

“Emergency Economic Stabilization Act of 2008” (EESA) – H.R. 1424
Summary of Foreclosure-Related Provisions

Prepared by Citizens’ Housing and Planning Association
October 7, 2008

Title I of the [“bailout” bill \(H.R. 1424\)](#), signed into law on October 3, creates a new Troubled Assets Recovery Program (TARP) under which the Treasury Department can purchase residential and commercial mortgages, mortgage backed securities and other mortgage-related assets originated or issued before March 14, 2008, as well as other assets as needed.

Four sections include language related to foreclosure assistance and renter protections. Three lay out steps the Treasury Department must take regarding the mortgage-type assets they acquire and that other federal agencies (FDIC, FHFA, FHA) must take in relation to any mortgage-type assets they own, requiring them to: (1) develop a plan to “maximize” assistance to owners; (2) encourage loan modifications that recognize owners’ for operating costs and that protect tenants with leases and/or rent subsidies; and (3) develop a coordinated plan to prevent foreclosures and encourage modifications. The fourth provision modifies the new FHA HOPE for Homeowners program, expanding eligibility and allowing upfront payments to subordinate lienholders to facilitate loan modifications. The bill also creates a Congressional Oversight Panel that, among other things, must review the financial market regulatory system and recommend improvements by January 20, 2009 and requires the Treasury Department to do the same by April 30, 2009.

§103 – Considerations Requires the Treasury to consider nine factors in exercising its powers, including the need to protect taxpayers, to need to stabilize financial institutions, the need “*to help families keep their homes and to stabilize communities,*” and “the utility of purchasing other real estate owned and instruments backed by mortgages on *multifamily properties.*”

§109 - Foreclosure Mitigation Actions

(a) Residential Mortgage Loan Servicing Standards - To the extent Treasury acquires mortgages, mortgage backed securities and other assets secured by residential real estate, *including multifamily housing*, the Treasury Secretary:

- Must implement “a plan that seeks to maximize assistance for homeowners” (the plan shall include protecting Federal, State and local rental subsidies and protections and ensure that any modification takes into account the need for operating funds to maintain decent and safe conditions at the property).
- Must use his/her authority to “encourage the servicers of the underlying mortgages, considering net present value to the taxpayer, to take advantage of” the FHA HOPE for Homeowners program or other available programs to minimize foreclosures.”
- May “use loan guarantees and credit enhancement to facilitate loan modifications to prevent avoidable foreclosures.”

(b) Coordination - Requires the Treasury Secretary to coordinate with the FDIC, the Federal Reserve Board of Governors, FHFA, HUD and other government entities that hold troubled assets, to:

- “attempt to identify opportunities for the acquisition of classes of troubled assets that will improve the ability of the Secretary to improve the loan modification and restructuring process, and
- *where permissible*, to permit bona fide tenants who are current on the rent to remain in their homes under the terms of the lease.”

- (c) Consent to Reasonable Loan Modification Requests – requires the Secretary, upon any request arising under existing investment contracts, to consent “where appropriate, and considering net present value to the taxpayer, to reasonable requests for loss mitigation measures” including term extensions, rate reductions, principal write-downs, increases in the proportion of loans in the trust that may be modified or removal of other limitations on modifications.

§110 – Assistance to Homeowners (by federal property managers) – Without superceding their duties or requirements, requires each “federal property manager” (FDIC, FHFA, Federal Reserve) that holds, owns or controls mortgages or assets backed by residential mortgages to:

- Develop and “implement a plan that seeks to maximize assistance for homeowners” within 60 days of bill enactment.
- Use their authority to encourage servicers to use the FHA HOPE for Homeowners program or other available programs to minimize foreclosures.
- Ensure that loan modifications continue for any existing federal, state or local rental subsidies and protections and take into consideration the need for operating funds to maintain decent and safe conditions at the property.
- Consult with each other in developing their plans and to extent possible use consistent approaches in implementing these requirement.
- Report to Congress monthly, starting 60 days from bill enactment, on the number and types of loan modifications made and the number of actual foreclosures during the reporting period.
- In cases where they hold an interest in but do not own obligations secured by residential mortgages, to encourage servicers to implement loan modifications using the same approaches as above and to facilitate such modifications to the extent possible.

§124 Amendments to FHA HOPE for Homeowners Program Makes several changes to the new FHA program to help at-risk owners to refinance into more affordable mortgages:

- Expands the class of eligible homeowners (previously limited to those with mortgage debt to income ratios above 31% as of March 1) to cover owners who, due to a mortgage reset, have since hit that ratio or could in the future.
- Allows the Federal Housing Finance Oversight Board (Treasury, Federal Reserve, HUD, FHFA Director) to raise the program’s 90% loan to value limit on new mortgages, if it decides a higher limit is warranted.
- Authorizes payments to subordinate lienholders in order to facilitate refinancings, and includes them in the net costs that can be financed with HOPE Bonds.

Oversight and Regulatory Reform

- **§105(e)** requires the Treasury Secretary to review the current financial market regulatory system, include the GSE regulatory system, and report its findings to Congressional Committees by April 30, 2009, along with any recommendations, including whether the regulatory system should be extended to cover participants not currently regulated.
- **§125** establishes a five member Congressional Oversight Panel to report monthly to Congress on activities under TARP, including the effectiveness of foreclosure mitigation efforts. The first report will be due 30 days after the Treasury Department begins exercising its new authority under TARP. The Panel must also conduct a regulatory review similar to that required of the Treasury and report their recommendations by January 20, 2009. The Panel will include 2 members of the House (1 from each party), 2 members of the Senate (1 per party) and 1 member jointly chosen by the House Speaker and Senate majority leader.

Relationship to Existing Law

- **§119(b)(1)** (Treatment of Homeowners' Rights) clarifies that the terms of any residential mortgage loan that is part of any purchase by the Secretary under this Act shall remain subject to all claims and defenses that would otherwise apply, notwithstanding the exercise of authority by the Secretary under this Act..
- §119(b)(2) states that actions by the Treasury under Act this shall not impair claims or defenses that would otherwise apply to persons other than the Secretary but also includes safe harbor language for servicers: "Except as established in any contract, a servicer of pooled residential mortgages owes any duty to determine whether the net present value of the payments on the loan, as modified, is likely to be greater than the anticipated net recovery that would result from foreclosure to all investors and holders of beneficial interests in such investment, but not to any individual or groups of investors or beneficial interest holders, and shall be deemed to act in the best interests of all such investors or holders of beneficial interests if the servicer agrees to or implements a modification or workout plan when the servicer takes reasonable loss mitigation actions, including partial payments."