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112TH CONGRESS
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S. 3678

To help ensure the fiscal solvency of the FHA mortgage insurance programs of the Secretary of Housing and Urban Development, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 13, 2012

Mr. TOOMEY (for himself and Mr. WARNER) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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A BILL

To help ensure the fiscal solvency of the FHA mortgage insurance programs of the Secretary of Housing and Urban Development, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''FHA Emergency Fiscal Solvency Act of 2012''.

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

Sec. 1. Short title and table of contents.
Sec. 2. FHA annual mortgage insurance premiums.
Sec. 3. Indemnification by FHA mortgagees.
Sec. 4. Early period delinquencies.

Sec. 5. Semiannual actuarial studies of MMIF during periods of capital depletion.
Sec. 6. Delegation of FHA insuring authority.
Sec. 7. Authority to terminate FHA mortgagee origination and underwriting approval.
Sec. 8. Authorization to participate in the origination of FHA-insured loans.
Sec. 9. Reporting of mortgagee actions taken against other mortgagees.
Sec. 10. Default and origination information by loan servicer and originating direct endorsement lender.
Sec. 11. Deputy Assistant Secretary of FHA for Risk Management and Regulatory Affairs.
Sec. 12. Establishment of Chief Risk Officer for GNMA.
Sec. 13. Report on mortgage servicers.
Sec. 14. FHA emergency capital plan.
Sec. 15. FHA safety and soundness review.
Sec. 16. FHA disclosure standards.
Sec. 17. Report on streamlining FHA programs.
Sec. 18. Budget compliance.

SEC. 2. FHA ANNUAL MORTGAGE INSURANCE PREMIUMS.

(a) IN GENERAL.—Subparagraph (B) of section 203(c)(2) of the National Housing Act (12 U.S.C. 1709(c)(2)(B)) is amended—

(1) in the matter preceding clause (i)—

(A) by striking ''may'' and inserting ''shall'';

(B) by striking ''not exceeding 1.5 percent'' and inserting ''not less than 0.55 percent''; and

(C) by inserting ''and not exceeding 2.0 percent of such remaining insured principal balance'' before ''for the following periods:''; and

(2) in clause (ii), by striking ''1.55 percent'' and inserting ''2.05 percent''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) take effect upon the expiration of the 6-

month period beginning on the date of the enactment of this Act.

SEC. 3. INDEMNIFICATION BY FHA MORTGAGEES.

Section 202 of the National Housing Act (12 U.S.C. 1708) is amended by adding at the end the following new subsection:

"(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 for insurance, 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 indemnification 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.".

SEC. 4. EARLY PERIOD DELINQUENCIES.

Subsection (a) of section 202 of the National Housing Act (12 U.S.C. 1708(a)) is amended by adding at the end the following new paragraphs:

"(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.".

SEC. 5. SEMIANNUAL ACTUARIAL STUDIES OF MMIF DURING PERIODS OF CAPITAL DEPLETION.

(a) IN GENERAL.—Paragraph (4) of section 202(a) of the National Housing Act (12 U.S.C. 1708(a)(4)) is amended—

(1) in the first sentence, by inserting "except as provided in subparagraph (B)," after "to be conducted annually,";

(2) in the second sentence, by inserting ", except as provided in subparagraph (B)," after "annually";

(3) by striking the paragraph designation and heading and all that follows through ''The Secretary shall provide'' and inserting the following:

''(4) INDEPENDENT ACTUARIAL STUDY.—

''(A) ANNUAL STUDY.—The Secretary shall provide''; and

(4) by adding at the end the following new subparagraph:

''(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 semiannual study.''.

(b) ANALYSIS OF QUARTERLY ACTUARIAL STUDIES.—The Secretary of Housing and Urban Development

shall conduct an analysis of the cost and feasibility of providing for an independent actuarial study of the Mutual Mortgage Insurance Fund on a calendar quarterly basis, which shall compare the cost and feasibility of conducting such a study on a quarterly basis as compared to a semi-annual basis and shall determine whether such an actuarial study can be conducted on a quarterly basis without substantial additional costs to the taxpayers. Not later than the expiration of the 90-day period beginning on the date of the enactment of this Act, the Secretary shall submit a report to the Congress setting forth the findings and conclusion of the analysis conducted pursuant to this subsection.

SEC. 6. DELEGATION OF FHA INSURING AUTHORITY.

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

(1) by striking subsection (c);

(2) in subsection (e), by striking ", including" and all that follows through "by the mortgagee"; and

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

SEC. 7. AUTHORITY TO TERMINATE FHA MORTGAGEE ORIGINATION AND UNDERWRITING APPROVAL.

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

(1) in the first sentence of subsection (b), by inserting ''or areas or on a nationwide basis'' after ''area'' each place such term appears; and

(2) in subsection (c), by striking ''(c)'' and all that follows through ''The Secretary'' in the first sentence of paragraph (2) and inserting the following:

''(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''.

SEC. 8. AUTHORIZATION TO PARTICIPATE IN THE ORIGINATION OF FHA-INSURED LOANS.

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

"(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.".

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

"(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;".

SEC. 9. REPORTING OF MORTGAGEE ACTIONS TAKEN AGAINST OTHER MORTGAGEES.

Section 202 of the National Housing Act (12 U.S.C. 1708), as amended by the preceding provisions of this Act,

is further amended by adding at the end the following new subsection:

"(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 multifamily 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.".

SEC. 10. DEFAULT AND ORIGINATION INFORMATION BY LOAN SERVICER AND ORIGINATING DIRECT ENDORSEMENT LENDER.

(a) COLLECTION OF INFORMATION.—Paragraph (2) of section 540(b) of the National Housing Act (12 U.S.C. 1712 U.S.C. 1735f–18(b)(2)) is amended by adding at the end the following new subparagraph:

"(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.".

(b) APPLICABILITY.—Information described in subparagraph (C) of section 540(b)(2) of the National Housing Act, as added by subsection (a) of this section, shall first be made available under such section 540 for the applicable collection period (as such term is defined in such section) relating to the first calendar quarter ending after the expiration of the 12-month period that begins on the date of the enactment of this Act.

SEC. 11. DEPUTY ASSISTANT SECRETARY OF FHA FOR RISK MANAGEMENT AND REGULATORY AFFAIRS.

(a) ESTABLISHMENT OF POSITION.—Subsection (b) of section 4 of the Department of Housing and Urban Development Act (42 U.S.C. 3533(b)) is amended—

(1) by inserting "(1)" after "(b)"; and

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

"(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 respon-

sible 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.''.

(b) TERMINATION.—Upon the appointment of the initial Deputy Assistant Secretary for Risk Management and Regulatory Affairs pursuant to section 4(b)(2) of the Department of Housing and Urban Development Act, as amended by subsection (a) of this section, the position of chief risk officer within the Federal Housing Administration, filled by appointment by the Federal Housing Commissioner, is abolished.

SEC. 12. ESTABLISHMENT OF CHIEF RISK OFFICER FOR GNMA.

Section 4 of the Department of Housing and Urban Development Act (42 U.S.C. 3533) is amended by adding after subsection (g), as added by section 1442 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Public Law 111–203; 124 Stat. 2163), the following new subsection:

''(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; and

"(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.".

SEC. 13. REPORT ON MORTGAGE SERVICERS.

(a) EXAMINATION.—The Secretary of Housing and Urban Development shall conduct an examination into

mortgage servicer compliance with the loan servicing, loss mitigation, and insurance claim submission guidelines of the FHA mortgage insurance programs under the National Housing Act (12 U.S.C. 1701 et seq.), and an estimate of the annual costs to the Mutual Mortgage Insurance Fund, since 2008, resulting from any failures by mortgage servicers to comply with such guidelines.

(b) REPORT.—Not later than the expiration of the 120-day period that begins upon the date of the enactment of this Act, the Secretary shall submit a report to the Congress on the results of the examination conducted pursuant to subsection (a), including recommendations for any administrative and legislative actions to improve mortgage servicer compliance with the guidelines referred to in subsection (a).

SEC. 14. FHA EMERGENCY CAPITAL PLAN.

(a) ESTABLISHMENT.—Not later than the expiration of the 30-day period beginning on the date of the enactment of this Act, the Secretary of Housing and Urban Development shall develop, submit to the Congress, and commence implementation of an emergency capital plan for the restoration of the fiscal solvency of the Mutual Mortgage Insurance Fund (in this section referred to as the ''Fund'').

(b) CONTENTS.—The emergency capital plan developed pursuant to this section shall—

(1) provide a detailed explanation of the processes and controls by which amounts of capital that are assets of the Fund are monitored and tracked;

(2) establish a plan to ensure the financial safety and soundness of the Fund that avoids the need for borrowing amounts from the Treasury of the United States to meet obligations of the Fund; and

(3) describe the procedure by which, if necessary, any amounts from the Treasury needed to meet obligations of the Fund will be obtained from the Treasury.

(c) MONTHLY REPORTS.—

(1) REPORTS.—Subject to paragraph (3), upon the conclusion of each calendar month ending after the 14-day period that begins on the date of the enactment of this Act, the Secretary of Housing and Urban Development shall submit to the Congress a report assessing the financial status of the Fund at the conclusion of such month and setting forth the information described in paragraph (2).

(2) CONTENTS.—Each report required under paragraph (1) for a month shall contain the fol-

lowing information regarding the Fund as of the conclusion of such month:

(A) The number of mortgages that are obligations of the Fund that are 60 or more days delinquent, the expected losses to the Fund associated with such delinquent mortgages, and the methodology used to make such calculation.

(B) The number of mortgages that are obligations of the Fund that have a loan-to-value ratio at the time of origination that is less than 80 percent and the percentage of all mortgages that are obligations of the Fund having such a ratio.

(C) The number of mortgages that are obligations of the Fund that had an original principal obligation exceeding 125 percent of the median house price, for a home of the size of the residence subject to the mortgage, for the area in which such residence is located, and the percentage of all mortgages that are obligations of the Fund having such an original principal obligation.

(D) The number of mortgages that are obligations of the Fund for which the mortgagor's income at the time of origination of the mort-

gage is greater than the median income for the area in which the residence subject to the mortgage is located, and the percentage of all mortgages that are obligations of the Fund for which the mortgagor has such an income.

(E) The balances for the financing and capital reserve accounts of the Fund.

(F) Any actions taken during such month to help ensure the financial soundness of the Fund and compliance with section 205(f) of the National Housing Act (12 U.S.C. 1711(f); relating to a capital ratio requirement).

(3) TERMINATION OF REPORTING REQUIREMENT.—The requirement to submit reports under paragraph (1) shall terminate on the first date after the date of the enactment of this Act that the Fund attains a capital ratio (as such term is defined in section 205(f)(3) of the National Housing Act) of 2.0 percent.

SEC. 15. FHA SAFETY AND SOUNDNESS REVIEW.

(a) REVIEW.—The Comptroller General of the United States shall provide for an independent third party to—

(1) conduct a one-time review of the mortgage insurance programs and funds of the Secretary of

Housing and Urban Development that shall determine, as of the time of such review—

(A) the financial safety and soundness of such programs and funds; and

(B) the extent of loan loss reserves and capital adequacy of such programs and funds; and

(2) to submit a report under subsection (b).

Such review shall be conducted in accordance with generally accepted accounting principles applicable to the private sector and Federal entities.

(b) REPORT.—The report under this subsection shall describe the methodology and standards used to conduct the review under subsection (a)(1), set forth the results and findings of the review, including the extent of loan loss reserves and capital adequacy of the mortgage insurance programs and funds of the Secretary of Housing and Urban Development, and include recommendations regarding restoring such reserves and capital to maintain such programs and funds in a safe and sound condition.

(c) TIMING.—The review required under subsection (a) shall be completed, and the report required under subsection (b) shall be submitted, not later than the expiration of the 60-day period beginning on the date of the enactment of this Act.

(d) RULE OF CONSTRUCTION.—Nothing in this section may be construed to alter or affect, or exempt the Secretary of Housing and Urban Development from complying with, any laws, regulations, or guidance relating to preparation or submission of budgets or audits or financial or management statements or reports.

SEC. 16. FHA DISCLOSURE STANDARDS.

Not later than the expiration of the 90-day period beginning on the date of the enactment of this Act, the Secretary of Housing and Urban Development shall review and revise all standards and requirements relating to disclosure of information regarding the mortgage insurance programs and funds, including actuarial studies conducted under section 202(a)(4) of the National Housing Act (12 U.S.C. 1708(a)(4)), quarterly reports under section 202(a)(5) of such Act, and annual audited financial statements under section 538 of such Act (12 U.S.C. 1735f–16), to ensure that, after the date of the enactment of this Act, such disclosures—

(1) provide meaningful financial and other information that is timely, comprehensive, and accurate;

(2) do not contain any material misstatements or misrepresentations;

(3) make available all relevant information; and

(4) prohibit material omissions that make the contents of the disclosure misleading.

SEC. 17. REPORT ON STREAMLINING FHA PROGRAMS.

(a) EXAMINATION.—The Secretary of Housing and Urban Development shall conduct an examination of the mortgage insurance and any other programs of the Federal Housing Administration to identify—

(1) the level of use and need for such programs;

(2) any such programs that are unused or underused; and

(3) methods for streamlining, consolidating, simplifying, increasing the efficiency of, and reducing the number of such programs.

(b) REPORT.—Not later than the expiration of the 12-month period that begins upon the date of the enactment of this Act, the Secretary shall submit a report to the Congress on the results of the examination conducted pursuant to subsection (a), including recommendations for any administrative and legislative actions to streamline, consolidate, simplify, increase the efficiency of, and reduce the number of such programs.

SEC. 18. BUDGET COMPLIANCE.

The Secretary of Housing and Urban Development shall allocate $2,500,000 from the account for Administrative Contract Expenses each fiscal year through Sep-

tember 30, 2017, which amounts shall be available only for the purposes of this Act and the amendments made by this Act, including such additional actuarial reviews as may be required by section 5 of this Act and the amendments made by such section.

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