

**Summary of Housing Provisions in Dodd-Shelby Foreclosure Bill  
As Approved by Full Senate (Amendment 4387 to H.R. 3221) (4/10/2008)**

**Prepared by CHAPA (April 14, 2008)**

The Senate foreclosure bill approved on April 10 is divided into 11 titles. Seven include provisions that relate directly to housing programs and policies: (I) FHA Reform (II) Foreclosures Protection for Military, (III) Aid to Cities and Towns; (IV) Increased Funding for Housing Counseling (V) New Mortgage Disclosure requirements for variable rate/variable payment mortgages; (VI) Tax Credit for purchasers of foreclosed homes; Increase in Tax-Exempt Volume cap, and new Standard Deduction for property taxes for non-itemizing homeowners and Title VIII relates to Real Estate Investment Trusts (REITs) and Title IX to Veterans Adaptive Housing Needs and Benefits.

The major changes in housing provisions between the draft and final versions of the bill were:

- An \$80 million reduction in funding for states and localities to address foreclosed properties (from \$4 billion to \$3.92 billion) and addition of a requirement that any profits from sale or rental of foreclosed/abandoned properties go back to U.S. Treasury if received 5 or more years after bill enactment
- An \$80 million increase in new funding for housing counseling (for a new total of \$180 million), including \$30 million specifically to be used to hire attorneys
- Addition of language allowing Federal Home Loan Bank Affordable Housing Program (AHP) funds to be used over the next two years to refinance mortgages for households with incomes at or below 80% of median
- Small change in the distribution formulas for the city/state foreclosure funding and increase in tax-exempt bond authority to provide a minimum amount for small states (the tax-exempt cap is raised accordingly).
- Inclusion of effective dates for new mortgage disclosure rules (12 months for most, date of regulations issuance or 30 months if earlier for disclosures regarding variable rate mortgages)

**TITLE I – FHA MODERNIZATION ACT OF 2008  
Subtitle A – Building American Homeownership Act of 2008**

**§112 – FHA Loan Limits** Starting January 1, 2009, raises allows FHA to insure mortgages of up to 110% of area median single family home price as long as that figure is between 65% and 132% of the then-current conforming loan limits for Fannie Mae and Freddie Mac. (It adjusts the maximum loan limit for 2-4 unit properties to 1.28%, 1.55% and 1.92% of the single family limit). In addition, the FHA floor can be no lower than the dollar limit in effect on October 21, 1998. Loans cannot exceed 100% of appraised value (up from 97.15-98.65 cap in current law).

- These limits are below the 125% of area median single family limit temporarily authorized under the Economic Stimulus bill and the minimum/maximums of 65-175% of GSE conforming loan limits but higher than previous limits of 95% of area median single family price (as long as between 48-87% of the Freddie Mac conforming loan limit).

**§113 – Downpayment requirements** Raises minimum cash downpayment requirement to 3.5% of appraised value (rather than 3% of HUD's estimate of the cost of acquisition). Continues to allow funds borrowed from family members to be used for downpayment as long as combined total of any associated lien plus the mortgage does not exceed 100% of appraised value. New language bans use of any funds to meet the minimum downpayment requirement that come from the seller or another person or entity that would benefit from the transaction.

**§114 - Mortgage Insurance Premiums** Raises maximum upfront mortgage insurance premium for Mutual Mortgage Insurance Fund to 3% (up from 2.25%) generally and to 2.75% for first-time homebuyers who graduate from an approved homebuyer counseling program (up from 2%).

**§115 – §203(k) Rehab Loans** - places program in the Mutual Mortgage Insurance Fund (rather than General Insurance Fund)

**§117 – Condominium Insurance** Limits insurance on unit mortgages under §243(c) to projects where blanket mortgage on project is FHA-insured. Allows mortgages for manufactured housing. Unlike House-passed FHA bill, does not allow 40 year mortgage term.

**§118 – Mutual Mortgage Insurance Fund** Clarifies that MMIF is subject to the Federal Credit Reform Act (requiring the net cost of loans and loan guarantees be calculated in federal budget. Requires HUD to arrange for an annual independent review of MMIF actuarial soundness and report findings to Congress with any recommendations of steps needed to maintain soundness (also requires HUD to report quarterly to Congress on financial status of Fund). Report must also include an evaluation of quality control procedures for underwriting of insured loans, risk characteristics of loans by borrower and by financial institution originating or funding the loans. Establishes two operational goals for Fund – (1) to minimize default risk to Fund and homeowners and institute “fraud prevention quality control screening” within 18 months and (2) meet housing needs of borrowers. The Senate bill *excludes two House-passed goals* – charging risk-based premiums and curtailing adverse selection (ending up with riskiest borrowers).

**§122 - Home Equity Conversion Mortgage (HECM) program** Sets uniform national maximum mortgage amount at the GSE conforming loan limit (rather than local median single family home price). Requires mortgage originator to be HUD-approved and bans involvement of individual originators in sale of other financial or insurance products. Allows use with cooperative units and purchase of a 1-4 unit property. Requires HUD to cap origination fees equal to 1.5% (including fees to correspondent mortgagees) of the maximum claim, with adjustments, and subject to a minimum amount and allows fee to be financed with mortgage

Specifies that mandated counseling must be provided by an independent third party and that counselors must meet qualification standards and follow counseling protocols to be established by HUD within 12 month of bill enactment. Allows HUD to use some mortgage insurance premium revenues to fund HECM counseling and disclosure requirements, including counseling for owners who decide not to take out an HECM.

Does not lift current cap (250,000) on the number of HECM mortgages nationwide. Requires Comptroller General (rather than HUD) to study cost and availability of credit under HECM and effect of new HECM cost or fee limits and report findings to Congress within 12 months of bill enactment.

**§123 – HUD/FHA Energy Efficient Mortgages Program** Updates cost limits for energy efficient improvements to the greater of 5% of the FHA loan limit or 2% of the FHA loan plus mortgage insurance premium. Caps aggregate number of insured mortgages at 5% of the total FHA-insured 1-4 units mortgages during the prior fiscal year.

**§124 – Pilot Program for Automated Process for Borrowers with Limited Credit History** Authorizes HUD to implement a pilot program to create an automated process for generating credit ratings for borrowers who have insufficient credit histories now to generate ratings. The pilot can look at information such as rent and utility payment history and other items HUD deems

appropriate. The total number of loans insured under this pilot is capped at 5% of total number of mortgages for 1-4 family homes insured during prior fiscal year. The Comptroller General must report to Congress within 2 years on program utilization and its impact on FHA insurance funds.

**§125-Homeownership Preservation** – Requires HUD and the FHA Commissioner, in consultation with industry representatives, NeighborWorks and other entities involved in foreclosure prevention, to develop and implement a plan to improve FHA’s loss mitigation process and report such plan to Congress.

**§126-Use of FHA Savings to Improve FHA Technologies, Procedures, Staffing, etc.** Authorizes appropriation of \$25 million a year for five years (FY2009 through FY2013) from the FHA’s negative credit subsidy to increase funding to improve FHA technology, processes, fraud elimination and staffing. Funds shall only be made available each after HUD determines FHA can afford it (i.e. fund is sound and sufficient negative credit subsidy is available after compliance with capital ratio requirements). HUD must obtain recommendations from mortgage lending industry and secondary markets on how best to update procedures and processes and submit progress report to Congress within 12 months of bill enactment.

**§127 – Post-Purchase Housing Counseling Eligibility** – expands eligibility for HUD counseling to homeowners facing financial difficulty pay mortgage due to factors other than income loss (e.g. divorce, medical expenses, unexpected repair costs, property tax increases) and drops language limiting to first-time homebuyers. Adds income limit (annual income established by HUD as “low or moderate income”).

**§128- Pre-Purchase Homeownership Counseling Demonstration** Authorizes new HUD program to test alternative forms of pre-purchase counseling for first-time homebuyers approved for a home loan with a loan to value ratio of 97% to 98.5%. Counseling can be delivered by phone, online, in-person one-on-one, through classes or other methods HUD chooses. The pilot can deliver such services to up to 3,000 households a year. The program is authorized until 3 years from the date of bill enactment and HUD must track payment history and delinquency rates of participants until the 5th anniversary of bill enactment.

**§129 – Fraud Prevention** Adds language to ensure fraudulent activity in connection with FHA programs is penalized in the same way as fraud against other federal entities or against federally-insured or chartered financial entities.

**§130 – Limitation on Mortgage Insurance Premium Increases** Until October 1, 2009, forbids any increases in FHA mortgage insurance premiums above levels in effect on October 1, 2006 unless HUD determines increases are necessary to avoid new budget appropriation to cover costs. HUD must provide at least 30 days advance notice of any increase both in the Federal Register and by notifying the Senate Banking and House Financial Services Committees unless there is need for more rapid implementation.

**§133 – Moratorium on Implementation of Risk-Based Premiums** For 12 months from date of bill enactment, prohibits HUD from implementing risk-based premiums for FHA products as described in the Notice published in the Federal Register on 9/20/2007.

**Subtitle B – FHA Manufactured Housing Loan Modernization Act of 2008** Lifts limit on value of manufactured home loans and associated lot loans in financial institution portfolios.

- Updates (raises) maximum loan limits and requires indexing future limits annually. Requires HUD to establish the index within one year of bill enactment, based on Census data on manufactured home prices.
- Increases allowed upfront mortgage insurance premium from current 1% to up to 2.25% of original insured principal and allows annual premiums of up to 1% of principal balance.
- Requires HUD to revise underwriting criteria for manufactured homes and lots within 6 months of bill enactment to ensure program is financially sound.
- Bans kickbacks and unearned fees in connection with financing manufactured homes.
- Imposes minimum leasehold requirements for FHA-insured loans for manufactured homes – leasehold term must run at least 3 years from date of loan origination with annual renewal options after that and require at least 180 day notice to tenant of lease termination if manufactured community is closing.

## **TITLE II – MORTGAGE FORECLOSURE PROTECTIONS FOR SERVICE MEMBERS**

- Temporarily increases the VA loan guaranty amount (for loans originated between date of bill enactment and 12/31/2008) from 25% of the GSE conforming loan limit to 125% of the area median price for a single family home if higher (latter capped at 175% of the GSE limit for year loan is originated).
- Requires Department of Defense to develop/implement foreclosure prevention counseling program for service members returning from abroad.
- Temporarily lengthens the time a lender must wait before starting foreclosure from three months to nine months after a soldier returns from service (provision would become effective upon bill enactment and expire 12/31/2010).
- Extends period on which mortgage interest is capped at 6% - current law limits to period when on active duty abroad – bill would continue cap for one year after return. Bill also adds fees to the definition of interest.

## **TITLE III – EMERGENCY ASSISTANCE TO REDEVELOP ABANDONED AND FORECLOSED HOMES**

- Appropriates \$3.92 billion for States and units of local government for the redevelopment of abandoned and foreclosed upon homes and residential properties and \$180 million for housing counseling activities described in Title IV.

- Funds (“to be treated as if CDBG”) to be allocated under a formula to be devised by HUD, based on -number and percentage of “home foreclosures” in each state or unit of local government, number and % of homes financed with subprime loans and number and percentage of homes in default or delinquency. Every State shall receive at least 0.5% of the funds allocated (\$19.6 million).
- HUD must devise formula within 60 days of bill enactment and distribute funds within 30 days of devising formula. Localities must “use” funds within 18 months of receipt.
- States and localities must give priority for assistance to areas with greatest needs, including those with the highest percentage of home foreclosures, the highest percentage of homes financed with “a subprime mortgage related loan”, and likely to face a significant rise in home foreclosures.
- Eligible uses include establishing financing mechanisms for purchase and redevelopment of foreclosed residential properties (e.g. soft-second, loan loss reserves, shared-equity loans for LMI homebuyers, purchase and rehab abandoned or foreclosed properties for rent or resale, land banking of foreclosed homes and demolition of blighted structures.

- Restrictions: All purchases must be below current market appraised value and resales to homebuyer owners can't exceed price to acquire/rehab. No funds can be used for eminent domain not related to public use.
- Income targeting: Funds can only be used to assist individuals and families with incomes at or below 120% AMI and at least 25% of funds must be used to purchase/redevelop abandoned or foreclosed properties that will be used to house individuals or families at or below 50% AMI.
- Five Year Revolving Fund – During the five year period following the date of bill enactment, States shall keep and reuse any *profits* [rental and sales proceeds which exceed acquisition and redevelopment costs (including reasonable development fees) for eligible activities. After that, all profits and revenues from sale, rental, rehab or redevelopment of abandoned or foreclosed residential property must go to the U.S. Treasury as miscellaneous receipts unless HUD approves a request to use the funds for the purposes authorized under this bill.
- States and localities can keep all other revenues (i.e. from financing mechanisms, landbanking, demolition) to further the intent of this bill.
- CDBG requirements: HUD can modify CDBG requirements for this program except fair housing, labor standard and environmental requirements – must notify Senate Banking and House Financial Services Committees 10 days in advance. No local match required.
- Long term use restrictions: HUD shall try to ensure by rule or order “to the maximum extent practicable and for the longest feasible term” that properties assisted under this program remain affordable at the income levels above.

### **TITLE III AND TITLE IV – HOUSING COUNSELING**

§301 (Title III) appropriates an additional \$180 million<sup>1</sup> for foreclosure mitigation counseling through the Neighborhood Reinvestment Corporation (NeighborWorks). §401 generally specifies that a new appropriation is available on the same terms and conditions as \$180 million previously provided in the FY2008 budget (as enacted 12/16/2007).<sup>2</sup>

- *\$30 million* of the new money is to be distributed to HUD- or NRC-approved intermediaries *to hire lawyers* to help owner-occupants with legal issues that can't be handled by current counseling staff. Requires NRC to give priority for this funding to counseling intermediaries and legal organizations that provide legal help in the 100 metropolitan statistical areas with the highest “home foreclosure rates” and that could begin using funds within 90 days of receipt. Funds can't be used to provide or obtain legal representation on behalf of owner for civil litigation.

§402 requires grantees to coordinate with nonprofits operating national or statewide toll-free foreclosure prevention hotlines including those serving as a consumer referral source and data repository.

### **TITLE V – MORTGAGE DISCLOSURE IMPROVEMENT ACT OF 2008**

§ 502 Extends residential mortgage disclosure requirements to all extensions of credit that are secured by the dwelling of a consumer (including refinancings) and:

- Effective 12 months from bill enactment , amends disclosure requirements by adding requirement that they include a statement in conspicuous type size and format that “You are not required to complete this agreement merely because you have received these disclosures or signed a loan application” and be furnished to the borrower at least 7 business days before closing.
- Effective upon the earlier of issuance of regulations or *30 months from bill enactment*, revises payment schedule disclosures when the credit extension has a variable interest rate or variable payments, adding a requirement that the payment schedule be labeled “Payments will Vary Based on Interest Changes” and state in conspicuous type size and format examples of

adjustments to the regular required payment based on the change in interest rates under this contract, including an example showing the maximum payment amount. Requires Federal Reserve Board to conduct consumer testing, before issuing regulations to implement this requirement, to determine the appropriate format so disclosures are easily understood.

- Effective 12 months from bill enactment, requires creditor give borrower a corrected statement at least 3 days before consummation of the transaction if the annual percentage rate of interest provided in the earlier disclosure is no longer accurate. Consumers can waive or modify this requirement in writing but only in the case of a personal emergency which they must also describe.
- Adds presumption of receipt if disclosures are mailed, stating that the consumer shall be considered to have received them 3 business days later.
- Consumers must receive required disclosures before paying any fee to the creditor or other person in connection with their application for a residential mortgage transaction. However, they may pay a “bona fide and reasonable” fee for lender to obtain consumer’s credit report before disclosures are received.
- Doubles minimum and maximum civil penalties for violating Act (in addition to damages and other awards) to \$400 and \$4000 respectively in case of an individual action related to a credit extension related to a person’s real property or dwelling.

§503 Loosens the definition of a **bank “public welfare activity”** from an activity that “promotes the public welfare by benefiting primarily low- and moderate- income communities or families” to an activity that “is designed primarily to promote the public welfare, including the welfare of low and moderate income communities or families.” This will enable investments benefiting a broader range of incomes and communities.

§504 **Federal Home Loan Bank Affordable Housing Program (AHP)** For two years from date of bill enactment, authorizes the use of AHP funds to refinance first mortgage loans on primary residence of a family with an income at or below 80% of median.

## **TITLE VI – TAX-RELATED PROVISIONS**

**§601 – Four-Year Carryback of Certain Operating Losses** According to Dodd summary, this provision aids homebuilders and other businesses hit by the current economic downturn by extending a law that allows corporations to apply excess net operating losses to tax returns from prior profitable years and receive any applicable refunds. For 2008 and 2009 losses, the provision would extend the “net operating loss (NOL) carryback” to four years (back to 2004 and 2005, respectively) from the two years currently in law. Also suspends 90% Alternative Minimum Tax for taxable years ending after 12/31/97 for companies using this carryback. Bill also requires Treasury to develop regulations to prevent abuse of the intent of these provisions.

### **§602- Increased Volume Cap for Tax-Exempt Bonds, Temporary Change in Allowed Uses**

- Authorizes \$10.134 billion increase in calendar year 2008 tax-exempt bond authority nationwide, to be allocated to states based on population, except that small states shall receive a minimum allocation of \$90.3 million
- The extra authorization can only be used to finance qualified rental projects or mortgage issues. Authorization can’t be carried forward nor bonds issued after calendar year 2010.
- Interest earned on these bonds is exempt from alternative minimum tax, as is interest earned on any qualified veterans mortgage bond issued between date of bill enactment and 12/31/2010.
- Generally allows tax-exempt bonds to be used for refinance mortgages originally financed through a “qualified subprime loan” (defined as an adjustable rate single family mortgage loan

originated during 2002-2007 that the bond issuers determines is likely to cause financial hardship to the borrower if not refinanced”).

**§603 – Tax Credit for Purchase of Foreclosed Homes** Allows individuals and married couples to take a tax credit of \$7,000 (or actual purchase price if less) in connection with the purchase of a “qualified principal residence” (single family home upon which foreclosure has been filed and is either new (never occupied but construction began by 9/1/2007) or was occupied at mortgagor at least one year prior to the foreclosure filing. Credit shall be divided among buyers (i.e. if two individuals filing separately, they could each get a credit of \$3,500.

- One time only
- Credit must be taken in equal amounts over two years; if the taxpayer disposes of the property or fails to occupy it as a principal residence any time in the 24 months following purchase, the remaining credit will be disallowed for the taxable year in which the disposition or failure to occupy occurred, and succeeding year if disallowed in year 1.
- Applies only to purchases made in taxable years ending after date of bill enactment (e.g. starting in 2008).

**§604 – Standard Deduction for Real Property Taxes for Non-Itemizers** Starting in taxable year 2008, allows taxpayers who do not itemize to deduct state and local real property taxes paid or accrued during the year up to a maximum deduction of \$500 (\$1000 if joint return).

- *Deduction only allowed if the rate of tax in the jurisdiction for all residential real property taxes has not been increased at any time after April 2, 2008 and before January 1, 2009.*

**Title XI – SENSE OF THE SENATE** States that Senate supports a policy of non-interference regarding local government requirements that holders of foreclosed properties maintain them.

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<sup>1</sup> Language increasing appropriation from \$100 million to \$180 is in §304 of Title III.

<sup>2</sup> FY2008 budget terms require NRC to distribute the funds to HUD- or NRC-approved counseling intermediaries to assist states and areas with high rates of default and foreclosure, particularly in the subprime housing market. The funds cannot be used for payments to lenders or owners to discharge mortgage or pay down debt. Funds can only be used to assist owner-occupants in default or *in danger* of default. Eligible activities include activities likely to prevent foreclosure and result in long-term mortgage affordability “*or another positive outcome*”, such as analysis of borrower’s financial situation, counseling regarding assumption of mortgage by a non-federal third party, advice regarding restructuring and refinancing options, approval of a workout by all interested parties and outreach and advertising. Up to \$5 million can be used for capacity building and administration and at least \$50 million must be distributed within 60 days of bill enactment.