspension of the housing goals until they can be achieved and in a manner consistent with the conservatorship.

The following six factors must be considered by the FHFA in setting the multifamily special affordable housing goals:

- (1) National multifamily mortgage credit needs and the ability of the Enterprise to provide additional liquidity and stability for the multifamily mortgage market;
- (2) The performance and effort of the Enterprise in making mortgage credit available for multifamily housing in previous years;
- (3) The size of the multifamily mortgage market for housing affordable to low-income and very low-income families, including the size of the multifamily markets for housing of a smaller or limited size;
- (4) The ability of the Enterprise to lead the market in making multifamily mortgage credit available, especially for multifamily housing affordable to low-income and very low-income families;
- (5) The availability of public subsidies; and
- (6) The need to maintain the sound financial condition of the Enterprise

For Fannie Mae, the low-income multifamily goals for 2013 and 2014 were 265,000 and 250,000 units respectively. With regard to mortgage purchases that support multifamily housing for those below 50 percent AMI (very low-income), Fannie's goals were 70,000 units in 2013 and 60,000 for 2014. Freddie's goal for 2013 was 215,000 units, and fell to 200,000 units in 2014. Freddie's goal regarding the purchase of mortgages on multifamily housing affordable to very low-income families was set at 50,000 units in 2013 and 40,000 in 2014.

The Safety and Soundness Act also requires the GSEs to report on their purchases of mortgages on multifamily housing "of a smaller or limited size that is affordable to low-income families." Consistent with industry practice, FHFA has defined small multifamily properties as those containing 5 to 50 units.

Housing Finance Reform Bills

Lawmakers in both the House and Senate have introduced the following legislation that seeks to reduce the federal government's footprint in the housing finance market and wind-down or eliminate the GSEs.

- **S.1217: The Housing Finance Reform and Taxpayer Protection Act of 2013.** *Introduced by Senators Bob Corker (R-TN) and Mark Warner (D-VA) on June 25, 2013.* This bill intends to close the GSEs and replace them with a new federal company called the Federal

Mortgage Insurance Company (FMIC), which is designed to provide catastrophic reinsurance for mortgage-backed securities. The FMIC would retain the authority to guarantee multifamily loans. In an effort to promote the development of affordable housing, the bill allocates funds for the National Housing Trust Fund (NHTF), an affordable housing production program that will complement existing Federal, state and local programs. However, the current affordable housing goals would be eliminated. S. 1217 would also abolish the Federal Housing Finance Agency (FHFA) and transfer its staff, infrastructure, technology and other resources to the newly created FMIC.

- *S. 1217 has been the focus of numerous Senate hearings and has also served as the foundation for bills that were introduced later. It currently has 11 cosponsors.*
- **H.R. 2767: The Protecting American Taxpayers and Homeowners (PATH) Act.**
Introduced by Representative Scott Garrett (R-NJ) on July 22, 2013. The PATH Act's reforms to the Federal Housing Administration (FHA) are numerous and would ultimately reduce the size of the administration. Under this act, the FHA would spin off from HUD and would become its own free-standing agency, with full self-sufficiency requirements in its operations. The minimizing of the FHA would require the administration to raise guarantee fees, engage in risk-sharing with private investors, and steadily reduce the size of retained portfolios. Federal policy would also coordinate the operations of the FHA and the Rural Housing Service so that the two agencies would share technology and risk management. The PATH Act would also close the GSEs and repeal their mandatory affordable housing goals and the GSE-funded Housing Trust Fund.
 - *H.R. 2767 has gained 50 co-sponsors and is the leading housing finance reform bill in the House of Representatives.*
- **Draft Legislation: Housing Opportunities Move the Economy (HOME) Forward Act of 2014.**
Proposed by House Financial Services Committee Ranking Member Maxine Waters (D-CA) on March 27, 2014. Similar to other housing finance legislation, the HOME Forward Act would eliminate the GSEs and replace them with a more flexible approach that places more credit risk in the markets rather than the federal government. The HOME Forward Act would establish the National Mortgage Finance Administration with the purpose of ensuring access to affordable mortgage credit, including 30-year fixed mortgages, and protecting taxpayers for absorbing losses incurred in the secondary markets in periods of economic stress. Under this Administration, a new lender-owned Mortgage Securities Cooperative would be created to be the single issuer of government-guaranteed securities and will be governed on a "one-member, one-vote basis". The Act would require a 10 basis point fee assessment on users of the new system, estimated to generate approximately \$5 billion a year. Of the amounts collected through this fee, 75% would be directed to the National Housing Trust Fund, 15% to the Capital Magnet Fund, and 10% to a new Market Access Fund. Although the bill seeks to maintain the GSEs' multifamily business, it would repeal its mandatory affordable housing goals. According to a summary of the bill, the repeal of this requirement is offset through a condition that lenders participating in the new system must serve all credit worthy borrowers.
 - *Waters' draft legislation has yet to be submitted to a Congressional Committee.*
- **Draft Legislation: The Housing Finance Reform and Taxpayer Protection Act of 2014.**
Proposed by Senate Banking Committee Chairman Tim Johnson (D-SD) and Ranking Member Mike Crapo (R-ID) on March 16, 2014. This draft legislation closely follows the proposals of S. 1217. It will eliminate the GSEs and replace them with the Federal Mortgage Insurance Company (FMIC) to provide catastrophic reinsurance for mortgage-backed securities. Eligible multifamily borrowers would have access to a broad availability of credit

and market based incentives and transparency to serve underserved areas. The multifamily market would be supplemented by building upon successful risk-sharing mechanisms and products. However, this proposed legislation would eliminate the affordable housing goals after closing the GSEs. An initial and incentive-based fee structure will be established to support the Housing Trust Fund, the Capital Magnet Fund, and the newly-created Market Access Fund. The FMIC would be authorized to collect these fees and establish their incentive structure. Also similar to S. 1217, this draft legislation would transfer the staff, infrastructure, technology and other resources of the Federal Housing Finance Agency (FHFA) to the newly created FMIC.

- *This draft legislation was to be the subject of a markup hearing on April 29, 2014. However, this markup has been delayed until early May.*

Conclusion

Comprehensive reform of the housing finance industry may still be a long way off. Although lawmakers are motivated to reduce the footprint of Fannie and Freddie, there remain partisan disagreements on the method to do so. Currently, the Johnson-Crapo agreement seems to have the best possibility of advancing past the Senate Banking, Housing, and Urban Affairs Committee. However, its passage in both the House and Senate is unpredictable.

While NAHMA understands the need for a more transparent housing market that places less risk on taxpayers for another bailout should markets tumble again, we believe that any reform to the GSEs should preserve their affordable housing goals in some form. Additionally, lawmakers must consider how rising interest rates may lower financing options for affordable housing properties and what incentives may be used to encourage development and preservation. The bills listed above will be reviewed in consultation with our Federal Affairs Committee to determine which will provide the best options for the development and preservation of affordable housing.