108TH CONGRESS 2d Session } HOUSE OF REPRESENTATIVES { REPORT 108–748

ZERO DOWNPAYMENT ACT OF 2004

OCTOBER 6, 2004.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. OXLEY, from the Committee on Financial Services, submitted the following

R E P O R T

together with

ADDITIONAL, SUPPLEMENTAL, AND DISSENTING VIEWS

[To accompany H.R. 3755]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 3755) to authorize the Secretary of Housing and Urban Development to insure zero-downpayment mortgages for one-unit residences, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

39–006

AMENDMENT

The amendment is as follows:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Zero Downpayment Act of 2004".

SEC. 2. INSURANCE FOR ZERO-DOWNPAYMENT MORTGAGES.

(a) MORTGAGE INSURANCE AUTHORITY.—Section 203 of the National Housing Act (12 U.S.C. 1709) is amended by inserting after subsection (k) the following new subsection:

"(l) ZERO-DOWNPAYMENT MORTGAGES.—

"(1) INSURANCE AUTHORITY.—The Secretary may insure, and commit to insure, under this subsection any mortgage that meets the requirements of this subsection and, except as otherwise specifically provided in this subsection, of subsection (b).

"(2) ELIGIBLE SINGLE FAMILY PROPERTY.—To be eligible for insurance under this subsection, a mortgage shall involve a property upon which there is located a dwelling that is designed principally for a 1- to 3-family residence and that, notwithstanding subsection (g), is to be occupied by the mortgagor as his or her principal residence, which shall include—

"(A) a 1-family dwelling unit in a multifamily project and an undivided interest in the common areas and facilities which serve the project;

"(B) a 1-family dwelling unit of a cooperative housing corporation the permanent occupancy of the dwelling units of which is restricted to members of such corporation and in which the purchase of such stock or membership entitles the purchaser to the permanent occupancy of such dwelling unit; and

"(C) a manufactured home that meets such standards as the Secretary has established for purposes of subsection (b).

"(3) MAXIMUM PRINCIPAL OBLIGATION.—

"(A) LIMITATION.—To be eligible for insurance under this subsection, a mortgage shall involve a principal obligation in an amount not in excess of 100 percent of the appraised value of the property plus any initial service charges, appraisal, inspection and other fees in connection with the mortgage as approved by the Secretary.

"(B) INAPPLICABILITY OF OTHER LOAN-TO-VALUE REQUIREMENTS.—A mortgage insured under this subsection shall not be subject to subparagraph (B) of paragraph (2) of subsection (b) or to the matter in such paragraph that follows such subparagraph.

"(4) ELIGIBLE MORTGAGORS.—The mortgagor under a mortgage insured under this subsection shall meet the following requirements:

"(A) FIRST-TIME HOMEBUYER.—The mortgagor shall be a first-time homebuyer. The program for mortgage insurance under this subsection shall be considered a Federal program to assist first-time homebuyers for purposes of section 956 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12713).

"(B) COUNSELING.—

"(i) REQUIREMENT.—The mortgagor shall have received counseling, prior to application for the loan involved in the mortgage, by a third party (other than the mortgagee) who is approved by the Secretary, with respect to the responsibilities and financial management involved in homeownership. Such counseling shall be provided to the mortgagor on an individual basis by a representative of the approved third party counseling entity, and shall be provided in person to the maximum extent practicable.

"(ii) TOPICS.—Such counseling shall include providing to, and discussing with, the mortgagor—

"(I) information regarding homeownership options other than a mortgage insured under this subsection, other zero- or low-downpayment mortgage options that are or may become available to the mortgagor, the financial implications of entering into a mortgage (including a mortgage insured under this subsection), and any other information that the Secretary may require; and

"(II) a document that sets forth the amount and the percentage by which a property subject to a mortgage insured under this subsection must appreciate for the mortgagor to recover the principal amount of the mortgage, the costs financed under the mortgage, and the estimated costs involved in selling the property, if the mortgagor were to sell the property on each of the second, fifth, and tenth anniversaries of the mortgage.

"(iii) 2- AND 3-FAMILY RESIDENCES.—In the case of a mortgage involving a 2- or 3-family residence, such counseling shall include (in addition to the information required under clause (ii)) information regarding real estate property management.

"(5) OPTION FOR NOTICE OF FORECLOSURE PREVENTION COUNSELING AVAILABILITY.—

"(A) OPTION.—To be eligible for insurance under this subsection, the mortgagee shall provide mortgagor, at the time of the execution of the mortgage, an optional written agreement which, if signed by the mortgagor, allows, but does not require, the mortgagee to provide notice described in subparagraph (B) to a housing counseling entity that has agreed to provide the notice and counseling required under subparagraph (C) and is approved by the Secretary.

"(B) NOTICE TO COUNSELING AGENCY.— The notice described in this subparagraph, with respect to a mortgage, is notice, provided at the earliest time practicable after the mortgagor becomes 60 days delinquent with respect to any payment due under the mortgage, that the mortgagor is so delinquent and of how to contact the mortgagor. Such notice may only be provided once with respect to each delinquency period for a mortgage.

"(C) NOTICE TO MORTGAGOR.—Upon notice from a mortgagee that a mortgagor is 60 days delinquent with respect to payments due under the mortgage, the housing counseling entity shall at the earliest time practicable notify the mortgagor of such delinquency, that the entity makes available foreclosure prevention counseling that may assist the mortgagor in resolving the delinquency, and of how to contact the entity to arrange for such counseling.

"(D) ABILITY TO CURE.—Failure to provide the optional written agreement required under subparagraph (A) may be corrected by sending such agreement to the mortgagor not later than the earliest time practicable after the mortgagor first becomes 60 days delinquent with respect to payments due under the mortgage. Insurance provided under this subsection may not be terminated and penalties for such failure may not be prospectively or retroactively imposed if such failure is corrected in accordance with this subparagraph.

"(E) PENALTIES FOR FAILURE TO PROVIDE AGREEMENT.—The Secretary may establish and impose appropriate penalties for failure of a mortgagee to provide the optional written agreement required under subparagraph (A).

"(F) LIMITATION ON LIABILITY OF MORTGAGEE.—A mortgagee shall not incur any liability or penalties for any failure of a housing counseling entity to provide notice under subparagraph (C).

"(G) NO PRIVATE RIGHT OF ACTION.—This paragraph shall not create any private right of action on behalf of the mortgagor.

"(H) DELINQUENCY PERIOD.—For purposes of this paragraph, the term 'delinquency period' means, with respect to a mortgage, a period that begins upon the mortgagor becoming delinquent with respect to payments due under the mortgage and ends upon the first subsequent occurrence of such payments under the mortgage becoming current or the property subject to the mortgage being foreclosed or otherwise disposed of.

"(6) INAPPLICABILITY OF DOWNPAYMENT REQUIREMENT.—A mortgage insured under this subsection shall not be subject to paragraph (9) of subsection (b) or any other requirement to pay on account of the property, in cash or its equivalent, any amount of the cost of acquisition.

"(7) MMIF MONITORING.—In conjunction with the credit subsidy estimation calculated each year pursuant to the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.), the Secretary shall review the program performance for mortgages insured under this subsection and make any necessary adjustments, which may include altering mortgage insurance premiums subject to subsection (c)(2), adjusting underwriting standards, and limiting the availability of mortgage insurance under this subsection, to ensure that the Mutual Mortgage Insurance Fund shall continue to generate a negative credit subsidy.

"(8) UNDERWRITING.—For a mortgage to be eligible for insurance under this subsection:

"(A) IN GENERAL.—The mortgagor's credit and ability to pay the monthly mortgage payments shall have been evaluated using the Federal Housing Administration's Technology Open To Approved Lenders (TOTAL) Mortgage

Scorecard, or a similar standardized credit scoring system approved by the Secretary, and in accordance with procedures established by the Secretary.

"(B) MULTI-UNIT PROPERTIES.—In the case of a mortgage involving a property upon which there is located a dwelling that is designed principally for a 2- or 3-family residence, the mortgagor meets such additional underwriting standards as the Secretary may establish.

"(9) APPROVAL OF MORTGAGEES.—To be eligible for insurance under this subsection, a mortgage shall have been made to a mortgagee that meets such criteria as the Secretary shall establish to ensure that mortgagees meet appropriate standards for participation in the program authorized under this subsection.

"(10) DISCLOSURE OF INCREMENTAL COSTS.—

"(A) REQUIRED DISCLOSURE.—For a mortgage to be eligible for insurance under this subsection, the mortgagee shall provide to the mortgagor, at the time of the application for the loan involved in the mortgage, a written disclosure, as the Secretary shall require, that specifies the effective cost to a mortgagor of borrowing the amount by which the maximum amount that could be borrowed under a mortgage insured under this subsection exceeds the maximum amount that could be borrowed under a mortgage insured under subsection (b), based on average closing costs with respect to such amount, as determined by the Secretary. Such cost shall be expressed as an annual interest rate over the first 5 years of a mortgage.

"(B) COORDINATION.—The disclosure required under this paragraph may be provided in conjunction with the notice required under subsection (f).

"(11) LOSS MITIGATION.—

"(A) IN GENERAL.—Upon the default of any mortgage insured under this subsection, the mortgagee shall engage in loss mitigation actions for the purpose of providing an alternative to foreclosure to the same extent as is required of other mortgages insured under this title pursuant to the regulations issued under section 230(a).

"(B) ANNUAL REPORTING.—Not later than 90 days after the end of each fiscal year, the Secretary shall submit a report to the Congress that compares the rates of default and foreclosure during such fiscal year for mortgages insured under this subsection, for single-family mortgages insured under this title (other than under this subsection), and for mortgages for housing purchased with assistance provided under the downpayment assistance initiative under section 271 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12821).

"(12) ADDITIONAL REQUIREMENTS.—The Secretary may establish any additional requirements for mortgage insurance under this subsection as may be necessary or appropriate.

"(13) LIMITATION.—The aggregate number of mortgages insured under this subsection in any fiscal year may not exceed 10 percent of the aggregate number of mortgages and loans insured by the Secretary under this title during the preceding fiscal year.

"(14) PROGRAM SUSPENSION.—

"(A) IN GENERAL.—Subject to subparagraph (C), the authority under paragraph (1) to insure mortgages shall be suspended if at any time the claim rate described in subparagraph (B) exceeds 3.5 percent. A suspension under this subparagraph shall remain in effect until such time as such claim rate is 3.5 percent or less.

"(B) FHA TOTAL SINGLE-FAMILY ANNUAL CLAIM RATE.—The claim rate described in this subparagraph, for any particular time, is the ratio of the number of claims during the 12 months preceding such time on mortgages on 1- to 4-family residences insured pursuant to this title to the number of mortgages on such residences having such insurance in-force at that time.

"(C) APPLICABILITY.—A suspension under subparagraph (A) shall not preclude the Secretary from endorsing or insuring any mortgage that was duly executed before the date of such suspension.

"(15) SUNSET.—No mortgage may be insured under this subsection after September 30, 2009, except that the Secretary may endorse or insure any mortgage that was duly executed before such date.

"(16) GAO REPORTS.—The Comptroller General of the United States shall submit a report to the Congress not later than 2 years after the date of the enactment of this subsection, and annually thereafter, regarding the performance of mortgages insured under this subsection.

"(17) IMPLEMENTATION.—The Secretary may implement this subsection on an interim basis by issuing an interim rule, except that the Secretary shall solicit public comments upon publication of such interim rule and shall issue a final rule implementing this subsection after consideration of the comments submitted. ”.

(b) MORTGAGE INSURANCE PREMIUMS.—The second sentence of subparagraph (A) of section 203(c)(2) of the National Housing Act (12 U.S.C. 1709(c)(2)(A)) is amended by striking “In” and inserting “Except with respect to a mortgage insured under subsection (l), in”.

(c) GENERAL INSURANCE FUND.—Section 519(e) of the National Housing Act (12 U.S.C. 1735c(e)) is amended by striking “and 203(i)” and inserting “, 203(i), and 203(l)”.

PURPOSE AND SUMMARY

H.R. 3755 authorizes the Secretary of Housing and Urban Development to insure zero-downpayment mortgages for one- to three-unit residences. The bill reported out of the committee includes a number of safeguards designed to protect homebuyers and the FHA program.

BACKGROUND AND NEED FOR LEGISLATION

Recent census figures document that a record 68.6 percent of U.S. households lived in their own homes as of the last quarter of 2003. That figure has risen from 67.5 percent at the beginning of 2001. The racial divide in homeownership remains wide. Seventy-five and ½ percent of white households own their own home, compared to 49.4 percent of African American households and 47.7 percent of Hispanic households during the last part of 2003. Studies show that the single biggest obstacle to homeownership for most families is the inability to save enough money to meet downpayment and closing costs. Minority families in particular are burdened by high downpayment requirements.

Since the creation of the Federal Housing Administration (FHA) in the National Housing Act in 1934 (Public Law 73–479), downpayments have been a requirement of potential borrowers seeking to secure loans insured by the Federal government. FHA is not a direct lender; instead, the Federal agency guarantees loan payments for mortgages on moderately priced owner-occupied property through the issuance of mortgage insurance certificates. A housing or mortgage downpayment is the portion of purchase price paid to a home seller by a potential homebuyer to close a sales transaction, with the understanding that the balance will be paid later.

Over time, as mortgage lending markets matured, the conventional market attracted a significant share of mortgagees or potential borrowers. The conventional market (conventional financing) is commonly referred to in real estate as mortgage financing that is not insured or guaranteed by a government agency such as HUD/FHA, VA (Veterans Affairs) or the Rural Housing Service (RHS). The jumbo market (jumbo financing) is commonly referred to as those mortgage loans that exceed the statutory size limit eligible for purchase or securitization by government sponsored entities or the Federal agencies.

Theoretically, downpayment requirements were established to assure the lender that a borrower would be less likely to default or risk foreclosure on a home if there was some personal investment stake. Before the invention of automated or computerized underwriting to determine credit scores, lenders believed that downpayments were one of the best techniques to assess creditworthiness of a potential borrower; or, in the alternative, downpayments were a good indicator of credit risk. These downpayment requirements have ranged from as high as 20 percent to as low as 3 percent. Traditionally, mortgage loans for investment properties, as opposed to owner-occupied properties, required a larger downpayment, e.g. 20 percent.

Recently, some conventional mortgage lending products purchased by the secondary markets or held in institutional investment portfolios included provisions waving downpayments, contingent on certain underwriting conditions. Additionally, a majority of State housing agencies have provided some form of a zero or very-low downpayment program. H.R. 3755 would provide a FHA zero downpayment option for first-time homebuyers and, in turn, designed to increase homeownership in this country.

The introduced bill reflects a legislative proposal incorporated in the Administration's FY 2005 budget for the U.S. Department of Housing and Urban Development (HUD). The Administration's budget proposal assumes increased revenue from charging a higher premium to those potential borrowers who utilize the zero downpayment option. According to the budget proposal, those higher premiums would be sufficient to cover any anticipated losses expected by FHA's mortgage insurance funds. Although the Administration's budget proposal estimated that higher premiums would be sufficient to cover any anticipated losses expected by FHA's mortgage insurance funds, the Congressional Budget Office estimates that the bill ordered reported by the Committee would cost $500 million over the FY 2006–2009 period.

While there was considerable debate on whether the Administration's proposal would provide enough premium income to account for any potential losses, the Committee believed that further improvements to the proposal were necessary to ensure safety and soundness of the FHA's Mutual Mortgage Insurance Fund (MMIF). The Mutual Mortgage Insurance Fund is a statutorily-required actuarially sound FHA insurance fund for the unsubsidized single-family mortgage insurance program(s).

These improvements or safeguards incorporated into the legislation during the Committee's consideration included the following: a requirement establishing extensive counseling provisions, including pre-application loan counseling; an option, exercised by the new homeowner, for foreclosure prevention counseling; and, full disclosure of the incremental costs of the loan.

Consistent with the Administration's statements and testimony regarding implementation of a Zero Downpayment program, the Committee requires HUD to use an automated underwriting system to evaluate potential homebuyers; requires HUD to establish a process to monitor lenders to ensure that they meet the participation requirements; allows HUD the flexibility to charge a mortgage insurance premium, up to 2.25 percent, paid at the time of origination or mortgage closing, as well as assess an annual premium charge up to .55 percent. The up-front and annual mortgage insurance premiums are designed to offset any potential increased risk.

In addition to establishing these typical safeguards to ensure safety and soundness of the MMIF, the Committee included a performance trigger mechanism that would temporarily suspend the

Zero Downpayment program when the overall claim rate to the FHA fund exceeds 3.5 percent. The legislation defines the claim rate as the number of claims, or insurance actually paid due to a claim against the mortgage insurance premium, during the preceding 12 months on FHA single family mortgages. To further ensure that Congress and the Administration are apprised of any performance trends generated by the new downpayment requirements, HUD would be required to provide an annual report on the success of the program.

Moreover, the Committee imposed a program limitation on the number of loans that FHA could insure under this zero downpayment requirements of no more than 10 percent of the aggregate number of mortgages and loans insured by FHA in the preceding fiscal year.

Finally, the Committee imposed a 5-year sunset to enable an analysis of the FHA zero downpayment concept.

HEARINGS

The Subcommittee on Housing and Community Opportunity held a hearing on March 24, 2004 on H.R. 3755, the "Zero Downpayment Act of 2004". The following witnesses testified: The Honorable John C. Weicher, Assistant Secretary for Housing-Federal Housing Commissioner, U.S. Department of Housing and Urban Development; Ms. Sheila Crowley, President, National Low Income Housing Coalition; Rev. Warren L. Henry Sr., Vice-Chair, Housing Authority of Fulton County, Atlanta, GA; Mr. Thomas J. Finnegan, III, President, Huntington Mortgage Group, Columbus, OH; Mr. Michael F. Petrie, President, P/R Mortgage & Investment Corporation, Indianapolis, IN, on behalf of the Mortgage Bankers Association; Mr. James R. Rayburn, President, National Association of Home Builders; Mr. Deane Dolben, President, The Dolben Company, Burlington, MA, on behalf of the National Multi-Housing Council/National Apartment Association; Mr. Conrad Egan, President/CEO, National Housing Conference; Mr. Basil N. Petrou, Managing Partner, Federal Financial Analytics, Inc.; Mr. Scott Syphax, President & Chief Executive Officer, Nehemiah Corporation of America, Sacramento, CA; Mr. Jerome Witcher, Real Estate Agent, Art Lee Realtors, Columbus, OH; and Ms. Ann Ashburn, President and Chief Executive Officer, AmeriDream, Inc., Gaithersburg, MD.

COMMITTEE CONSIDERATION

On May 5, 2004, the Subcommittee on Housing and Community Opportunity met in open session and approved H.R. 3755 for full Committee consideration, as amended, by a voice vote.

On June 3, 2004, the Committee on Financial Services met in open session and ordered H.R. 3755 favorably reported to the House, with an amendment, by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. No record votes were taken with in conjunction with the consideration of this legislation.

A motion by Mr. Oxley to report the bill to the House with a favorable recommendation was agreed to by a voice vote.

The following amendments were considered:

An amendment in the nature of a substitute by Mr. Oxley, No. 1, making various substantive and technical changes to the bill, was agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. Baca, No. 1a, identifying the Gift Downpayment Program as one of the potential zero down alternatives, was withdrawn.

An amendment to the amendment in the nature of a substitute by Ms. Waters, No. 1b, striking “any fiscal year” and inserting “each of fiscal years 2005, 2006, and 2007”, was withdrawn.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a hearing and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

The Secretary of Housing and Urban Development will use the authority granted under this legislation to establish a program to provide FHA-insured mortgages with no downpayment requirement. That program will be administered in accordance with the provisions of this legislation to ensure the safety and soundness of MMIF.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that this legislation would result in no new budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 21, 2004.

Hon. MICHAEL G. OXLEY,
Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3755, the Zero Downpayment Act of 2004.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

ELIZABETH M. ROBINSON
(For Douglas Holtz-Eakin, Director).

Enclosure.

H.R. 3755—Zero Downpayment Act of 2004

Summary: H.R. 3755 would authorize a new loan guarantee program under the Federal Housing Administration (FHA) that would allow first-time home buyers to purchase a home without a down payment. Currently, FHA's single-family loan guarantee program requires home buyers to make a down payment of at least 3 percent of the sales price. The new loan guarantees would be available to home buyers purchasing various types of one-to-three family residences, such as single-family homes and condominiums, through September 30, 2009. The number of zero down-payment loans insured by FHA each year could not exceed 10 percent of its total number of single-family loan guarantees made during the preceding year. This legislation also would allow FHA to charge upfront and annual fees up to the levels set under current law for the existing single-family program.

CBO estimates that implementing this legislation would have a net cost of about $500 million over the 2006–2009 period, assuming future appropriation actions consistent with the bill. (We expect that it would take FHA about one year to implement the new program.) FHA's loan guarantee programs are discretionary federal credit programs that require appropriation action each year to establish a dollar limitation on the value of loans that may be guaranteed and to provide a credit subsidy appropriation for those FHA programs estimated to have a positive subsidy rate.

Included in this net cost is $59 million in offsetting collections that would be generated because we estimate that about half of the new loan guarantees under the zero down-payment program would be included in the Government National Mortgage Association's (GNMA's) single-family Mortgage-Backed Securities (MBS) program. (GNMA is responsible for guaranteeing securities backed by pools of mortgages insured by the federal government and, like FHA, requires appropriation action to establish its dollar limitation for the securities program.)

Enacting this bill could affect direct spending and receipts because the bill would provide the Secretary of the Office of Housing and Urban Development (HUD) with the authority to establish penalties against borrowers who fail to meet certain requirements under the bill. CBO estimates that any increase in civil or criminal penalties would not be significant.

H.R. 755 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 3755 is shown in the following table. The costs of this legislation fall within budget function 370 (mortgage and housing credit). For this estimate, we assume the bill will be enacted near the beginning of fiscal year 2005.

Basis of estimate: The budgetary impact of the zero down-payment loan program would depend on how many households would use this provision to help them become homeowners and the likelihood that such borrowers would default on their mortgages. CBO estimates that FHA would need appropriations of $143 million in 2006 and $562 million over the 2006–2009 period to cover the estimated subsidy cost of the zero down-payment program. We also estimate that about 50 percent of the loan guarantees made each year under the zero down-payment program would be included in GNMA's MBS program, resulting in the collection of additional negative subsidy receipts of $59 million over the 2006–2009 period. There also would be a cost associated with the GAO studies that are required under this bill. However, CBO estimates that those costs would be less than $500,000 each year. Each of these budgetary effects are discussed below.

	By fiscal year, in millions of dollars—					
	2004	2005	2006	2007	2008	2009
SPENDING SUBJECT TO APPROPRIATION						
FHA and GNMA Spending Under Current Law: [1]						
Estimated Authorization Level	–3,860	–2,611	–2,444	–2,383	–2,484	–2,428
Estimated Outlays	–3,860	–2,611	–2,444	–2,383	–2,424	–2,478
Proposed Changes:						
Net Subsidy Cost for Zero Down-Payment Loans:						
Estimated Authorization Level	0	0	143	140	138	141
Estimated Outlays	0	0	143	140	138	141
GNMA Offsetting Collections:						
Estimated Authorization Level	0	0	–16	–15	–14	–14
Estimated Outlays	0	0	–16	–15	–14	–14
Total Changes:						
Estimated Authorization Level	0	0	127	125	124	127
Estimated Outlays	0	0	127	125	124	127
Total FHA and GNMA Spending Under H.R. 3755: [2]						
Estimated Authorization Level	–3,860	–2,611	–2,317	–2,158	–2,300	–2,351
Estimated Outlays	–3,860	–2,611	–2,317	–2,158	–2,300	–2,351

[1] The figures for 2004 are CBO's current estimates of budget authority and outlays for these programs under the enacted appropriation levels for this year. The 2005–2009 levels are CBO's baseline estimates of the amount of offsetting collections generated by FHA's single-family program and GNMA's single-family MBS program.

[2] Enacting H.R. 3755 also would require an annual appropriation of less than $500,000 beginning in 2007 for the General Accounting Office (GAO) to prepare the studies required under the bill.

Demand for the zero down-payment program

According to FHA, mortgage banking associations, and industry experts, the number of private entities supporting down-payment assistance programs in recent years has grown, indicating a growing demand for programs that help home buyers who cannot afford down payments. For example, the Nehemiah Corporation, which is the oldest and largest nonprofit provider of down-payment assistance in the country, provided assistance to over 5,500 home buyers in 1998 compared to 33,000 home buyers in 2003.

CBO believes that demand for a zero down-payment program would be strong and, based on information from FHA, expects that about 150,000 loans with a face value of about $20 billion (known as the loan volume) could be guaranteed beginning in 2006. CBO does not estimate that any new loan guarantees would be issued in 2005 because we expect that it would take FHA one year to implement the new program following enactment of this legislation. This bill would limit the loan volume for the zero down-payment program to no more than 10 percent of FHA's total number of single-family loan guarantees made in the preceding year. CBO's estimates of total loan volume over the next five years average about $126 billion each year. Consequently, CBO estimates that volume for the new program would be limited to about $13 billion each year for around 100,000 borrowers.

According to FHA, an increasing number of its borrowers who are first-time home buyers making low down payments are using some form of down-payment assistance (e.g., gifts from relatives or grants from nonprofit entities). On average, these borrowers represent about 26 percent of all first-time home buyers making the minimum 3 percent down payment. CBO estimates that about 80,000 FHA borrowers who are first-time home buyers will use some form of down-payment assistance each year. CBO estimates that at least 50 percent of such borrowers would migrate to the new zero down-payment program. Under that assumption, about 40,000 FHA borrowers would use the new zero down-payment program instead of the existing single-family program. CBO estimates that this shift of about $5 billion worth of loan guarantees from the existing single-family program to the new zero down-payment program each year would affect the subsidy cost of the FHA program, as discussed below.

Credit risk associated with the zero down-payment program

Zero down-payment loans are viewed by private-sector lenders as having a higher risk of default than traditional mortgages with down payments according to several industry experts, such as people involved with the secondary-mortgage market, trade associations, and down-payment assistance programs. For private lenders, the borrower's loan-to-value (LTV) ratio indicates how much equity a borrower initially has in the home and serves as one of the predictors of the likelihood of default. On average, borrowers with less equity (that is, higher LTV ratios) have higher default rates than borrowers with more equity. Such borrowers are more vulnerable to adverse events, such as job loss and falling house prices. Under the proposed zero down-payment program, borrowers would enter home ownership with zero and even negative equity because borrowers could finance their up-front premiums and closing costs, resulting in LTV ratios of 103 percent or more.

To compensate for the risk of default, FHA has indicated that it would not change the credit standards (e.g., debt-to-income ratios and payment-to-income ratios) it applies to these new borrowers, but it would charge such borrowers higher loan-guarantee fees than those charged to borrowers under FHA's current single-family program. We expect that FHA would implement the fees at the maximum levels established under current law. That is, the up-front fees for the new program would be 2.25 percent of the loan value and annual fees would be 0.55 percent of the loan value for the first five years and 0.5 percent thereafter. (In comparison, borrowers in the existing program pay an up-front premium of a 1.5 percent and annual premiums of 0.5 percent.) Despite these higher fees, however, CBO expects that default costs could still exceed the value of the higher fees.

This bill would require FHA to suspend the zero down-payment program if more than 3.5 percent of the loans in the program are foreclosed in one year. CBO estimates that defaults for the new program would average about 1 percent each year and that the cumulative default rate over a 30-year period would exceed 30 percent. This restriction on the number of defaults could limit the number of loans FHA insures each year if the number of foreclosures is greater than we estimate. But other factors, such as changing consumer demand for the program due to higher interest rates, could also lead to a smaller loan volume in the program. The zero down-payment program would be considered a discretionary program that could be suspended by FHA at any time. For this estimate, CBO assumes that the necessary subsidies are provided each year through the appropriation process and that the subsidies are spent each year.

Subsidy cost

Under credit reform procedures, funds must be appropriated in advance to cover the subsidy cost of the loan guarantees, as estimated on a present-value basis. CBO estimates that the new program would have a subsidy rate of about 1.21 percent, compared to our estimate of the subsidy rate in 2006 of negative 1.78 percent for FHA's existing single-family program. With a subsidy rate of 1.21 percent, CBO estimates that the zero down-payment program would cost $618 million over the 2006–2009 period.

This estimated subsidy cost would be slightly offset by some expected savings associated with the $5 billion in business that would shift from the existing single-family program to the zero down-payment program. Because the loans that would shift to the new program would most likely represent some of the riskier loans, CBO estimates that the migration of these borrowers to the new program would leave the larger remaining portfolio of single-family loan guarantees with an overall slightly more negative subsidy rate. CBO estimates that the negative subsidy associated with the existing single-family program would become more negatively by about 0.1 percent beginning in 2006, resulting in additional offsetting collections of $57 million over the 2006–2009 period.

CBO estimates that implementing the zero down-payment program would result in a net cost of $143 million of 2006 and a net cost of $562 million over the 2006–2009 period. The estimated loan subsidy costs—which are treated as discretionary spending—would be recorded in the budget each year when the subsidy appropriation is provided. Under this legislation, the Secretary of HUD would have the ability to make certain programmatic adjustments, such as changing the guarantee fees, to ensure that the Mutual Mortgage Insurance Fund (MMIF) continues to realize offsetting collections. While CBO estimates that the zero down-payment program would require an appropriation to cover its estimated costs, such costs would not preclude the MMIF from generating net offsetting collections, albeit fewer collections than would be expected under current law.

GNMA subsidy receipts

GNMA is responsible for guaranteeing securities backed by pools of mortgages insured by the federal government. In exchange for a fee charged to lenders or issuers of the securities, GNMA guarantees the timely payments of scheduled principal and interest due on the pooled mortgages that back these securities. Because the value of the fees collected are estimated to exceed the cost of loan defaults in each year, the GNMA MBS program is estimated to have a negative subsidy rate of 0.23 percent in 2006, resulting in the net collection of receipts to the federal government.

Because over 90 percent of FHA-insured loans are eventually included in GNMA's MBS program, CBO estimates that implementing the zero down-payment program would result in additional collections to GNMA. Based on information from GNMA, CBO assumes that only the zero down-payment loans with the lowest credit risk would be included in GNMA's MBS program and that consequently such loans would not have any significant effect on GNMA's negative subsidy rate. We estimate that about 50 percent of the loan guarantees made under this new program would be included in GNMA's MBS program, resulting in the collection of $16 million in 2006 and $59 million over the 2006–2009 period.

GAO studies

This legislation also would require GAO to prepare a report on loan performance under the zero down-payment program no later than two years following enactment of the bill and annually thereafter. CBO estimates that GAO would require less than $500,000 annually beginning in 2007 for such reports.

Intergovernmental and private-sector impact: H.R. 3755 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal Costs: Susanne S. Mehlman; Impact on State, Local, and Tribal Governments: Sarah Puro; and Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

Federal Mandates Statement

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

Advisory Committee Statement

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section establishes the short title of the bill, the "Zero Downpayment Act of 2004."

Section 2. Insurance for zero-downpayment mortgages

Subsection (a) amends section 203 of the National Housing Act (12 U.S.C. 1709) to establish the program. Under the program, the Secretary is authorized to insure any mortgage that meets the requirements of the legislation.

The legislation defines the types of property eligible for this program as dwellings with 1–3 units, condominiums, cooperatives and manufactured housing. The principal obligation on a mortgage insured under this new subsection may not exceed 100 percent of the appraised value of the property plus any initial service charges, appraisal, inspection, and other fees in connection with the mortgage as approved by the Secretary.

Only first-time homebuyers, as defined under section 956 of the Cranston-Gonzalez Act, are authorized to participate in this program. Section 956 of the Cranston-Gonzalez Act defines first-time homebuyer as an individual who has not had any present ownership interest in principal residence during a specified period of time. Section 956 recognizes "displaced homemakers" and "single parents" for purposes of first-time homebuyer designation as those individuals who would not be prohibited from a first-time homebuyer program if they had, at one time, an ownership interest in a principal residence while married, owned a home with his or her spouse, or resided in a home owned by a spouse.

The program also requires counseling similar to the counseling required for eligible borrowers under the HECM (Reverse Mortgages) program. The Committee has authorized the Secretary to ensure that the counseling agencies cover specified topics with the mortgagors in a counseling session in order to ensure that mortgagors fully understand the financial implications of a Zero Downpayment mortgage. However, it is also understood that the required information may not be available at the time of counseling, which will occur prior to application. Therefore, the Committee urges HUD to develop generic information that the counseling agencies can provide to the potential program participants.

The mortgagor is required to receive counseling by a HUD-approved third-party counseling entity. This provision is intended to ensure that an individual considering a zero downpayment loan receives counseling from a housing counselor that is independent from the mortgagee so that the mortgagor is not steered into a loan from a particular lender.

This counseling should be provided individually and, when practicable, in person prior to the mortgage loan application. With regard to this provision, the Committee expects HUD to provide clear guidance to counseling agencies regarding the circumstances under which a counseling agency may waive the in-person requirement and offer alternative counseling methods. In developing these guidelines, HUD should consider the capacity of counseling agencies with respect to demand and the location of counseling agencies with respect to potential borrowers.

This section also requires a housing counselor to provide a prospective borrower with a document that sets forth the amount and the percentage by which the property subject to a proposed mortgage must appreciate for the mortgagor to recover the principal amount of the mortgage, the costs financed under the mortgage, and the estimated costs involved in selling the property, if the mortgagor were to sell the property on each of the second, fifth, and tenth anniversaries of the proposed mortgage. The Committee intends that a housing counselor may choose to meet this requirement by providing a prospective borrower with a document that makes the required calculations using the actual dollar amount of the proposed mortgage, but the housing counselor is not required to use the actual dollar amount of the proposed mortgage. To minimize burden, a housing counselor may round off the amount of the proposed mortgage and use a figure not less than the amount of the proposed mortgage that constitutes the nearest $5,000 increment to the actual amount of the proposed mortgage. The Committee also intends that the Secretary or his designee shall identify and supply to housing counselors interest rate tables with ascending $5,000 increments that will permit such counselors to make the calculations required by this section. The Secretary must post these interest rate tables on the HUD website and take all other steps required to make these tables generally available and accessible to housing counselors and the public.

The legislation further requires specific counseling regarding real estate property management for mortgagors purchasing dwellings with 2 to 3 units. It is understood by the Committee that counseling regarding real estate property management is a critical risk-mitigation measure for first-time homebuyers purchasing 2- or 3-unit properties and specific information must be developed for counseling agencies to perform this service.

The bill also requires that the lender provide a form at settlement to the new homeowner giving him or her the option to agree to allow, but not require, the mortgagee to provide notice of the mortgagor's delinquency to a foreclosure-prevention counseling agency if the loan becomes 60 days delinquent. If the lender chooses to notify a counseling agency under this provision, the agency must notify the mortgagor of the delinquency, the availability of foreclosure-prevention counseling from the agency, and the agency's contact information. The amendment further provides the lender with a mechanism to timely cure a failure to provide the optional agreement form, allows the Secretary to impose penalties for failure to provide the borrower with the optional agreement form, limits the liability of the lender in connection with this section, and defines the term "delinquency period."

The Committee notes that this provision seeks to establish relationships between mortgagees, mortgagors, and housing counseling entities that may be called upon in the event of default. It is suggested that the Department evaluate and monitor the practicality of this option, and to consider in particular the outcome of any previous pilot program completed by the Department that may be applicable to this requirement.

The provision also mandates that a mortgage insured under this new subsection is not subject to any requirement of a downpayment on the purchase price.

In order to protect the Mutual Mortgage Insurance Fund, the bill provides authority to require the Secretary to charge a sufficient mortgage insurance premium that will result in no net loss to that Fund. Under the proposed legislation, HUD is authorized to charge a mortgage insurance premium, up to 2.25 percent, paid at the time of origination or mortgage closing, as well as assess an annual premium charge up to .55 percent. The up-front and annual mortgage insurance premiums are designed to offset any potential increased risk.

The bill also directs the Secretary to use an automated underwriting system to assess whether the potential borrower has the ability to pay the monthly mortgage payments. In addition, this section allows the Secretary to establish additional underwriting standards for borrowers purchasing dwellings with 2 to 3 units. The Secretary must also establish procedures to monitor and address lenders to ensure they meet or exceed underwriting and other lender participation requirements.

This provision requires a written disclosure from the lender at the time of the loan application specifying the cost to a mortgagor of borrowing the amount of a loan under the zero downpayment program that exceeds the maximum loan amount of a subsection (b) FHA mortgage-insured product. That cost must be expressed as an annual interest rate over the first 5 years of a mortgage.

The legislation also requires lenders originating loans under this program to use loss-mitigation actions provided for in the National Housing Act. The Secretary must report a comparison of the rates of default and foreclosure each year for mortgages insured under the zero downpayment program, for single-family FHA-insured mortgages, and for mortgages for housing purchased under the American Dream Downpayment Act.

The Secretary is also authorized to establish any additional requirements for mortgage insurance under this new subsection as may be necessary or appropriate.

The legislation also places a number of limits on the program. For instance, the program is limited to 10 percent of the aggregate number of mortgages and loans insured in the preceding fiscal year. The legislation also establishes a program performance trigger to suspend this program when the overall FHA claim rate exceeds 3.5 percent over the preceding 12 months. Finally, the authorization for the program expires on September 30, 2009.

The bill also directs the GAO to report on the performance of the mortgages insured under this program 2 years after enactment and every year thereafter.

The bill authorizes the Secretary to implement this program on an interim basis by issuing an interim rule, but mandates the subsequent issuance of a final rule. The Committee intends that the implementation of this program be completed quickly and efficiently. The guidance that the Department immediately develop an Interim Rule that may take effect within 6 months is directed not only to HUD, but also to the Office of Management and Budget, to ensure that all necessary interagency coordination and approvals be performed in the shortest time frame possible.

Subsection (b) authorizes the Secretary to charge and collect a single up-front premium and annual payments.

Subsection (c) amends section 519(e) of the National Housing Act in order to clarify that the Mutual Mortgage Insurance Fund, and not the General Insurance Fund, will be used for carrying out this program.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

NATIONAL HOUSING ACT

* * * * * * *

PART VIII—MORTGAGE INSURANCE, RELIEF, AND FORECLOSURE AND CREDIT ENHANCEMENT FOR HOUSING

* * * * * * *

TITLE II—MORTGAGE INSURANCE

* * * * * * *

INSURANCE OF MORTGAGES

SEC. 203. (a) * * *

* * * * * * *

(c)(1) * * *

(2) Notwithstanding any other provision of this section, each mortgage secured by a 1- to 4-family dwelling that is an obligation of the Mutual Mortgage Insurance Fund or of the General Insurance Fund pursuant to subsection (v) and each mortgage that is insured under subsection (k) or section 234(c),, shall be subject to the following requirements:

(A) The Secretary shall establish and collect, at the time of insurance, a single premium payment in an amount not exceeding 2.25 percent of the amount of the original insured principal obligation of the mortgage. 【In】 *Except with respect to a* *mortgage insured under subsection (l), in* the case of a mortgage for which the mortgagor is a first-time homebuyer who completes a program of counseling with respect to the responsibilities and financial management involved in homeownership that is approved by the Secretary, the premium payment under this subparagraph shall not exceed 2.0 percent of the amount of the original insured principal obligation of the mortgage. Upon payment in full of the principal obligation of a mortgage prior to the maturity date of the mortgage, the Secretary shall refund all of the unearned premium charges paid on the mortgage pursuant to this subparagraph.

* * * * * * *

(l) ZERO-DOWNPAYMENT MORTGAGES.—

(1) INSURANCE AUTHORITY.—The Secretary may insure, and commit to insure, under this subsection any mortgage that meets the requirements of this subsection and, except as otherwise specifically provided in this subsection, of subsection (b).

(2) ELIGIBLE SINGLE FAMILY PROPERTY.—To be eligible for insurance under this subsection, a mortgage shall involve a property upon which there is located a dwelling that is designed principally for a 1- to 3-family residence and that, notwithstanding subsection (g), is to be occupied by the mortgagor as his or her principal residence, which shall include—

(A) a 1-family dwelling unit in a multifamily project and an undivided interest in the common areas and facilities which serve the project;

(B) a 1-family dwelling unit of a cooperative housing corporation the permanent occupancy of the dwelling units of which is restricted to members of such corporation and in which the purchase of such stock or membership entitles the purchaser to the permanent occupancy of such dwelling unit; and

(C) a manufactured home that meets such standards as the Secretary has established for purposes of subsection (b).

(3) MAXIMUM PRINCIPAL OBLIGATION.—

(A) LIMITATION.—To be eligible for insurance under this subsection, a mortgage shall involve a principal obligation in an amount not in excess of 100 percent of the appraised value of the property plus any initial service charges, appraisal, inspection and other fees in connection with the mortgage as approved by the Secretary.

(B) INAPPLICABILITY OF OTHER LOAN-TO-VALUE REQUIREMENTS.—A mortgage insured under this subsection shall not be subject to subparagraph (B) of paragraph (2) of subsection (b) or to the matter in such paragraph that follows such subparagraph.

(4) ELIGIBLE MORTGAGORS.—The mortgagor under a mortgage insured under this subsection shall meet the following requirements:

(A) FIRST-TIME HOMEBUYER.—The mortgagor shall be a first-time homebuyer. The program for mortgage insurance under this subsection shall be considered a Federal program to assist first-time homebuyers for purposes of section 956 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12713).

(B) COUNSELING.—

(i) REQUIREMENT.—The mortgagor shall have received counseling, prior to application for the loan involved in the mortgage, by a third party (other than the mortgagee) who is approved by the Secretary, with respect to the responsibilities and financial management involved in homeownership. Such counseling shall be provided to the mortgagor on an individual basis by a representative of the approved third party counseling entity, and shall be provided in person to the maximum extent practicable.

(ii) TOPICS.—Such counseling shall include providing to, and discussing with, the mortgagor—

(I) information regarding homeownership options other than a mortgage insured under this subsection, other zero- or low-downpayment mortgage options that are or may become available to the mortgagor, the financial implications of entering into a mortgage (including a mortgage insured under this subsection), and any other information that the Secretary may require; and

(II) a document that sets forth the amount and the percentage by which a property subject to a mortgage insured under this subsection must appreciate for the mortgagor to recover the principal amount of the mortgage, the costs financed under the mortgage, and the estimated costs involved in selling the property, if the mortgagor were to sell the property on each of the second, fifth, and tenth anniversaries of the mortgage.

(iii) 2- AND 3-FAMILY RESIDENCES.—In the case of a mortgage involving a 2- or 3-family residence, such counseling shall include (in addition to the information required under clause (ii)) information regarding real estate property management.

(5) OPTION FOR NOTICE OF FORECLOSURE PREVENTION COUNSELING AVAILABILITY.—

(A) OPTION.—To be eligible for insurance under this subsection, the mortgagee shall provide mortgagor, at the time of the execution of the mortgage, an optional written agreement which, if signed by the mortgagor, allows, but does not require, the mortgagee to provide notice described in subparagraph (B) to a housing counseling entity that has agreed to provide the notice and counseling required under subparagraph (C) and is approved by the Secretary.

(B) NOTICE TO COUNSELING AGENCY.—The notice described in this subparagraph, with respect to a mortgage, is notice, provided at the earliest time practicable after the mortgagor becomes 60 days delinquent with respect to any payment due under the mortgage, that the mortgagor is so delinquent and of how to contact the mortgagor. Such notice may only be provided once with respect to each delinquency period for a mortgage.

(C) NOTICE TO MORTGAGOR.—Upon notice from a mortgagee that a mortgagor is 60 days delinquent with respect

to payments due under the mortgage, the housing counseling entity shall at the earliest time practicable notify the mortgagor of such delinquency, that the entity makes available foreclosure prevention counseling that may assist the mortgagor in resolving the delinquency, and of how to contact the entity to arrange for such counseling.

(D) ABILITY TO CURE.—Failure to provide the optional written agreement required under subparagraph (A) may be corrected by sending such agreement to the mortgagor not later than the earliest time practicable after the mortgagor first becomes 60 days delinquent with respect to payments due under the mortgage. Insurance provided under this subsection may not be terminated and penalties for such failure may not be prospectively or retroactively imposed if such failure is corrected in accordance with this subparagraph.

(E) PENALTIES FOR FAILURE TO PROVIDE AGREEMENT.—The Secretary may establish and impose appropriate penalties for failure of a mortgagee to provide the optional written agreement required under subparagraph (A).

(F) LIMITATION ON LIABILITY OF MORTGAGEE.—A mortgagee shall not incur any liability or penalties for any failure of a housing counseling entity to provide notice under subparagraph (C).

(G) NO PRIVATE RIGHT OF ACTION.—This paragraph shall not create any private right of action on behalf of the mortgagor.

(H) DELINQUENCY PERIOD.—For purposes of this paragraph, the term "delinquency period" means, with respect to a mortgage, a period that begins upon the mortgagor becoming delinquent with respect to payments due under the mortgage and ends upon the first subsequent occurrence of such payments under the mortgage becoming current or the property subject to the mortgage being foreclosed or otherwise disposed of.

(6) INAPPLICABILITY OF DOWNPAYMENT REQUIREMENT.—A mortgage insured under this subsection shall not be subject to paragraph (9) of subsection (b) or any other requirement to pay on account of the property, in cash or its equivalent, any amount of the cost of acquisition.

(7) MMIF MONITORING.—In conjunction with the credit subsidy estimation calculated each year pursuant to the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.), the Secretary shall review the program performance for mortgages insured under this subsection and make any necessary adjustments, which may include altering mortgage insurance premiums subject to subsection (c)(2), adjusting underwriting standards, and limiting the availability of mortgage insurance under this subsection, to ensure that the Mutual Mortgage Insurance Fund shall continue to generate a negative credit subsidy.

(8) UNDERWRITING.—For a mortgage to be eligible for insurance under this subsection:

(A) IN GENERAL.—The mortgagor's credit and ability to pay the monthly mortgage payments shall have been evaluated using the Federal Housing Administration's Tech-

nology Open To Approved Lenders (TOTAL) Mortgage Scorecard, or a similar standardized credit scoring system approved by the Secretary, and in accordance with procedures established by the Secretary.

(B) MULTI-UNIT PROPERTIES.—In the case of a mortgage involving a property upon which there is located a dwelling that is designed principally for a 2- or 3-family residence, the mortgagor meets such additional underwriting standards as the Secretary may establish.

(9) APPROVAL OF MORTGAGEES.—To be eligible for insurance under this subsection, a mortgage shall have been made to a mortgagee that meets such criteria as the Secretary shall establish to ensure that mortgagees meet appropriate standards for participation in the program authorized under this subsection.

(10) DISCLOSURE OF INCREMENTAL COSTS.—

(A) REQUIRED DISCLOSURE.—For a mortgage to be eligible for insurance under this subsection, the mortgagee shall provide to the mortgagor, at the time of the application for the loan involved in the mortgage, a written disclosure, as the Secretary shall require, that specifies the effective cost to a mortgagor of borrowing the amount by which the maximum amount that could be borrowed under a mortgage insured under this subsection exceeds the maximum amount that could be borrowed under a mortgage insured under subsection (b), based on average closing costs with respect to such amount, as determined by the Secretary. Such cost shall be expressed as an annual interest rate over the first 5 years of a mortgage.

(B) COORDINATION.—The disclosure required under this paragraph may be provided in conjunction with the notice required under subsection (f).

(11) LOSS MITIGATION.—

(A) IN GENERAL.—Upon the default of any mortgage insured under this subsection, the mortgagee shall engage in loss mitigation actions for the purpose of providing an alternative to foreclosure to the same extent as is required of other mortgages insured under this title pursuant to the regulations issued under section 230(a).

(B) ANNUAL REPORTING.—Not later than 90 days after the end of each fiscal year, the Secretary shall submit a report to the Congress that compares the rates of default and foreclosure during such fiscal year for mortgages insured under this subsection, for single-family mortgages insured under this title (other than under this subsection), and for mortgages for housing purchased with assistance provided under the downpayment assistance initiative under section 271 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12821).

(12) ADDITIONAL REQUIREMENTS.—The Secretary may establish any additional requirements for mortgage insurance under this subsection as may be necessary or appropriate.

(13) LIMITATION.—The aggregate number of mortgages insured under this subsection in any fiscal year may not exceed 10 percent of the aggregate number of mortgages and loans in-

sured by the Secretary under this title during the preceding fiscal year.

(14) PROGRAM SUSPENSION.—

(A) IN GENERAL.—Subject to subparagraph (C), the authority under paragraph (1) to insure mortgages shall be suspended if at any time the claim rate described in subparagraph (B) exceeds 3.5 percent. A suspension under this subparagraph shall remain in effect until such time as such claim rate is 3.5 percent or less.

(B) FHA TOTAL SINGLE-FAMILY ANNUAL CLAIM RATE.—The claim rate described in this subparagraph, for any particular time, is the ratio of the number of claims during the 12 months preceding such time on mortgages on 1- to 4-family residences insured pursuant to this title to the number of mortgages on such residences having such insurance in-force at that time.

(C) APPLICABILITY.—A suspension under subparagraph (A) shall not preclude the Secretary from endorsing or insuring any mortgage that was duly executed before the date of such suspension.

(15) SUNSET.—No mortgage may be insured under this subsection after September 30, 2009, except that the Secretary may endorse or insure any mortgage that was duly executed before such date.

(16) GAO REPORTS.—The Comptroller General of the United States shall submit a report to the Congress not later than 2 years after the date of the enactment of this subsection, and annually thereafter, regarding the performance of mortgages insured under this subsection.

(17) IMPLEMENTATION.—The Secretary may implement this subsection on an interim basis by issuing an interim rule, except that the Secretary shall solicit public comments upon publication of such interim rule and shall issue a final rule implementing this subsection after consideration of the comments submitted.

* * * * * * *

TITLE V—MISCELLANEOUS

* * * * * * *

ESTABLISHMENT OF GENERAL INSURANCE FUND

SEC. 519. (a) * * *

* * * * * * *

(e) The General Insurance Fund shall not be used for carrying out the provisions of sections 203(b) (except as provided in section 203(v)), 203(h) [and 203(i)], *203(i), and 203(l)*, or the provisions of section 213 to the extent that they involve mortgages the insurance for which is the obligation of the Cooperative Management Housing Insurance Fund created by section 213(k), or the provisions of sections 223(e), 233(a)(2), 235, 236 and 237; and nothing in this section shall apply to or affect mortgages, loans, commitments, or insurance under such provisions.

* * * * * * *

ADDITIONAL VIEWS

We are writing to express our support for H.R. 3755, the Zero Downpayment Act of 2004, as approved by the Committee on June 3, 2004.

We are pleased that a number of important consumer protections provisions designed to protect potential homebuyers were incorporated into the bill as reported by the Subcommittee on Housing and Community Opportunity and by the full Committee. In particular, we are pleased that the bill includes the following provisions:

- Require potential borrowers to receive prep-purchase counseling individually, and, when practicable, in person prior to the loan application;
- Require housing counselors to provide borrowers with a document setting forth the amount and the percentage by which the property must appreciate for the mortgagor to recover the principal amount of the mortgage, the costs financed under the mortgage, and the estimated costs involved in selling the property, if the mortgagor were to sell the property on each of the second, fifth, and tenth anniversaries of the proposed mortgage;
- Require lenders to provide a form at settlement to new homeowners giving them the option to agree to allow, but not require, the mortgagee to provide notice of the mortgagor's delinquency to a foreclosure-prevention counseling agency if the loan becomes 60 days delinquent.
- Require the Secretary to report a comparison of the rates of default and foreclosure each year for mortgages insured under the zero downpayment program, for single-family FHA-insured mortgages.

In conclusion we consider these consumer protections to be vital parts of this legislation, and therefore strongly support the bill as reported by the Committee.

BARNEY FRANK.
RUBÉN HINOJOSA.
MICHAEL E. CAPUANO.
ARTUR DAVIS.
MAXINE WATERS.
CAROLYN B. MALONEY.
LUIS V. GUTIERREZ.
WM. LACY CLAY.
BRAD MILLER.
RAHM EMANUEL.
BARBARA LEE
MELVIN L. WATT.
JOE BACA.
CHRIS BELL.
STEVE ISRAEL.
NYDIA M. VELÁZQUEZ.
HAROLD FORD.
DENNIS MOORE.
MIKE ROSS.
GREGORY W. MEEKS.
CAROLYN MCCARTHY.

SUPPLEMENTAL VIEWS

Although I certainly applaud the goal of H.R. 3755 and agree that increasing homeownership is a very noble and worthy objective for this Congress, I would like to register a number of concerns with this legislation as reported out of Committee.

First, I am concerned about the need for expanding the FHA insurance program and allowing it to compete with the private market and the numerous private organizations that already provide downpayment assistance. Currently, homeownership is at an all-time high of 68.6 percent, mortgage rates are low relative to our history, and you can hardly turn on the television, open your mail, or read a newspaper without seeing a plethora of offers from a number of different companies offering very competitive mortgage rates. An infinite number of private lenders are competing for the business of borrowers of all income levels, offering a wide variety of choices at very low costs. This is a clear example of our free market system working, and it is working well.

I am also very troubled by the taxpayer exposure that is likely to result from this legislation. To achieve homeownership, I believe a borrower needs to have some investment in the underlying home, which this bill does not provide. Right now, the foreclosure rate of FHA loans is at a record high of over three times the foreclosure rate of conventional mortgages. Furthermore, the delinquency rate for FHA loans is more than five times as high as it is for conventional loans. These rates are important to consider because of the huge number of FHA-insured loans that are currently outstanding. For instance, in FY 2003 alone this program had more than $400 billion in outstanding loans. It is unfortunate that we do not hear much about taxpayer exposure in this Congress, and that must change. Congress cannot continue to put American taxpayers at risk of having to bail out the federal government due to misguided public policy decisions.

Another concern I have is supporting the expansion of FHA without considering the effectiveness of the already massive number of housing programs aimed at assisting low and moderate income people. If a role exists for the federal government in providing housing assistance for individuals and families, it is my hope that this Committee would work to identify wasteful and duplicative federal housing programs not serving their intended purpose and either consolidate or eliminate these programs. Additionally, it is important to remember that the 108th Congress has already approved nearly $800 million downpayment assistance for low and moderate income people.

Finally, there are many other obstacles to homeownership that must be considered in addition to downpayment assistance. Many in America cannot afford to save enough money to own their own home because much of their paycheck is gutted by federal taxes.

Mortgage lenders and financial institutions are burdened with some of the highest levels of taxation, litigation, and regulation that our nation has seen, preventing them from making more home loans in their communities.

There is no greater housing program in the history of this nation than the American free enterprise system. Our housing market will strengthen and more Americans will be able to own their own homes if Congress focuses on the real obstacles potential homeowners face. In order for homeownership rates to increase, congress should concentrate their efforts on reducing the burdens that excessive taxation, litigation and regulation impose on individuals and families wishing to participate in the American dream.

JEB HENSARLING.

DISSENTING VIEWS OF RON PAUL

The Zero Downpayment Act of 2004 (H.R. 3755) waives the requirement that a homebuyer make a downpayment in order to be eligible for a Federal Home Administration (FHA) insured mortgage. This bill distorts the housing market, and thus weakens the general economy. Repealing the downpayment requirement could also increase the default rate of FHA insured mortgages and thus increase the costs of the FHA insured mortgage program to the taxpayer. These concerns alone would justify rejecting this bill. However, my main objection to this legislation is that it furthers the something-for-nothing mentality that is incompatible with a free society.

The requirement that homebuyers make a downpayment ensures that a prospective homebuyers is a worthy credit risk and reduces the likelihood of default. After all, people are less likely to abandon property if they have invested substantial savings in the property in the form of a downpayment. The sponsors of H.R. 3755 claim that modern methods of evaluating whether someone poses a good credit risk eliminates the need for the downpayment requirement. However, while modern techniques to measure credit worthiness can measure one's income and credit history, they cannot measure a person's willingness and ability to delay current consumption to ensure one can make monthly mortgage payments. Eliminating the downpayment requirement makes it more likely that people unwilling to save to insure they can make their monthly mortgage payments will receive FHA insured home loans. Therefore, this program increases the rate of default on FHA loans, and thus increase the costs to taxpayers of the FHA program. HUD claims it can recoup the loss of a mortgage by increasing premium payments. However, if the zero mortgage policy raises the default rate, the higher premium will be useless in recouping revenue lost from eliminating the downpayment requirement.

Recently, a mortgage broker told a friend of mine that his business was experiencing an increase in defaults. According to this mortgage broker, one reason for this was the failure to require downpayments; private industry has excessively relied on credit history information instead of a down payment to entice more people into the home market. H.R. 3755 authorizes the federal government to repeat this folly. Does anyone really believe the federal government will succeed where the private sector has failed? Before answering that question, my colleagues should consider that FHA foreclosure rates are already at record levels! Of course, if default rates raises, Congress can pass a new program making the taxpayers responsible for the monthly payments of holders of FHA insured loans.

H.R. 3755 will harm the economy by artificially increasing the demand for housing, causing resources to be diverted from other uses into housing to meet this government-created demand. Allocating resources based on market-distorting government programs insures that those resources will not be devoted to their highest-valued use. Thus, government interference in the economy results in a loss of economic efficiency and, more importantly, a lower standard of living for all citizens. The only policy guaranteed to maximize economic growth and the well being of citizens is to allow the actions of private individuals in a free-market to determine the allocation of resources.

Government policies have already artificially inflated the demand for housing, creating a housing bubble. While the temporary effects of this bubble may appear beneficial to homebuyers and homebuilders, eventually they will suffer when the housing bubble bursts. Encouraging more people to enter an already-inflated market will only increase the economic damage and human suffering the bursting of the housing bubble will cause.

By increasing the demand for housing, H.R. 3755 will also increase the price of housing. Those unable to qualify for an FHA insured mortgage might find themselves priced out of the housing market. Thus, an unintended consequence of this bill could be to reduce some people's ability to obtain affordable housing!

Finally, the most important reason to reject this bill is that it undermines liberty. It is bad enough that this committee has already expanded the handout state with the misnamed "America Dream Downpayment Act." This bill would now relieve those already receiving help from the taxpayers through the FHA program of the modest requirement that they save for a downpayment. Every time Congress makes it easier for people to receive handouts from the government, we erode people's willingness and ability to care for themselves. Eventually, the recipients of this government largesse stop thinking of themselves as independent citizens and begin viewing themselves as wards of the state. It is impossible to maintain a free society when a large number of people look to the state to meet every one of their needs.

By relieving participants in the Federal Home Administration program of the requirement that they pay a downpayment, H.R. 3755 increases the risk of default, thus increasing the program's cost to the taxpayer. H.R. 3755 also encourages the something for nothing mentality that is inconsistent with a free society. Therefore, the Financial Services Committee should reject this bill.

RON PAUL.

○