

Housing and Economic Recovery Act of 2008, H.R. 3221

NCSHA Summary

Housing Assistance Tax Act of 2008 (Housing Bond and Credit Cap Increase and Modernization Provisions)

Housing Credit Modifications

- Provides a 20-cent per capita Housing Credit cap increase for 2008-2009 and increases the small state minimum by 10 percent for those same years.
- Repeals permanently the Alternative Minimum Tax on Housing Credits for buildings placed in service after December 31, 2007.
- Sets the 70 percent present value (“9 percent”) Credit applicable percentage at the greater of current law and 9 percent, with a sunset date of December 31, 2013, effective for buildings placed in service after date of enactment.
- Eliminates below-market federal loans from the definition of federally subsidized properties, allowing the 9 percent Credit on all federally subsidized properties, except for tax-exempt bond financed properties, effective for buildings placed in service after date of enactment.
- Clarifies that the eligible basis of a building shall not include any costs financed with the proceeds of a federally funded grant, effective for buildings placed in service after date of enactment.
- Eliminates the prohibition on the 30 percent basis boost for HOME-assisted properties in qualified census tracts (QCT) or difficult development areas (DDA), effective for buildings placed in service after date of enactment.
- Authorizes allocating agencies to award a 30 percent “basis boost” to buildings that states determine need the boost to be economically feasible, effective for buildings placed in service after date of enactment.
- Clarifies the general public use test to explicitly allow Credit developments that establish tenancy restrictions for persons with special needs, tenants who are involved in artistic or literary activities, and persons who are members of a specified group under a Federal or state program or policy that supports housing for such a specified group, effective for buildings placed in service before, during, and after date of enactment.
- Repeals the Housing Credit ten-year (anti-churning) rule for acquisition of Housing Credits for projects currently subsidized pursuant to certain specified HUD and USDA housing programs and similar state assisted programs, effective for buildings placed in service after date of enactment.
 - Programs included are HUD Section 8, Section 221(d)(3), Section 221(d)(4), Section 236, and USDA Section 515 and any other housing program administered by HUD or the Rural Housing Service of the Department of Agriculture.
- Modifies HUD’s income limit methodology for calendar years after 2008 to require HUD to increase applicable area median incomes by the amount area median incomes rise, even if the HUD-determined area median incomes would be frozen under HUD’s 2007 and 2008 income limit methodology.

- Adds energy efficiency and historic character to items that must be factored into state QAPs, effective for allocations made after December 31, 2008.
- Modifies the Housing Credit student rule to make children who received foster care assistance eligible for Housing Credit apartments, effective for determinations after date of enactment.
- Defines area median income in rural areas as the greater of the area median income and the national non-metropolitan median income, effective for income determinations made after date of enactment, applicable only to 9 percent Credit developments.
- Increases the minimum rehabilitation threshold for acquisition and rehabilitation Credits to the greater of 20 percent of eligible basis and \$6,000 per unit, effective for Housing Credit allocations made after date of enactment for non-bond-financed developments and effective for bonds allocated after date of enactment for bond-financed developments. Adjusts per unit limit for inflation in future years.
- Expands the allowable basis for community service facilities, effective for buildings placed in service after date of enactment.
- Relaxes the Housing Credit related party rule restricting investment in properties owned by related parties, effective for buildings placed in service after date of enactment. Expands allowable related party interest to 50 percent from 10 percent.
- Allows Housing Credits on properties financed with HUD's Section 8 Moderate Rehabilitation program, effective for buildings placed in service after date of enactment.
- Extends the time developers have to meet the 10 percent carryover allocation test to one year from allocation, effective for buildings placed in service after date of enactment.
- Eliminates the annual income recertification requirement for 100 percent qualified unit developments, applicable for years ending after the date of enactment.
- Repeals the Housing Credit recapture bond rule, effective for future dispositions and past dispositions if: a) it is reasonably expected the building will continue to be operated as a qualified low-income building; and b) the taxpayer elects to be subject to the new longer statute of limitations.
- Excludes military employees' basic allowance for housing from the definition of income if they are housed in a building located in a county with a military base that had its population grow by 20 percent or more between December 31, 2005 and June 1, 2008, or any county adjacent to such a county. Applies to new and existing 9 percent Credit buildings for determinations made after date of enactment and before January 1, 2012.

GAO Study

- Directs the GAO to complete a report analyzing the implementation of the bill's Housing Credit changes and the distribution of Housing Credit allocations before and after the effective date of such modifications by December 31, 2012.

Housing Bond Provisions

- Provides \$11 billion in new tax-exempt Housing Bond authority in 2008 for single-family and multifamily housing activities. Authority is available through 2010.
- Clarifies that unused authority in 2008 and 2009 can be carried forward, but amounts carried forward must be used for housing issues.

- Makes refinancing an eligible MRB activity for 2008-2010 for adjustable rate single-family mortgages made after December 31, 2001, and before January 1, 2008, that the bond issuer determines would be reasonably likely to cause financial hardship to the borrower if not refinanced.
- Exempts permanently Housing Bonds from the Alternative Minimum Tax, effective for bonds issued after date of enactment.
- Allows HFAs to use Housing Bonds for single-room occupancy units, effective for bonds issued after date of enactment.
- Modifies the tax-exempt bond next available unit and student rules to make them consistent with the Credit rules, effective for bonds issued after date of enactment.
- Extends MRB disaster relief by waiving the first-time homebuyer rule and increasing purchase price and income limits to targeted area requirements in presidentially declared disaster areas established on or after May 1, 2008 and on or before January 1, 2010, effective for bonds issued after May 1, 2008.
- Permits recycling of tax-exempt multifamily bonds –
 - If the second (refunding) bond is issued within six months of loan repayment and not later than four years of original issuance.
 - Second bond (refunding bond) does not generate new Housing Credits.
 - Effective for loan repayments made after date of enactment.

First-Time Homebuyer Credit

- Establishes a first-time homebuyer refundable tax credit equal to 10 percent of the purchase price of a principal residence, not to exceed \$7,500.
- Phases out the credit for taxpayers with incomes over \$75,000 (\$150,000 for joint returns).
- Prevents credit from being allowed to any taxpayer for any taxable year if:
 - The taxpayer receives the District of Columbia first-time homebuyer credit.
 - The residence is financed by the proceeds of a tax-exempt MRB.
 - The taxpayer is a nonresident alien.
 - The taxpayer disposes of such residence before the close of the taxable year.
- Allows the credit for purchases on or after April 9, 2008 and before July 1, 2009.
- Requires taxpayers receiving the credit to repay it over 15 years in equal installments by imposing a surcharge on the taxpayers' annual income tax.

Emergency Assistance for the Redevelopment of Abandoned and Foreclosed Homes
(Neighborhood Stabilization Funding)

Key Provisions for HFAs

- Appropriates \$3.92 billion for grants to states and localities for the redevelopment of abandoned and foreclosed homes and \$180 million for housing counseling.
- Requires HUD to establish a funding allocation formula based on the number and percentage of home foreclosures, subprime mortgages, and homes in default or delinquency in each state or locality.
- Amounts appropriated will be treated as though such funds were community development block grant (CDBG) funds. This implies 70 percent of the funds will be distributed to localities and 30 percent to states, as under the CDBG program.
- Establishes a minimum state allocation of 0.5 percent of the funds (\$19.6 million based on \$3.92 billion amount).
- Requires all funds be used with respect to individuals and families whose income does not exceed 120 percent of area median income (AMI).
- Requires that at least 25 percent of the funds be used for the purchase and redevelopment of homes and properties that will be used to house individuals and families with incomes not greater than 50 percent of AMI.
- Requires states and local governments to give priority emphasis and consideration to areas with the greatest need, including those: with the greatest percentage of home foreclosures, the highest percentage of subprime mortgages, and those at risk of increased foreclosures.
- Directs states and local governments to use their allocation within 18 months of receipt.
- Directs entities approved by HUD or the Neighborhood Reinvestment Corporation (NRC) and state housing finance entities receiving foreclosure mitigation counseling funds to identify and coordinate with nonprofit organizations operating national or statewide toll-free foreclosure prevention hotlines.

Other Significant Provisions

Eligible Uses

- Allows funds to be used for establishing financing mechanisms for purchase and redevelopment of foreclosed homes, purchasing and rehabilitating properties that have been abandoned or foreclosed, establishing land banks for foreclosed homes, demolishing blighted structures, and redeveloping demolished or vacant properties.
- Purchases of foreclosed homes must be at a discount from the current market appraised value of the home or property.
- Sales of these homes and properties to an individual as a primary residence must be in an amount equal or less than the cost to acquire and rehabilitate such home or property.
- Creates a five-year reinvestment period in which revenue from the sale, rental, redevelopment, rehabilitation, or other eligible use in excess of the cost to acquire and rehabilitate the home or property must be used by the state or locality in accordance with the provisions of this Act.
- No matching funds are required.

- Requires the Secretary ensure, to the maximum extent practicable and for the longest feasible term, that the homes and properties remain affordable.

Housing Counseling

- Appropriates \$180 million to the NRC to remain available until September 30, 2008 for foreclosure mitigation activities.
- Requires the NRC to use \$30 million of the \$180 million in counseling funds to make grants to counseling intermediaries or to hire attorneys and assist homeowners with legal issues directly related to the homeowner's foreclosure, delinquency, or short sale.
- Requires that at least 15 percent of counseling funds be provided to counseling organizations that target loss mitigation counseling services to minority and low-income homeowners or provide such services in neighborhoods with high concentrations of minority and low-income homeowners.

FHA Modernization Act of 2008

Key Provisions for HFAs

- Increases the FHA loan limit from 95 percent to 115 percent of area median home price, up to 150 percent of the GSE conforming loan limit, or \$625,000, effective January 1, 2009.
- Requires a down payment of at least 3.5 percent for any FHA loan.
- Places a 12-month moratorium on HUD implementation of risk-based premiums.

Other Significant Provisions

- Prohibits seller-financed down payments.
- Allows down payment assistance from family members.
- Imposes 100 percent combined loan-to-value ratio cap. If down payment assistance repayment is secured by a lien, the lien must be subordinate to the mortgage and the sum of the principal obligation of the mortgage and the lien must not exceed 100 percent of the appraised property value.
- Expands HUD's Home Equity Conversion Mortgage (HECM) program.
- Establishes a pilot program to test alternative automated underwriting systems for borrowers without sufficient credit history.
- Directs HUD to consult with industry, the Neighborhood Reinvestment Corporation (NRC), and other entities involved in foreclosure prevention activities to develop and implement a plan to improve FHA's loss mitigation process.
- Establishes a three-year pre-purchase homeownership counseling demonstration.

Multifamily Insurance Premiums

- Prevents HUD from increasing FHA multifamily premiums until October 1, 2009.

Manufactured Housing

- Restructures FHA's manufactured housing insurance program and increases consumer protections for manufactured home residents.

Federal Housing Finance Regulatory Reform Act of 2008
(Government-Sponsored Enterprises (GSE) Reform)

Key Provisions for HFAs

- Establishes a GSE-financed housing trust fund to provide grants to states for rental and homeownership activities targeted to extremely low-income families.
- Requires Fannie Mae and Freddie Mac to set aside an amount equal to 4.2 basis points for each dollar of the unpaid principal balance of its total new business purchases and to transfer 65 percent of that amount to HUD to fund the new Housing Trust Fund and 35 percent to Treasury to fund the new Capital Magnet Fund.
- Directs all the GSE set-aside funds the first year, half of the funds the second year, and 25 percent of the funds the third year to a special fund to offset the costs of the new FHA refinancing program.
- Increases Fannie Mae and Freddie Mac's high-cost area loan limits to the lesser of 115 percent of the median house price and 150 percent of the conforming loan limit, or \$625,000, effective January 1, 2009.
- Strengthens Fannie Mae and Freddie Mac's affordable housing goals by lowering the income limit on qualifying mortgages from 100 percent of area median income (AMI) to 80 percent of AMI; requiring Fannie Mae and Freddie Mac to serve a variety of underserved markets, such as rural areas, manufactured housing, and preservation; and expanding the regulator's enforcement powers.

Other Significant Provisions

New Regulator with Expanded Powers

- Creates a new, independent GSE regulator named the Federal Housing Finance Agency (FHFA).
- Gives the FHFA director banking regulator-type powers over Fannie Mae, Freddie Mac, and the Federal Home Loan Banks (FHLBs).
- Requires the director to establish criteria for the portfolio holdings of the GSEs and to establish risk-based capital requirements for the GSEs and FHLBs.
- Gives the Federal Reserve Board a consultative role in advising the new GSE regulator on capital standards and other regulations.
- Requires each GSE to obtain initial approval from the director before offering any new product.
- Sets the conforming loan limits for Fannie Mae and Freddie Mac at \$417,000 for a mortgage on a single-family home. Allows the FHFA to adjust the limit on January 1 of each year to recognize price changes.
- Gives Treasury temporary authority to purchase obligations and securities issued by the GSEs, if the Treasury Secretary determines the action is necessary to provide stability to the financial markets, prevent disruptions in the availability of mortgage finance, and protect the taxpayer.

Mission Improvement

- Requires the director to give full credit toward the achievement of the multifamily special affordable housing goal to units in multifamily housing that otherwise qualify under the goal and that are financed by tax-exempt or taxable bonds issued by a state or local housing finance agency, if the bonds, in whole or in part, are secured by a guarantee of the enterprise or are purchased by the enterprise (with the exception that less than full credit may be given for purchases of investment grade bonds, to the extent that such purchases do not provide a new market or add liquidity to the existing market).
- Requires new affordable housing goals similar to those that apply to Fannie Mae and Freddie Mac for FHLB mortgage purchase programs and requires the FHLBs to create a public-use database for the programs.
- Allows Treasury-certified Community Development Financial Institutions (CDFIs) to join FHLBs. Allows CDFI FHLB members to use FHLB advances for community development purposes.

Affordable Housing Trust Fund

- Establishes a Housing Trust Fund to provide grants to states for use:
 - To increase and preserve the supply of rental housing for extremely low and very low-income families, including homeless families; and
 - To increase homeownership for extremely low and very low-income families.
- Allows states receiving grants to designate a state housing finance agency, housing and community development entity, tribally designated housing entity, or any other qualified instrumentality of the state to receive the grant funds.
- Requires the HUD Secretary to establish a needs-based formula for distributing funds to the states within 12 months of enactment of the bill.
- Establishes a minimum state allocation of \$3 million.
- Requires the state or state-designated entity receiving grant funds to establish an allocation plan.
- Defines eligible activities as production, preservation, and rehabilitation of rental housing and production, preservation, and rehabilitation of housing for homeownership, including down payment assistance, closing cost assistance, and assistance for interest rate buy-downs.
- All assistance must be used to benefit very low-income families (with incomes not greater than 50 percent of area median income (AMI)) and at least 75 percent of assistance received must be used to benefit extremely low-income families (with incomes not greater than 30 percent of AMI).
- Limits state spending on homeownership activities to not more than 10 percent of total assistance provided.
- Requires state grantees to use or commit all funds within two years of when they become available.
- Requires state grantees to submit an annual report to the Secretary describing the activities funded by the grants and compliance with established allocation plans.

Capital Magnet Fund

- Establishes the Capital Magnet Fund within the Treasury's Community Development Financial Institutions Fund.
- Directs Treasury to carry out a competitive grant program to attract private capital and increase investment for:
 - The development, preservation, rehabilitation, or purchase of affordable housing for primarily extremely low, very low, and low-income families; and
 - Economic development activities or community service facilities which, in conjunction with affordable housing activities, stabilize or revitalize a low-income area or underserved rural area.
- Defines eligible grantees as Treasury-certified community development institutions and nonprofit organizations having as one of their principal purposes the development or management of affordable housing.

Set-Aside Provisions

- Allows the Director to suspend the set-aside requirement if it would contribute to the financial instability of the enterprise, would cause the enterprise to be undercapitalized, or would prevent the enterprise from successfully completing a capital restoration plan.
- Prohibits Fannie Mae and Freddie Mac from passing the cost of the set-asides to lenders.

HOPE for Homeowners Act of 2008
(FHA Foreclosure Prevention Refinancing Program)

Key Provisions for HFAs

- Authorizes the FHA to insure refinance loans for distressed borrowers to prevent foreclosures.
- Authority goes into effect for mortgage commitments on or after October 1, 2008 and expires September 30, 2011.
- Limits the aggregate original principal obligation of all mortgages insured to \$300 billion.
- Limits mortgage amounts to not more than 90 percent of the appraised value of the property.
- Requires existing mortgage holders to accept the proceeds of the insured loan as payment in full for all indebtedness.
- Mortgages must bear interest at a single rate that is fixed for the entire term of the mortgage and have a maturity of not less than 30 years.
- The principal obligation amount of each mortgage shall not exceed 132 percent of the 2007 FHA mortgage insurance program limit for the area in which the property is located.

Other Significant Provisions

- Restricts eligibility to mortgages on principal residences.
- Creates a Board, composed of the HUD Secretary, the Secretary of the Treasury, the Chair of the Board of Governors of the Federal Reserve System, and the Chair of the Board of Directors of the Federal Deposit Insurance Corporation, to establish program requirements and standards and to provide necessary guidance.

Requirements for Insured Mortgages

- The mortgagor must lack the capacity to pay the existing mortgage.
- The mortgagor must certify that there was not intentional default on the mortgage or other debt and that no false information was used to obtain any eligible mortgage.
- The mortgagor must have had a mortgage debt-to-income ratio, including all existing mortgages, greater than 31 percent as of March 1, 2008.
- Requires lenders to waive or forgive all penalties for prepayment or refinancing and all fees and penalties related to default or delinquency on the eligible mortgage.
- A mortgagor may not grant a new second lien on the mortgaged property during the first five years of term of the newly insured mortgage, with exceptions for second liens necessary to ensure the maintenance of property standards. Second liens cannot reduce the value of the Government's equity in the borrower's home and, when combined with the mortgagor's existing mortgage indebtedness, cause total indebtedness to exceed 95 percent of the home's appraised value at time of the second lien.
- Establishes a 3 percent upfront mortgage insurance premium and a 1.5 percent annual premium for all mortgages insured under this program.

- Directs the Board to establish reasonable limits on origination fees and procedures to ensure that interest rates are commensurate with market interest rates.
- Establishes an equity-sharing system applicable if a HOPE mortgage property is sold or refinanced within five years, as follows:
 - Within one year, the Secretary is entitled to 100 percent of the equity.
 - After one year but within two, the Secretary is entitled to 90 percent of the equity and the mortgagor is entitled to 10 percent.
 - After two years but within three, the Secretary is entitled to 80 percent of the equity and the mortgagor is entitled to 20 percent.
 - After three years but within four, the Secretary is entitled to 70 percent of the equity and the mortgagor is entitled to 30 percent.
 - After four years but within five, the Secretary is entitled to 60 percent of the equity and the mortgagor is entitled to 40 percent.
 - After five years, the Secretary is entitled to 50 percent of the equity and the mortgagor is entitled to 50 percent.

HOPE Fund

- Establishes within FHA a revolving fund called the Home Ownership Preservation Entity (HOPE) Fund to be used for mortgage insurance obligations.
- Requires the Board to submit monthly reports to Congress identifying progress of the HOPE for Homeowners Program.
- Authorizes Ginnie Mae to guarantee securities based on and backed by a trust or pool composed of HOPE mortgages.
- Authorizes HUD to insure mortgages under this program effective for commitments made on or after October 1, 2008 and on or before September 30, 2011.

Study of Auction or Bulk Refinance Program

- Directs the Board to study the need for an auction or bulk refinancing mechanism to refinance existing mortgages that are at risk of foreclosure.

Mortgage Foreclosure Protections for Servicemembers

- Temporarily increases the maximum loan guarantee for Veterans Affairs-guaranteed loans to 25 percent of the higher of the applicable GSE loan limit and 125 percent of the area median price for a single-family residence (provided the amount does not exceed 175 percent of the conforming loan limit), whichever is higher.
- Directs the Secretary of Defense to develop and implement a program to advise members of the Armed Forces who are returning from service on active duty abroad on actions to take to prevent or forestall foreclosure.
- Extends, effective from date of enactment until December 31, 2010, the period a lender must wait before starting foreclosure proceedings from three months to nine months after a servicemember returns from service.
- Suspends increases in mortgage interest rates in excess of 6 percent during the service period and for one year after a servicemember ends his/her service.
 - Interest includes service charges, renewal charges, fees, or any other charges (excepting bona fide insurance) with respect to an obligation or liability.
 - This provision sunsets on January 1, 2011.

Secure and Fair Enforcement for Mortgage Licensing Act of 2008

- Encourages the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators to create a Nationwide Mortgage Licensing System and Registry that would establish minimum national standards for all residential mortgage brokers and lenders.
- Requires that the federal banking agencies create a system for registering employees of depository institutions or subsidiaries as registered loan originators with the nationwide system and registry.
- Requires states to establish state licensing and registration systems.
- Prohibits lenders from issuing loans if they have not registered with the national and state systems.
- Grants HUD the authority and enforcement power to back up the national system and registry or create its own nationwide system and registry if the above nationwide system fails or is not established.
- Requires the Secretary to submit, within 12 months of enactment, a report to Congress on the root causes of default and foreclosure of home loans.

Conversion of Project-Based Rental Assistance Contracts

- Allows the Secretary to convert, at the request of an owner of a multifamily housing project that exceeds 5,000 units to which a contract for Section 8 project-based rental assistance and a Rental Assistance Payment contract is subject, such contracts to a Section 8 project-based rental assistance contract.

Mortgage Disclosure Improvement Act

- Amends the Truth-in-Lending Act (TILA) to expand the types of home loans subject to early disclosures and improve loan disclosures given to individuals and families on original and refinancing home loans.
- Requires that mortgage loan terms be disclosed no later than seven days before closing, and if terms change, not later than three, including the maximum loan payment for adjustable rate mortgages.

Reforms Related to Real Estate Investment Trusts (REITs)

- Modernizes REIT rules to liberalize the regulation of real estate investment trusts.

Revenue Provisions

General Provisions

- Extends and expands certain Gulf Opportunity (GO) Zone incentives to provide assistance to taxpayers located within the GO Zone.
- Expands the use of the bonus depreciation provision enacted as a part of the Economic Stimulus Act of 2008.
- Allows taxpayers to elect to accelerate the recognition of a portion of their historic AMT or research and development (R&D) credits in lieu of the bonus depreciation tax benefit that was included in the Economic Stimulus Act of 2008.

Revenue Offsets

- Contains the following revenue-raising provisions:
 - Establishes information-reporting requirement on payment card and third-party network transactions;
 - Excludes gain on sales of a principal residences not to apply to nonqualified use;
 - Delays implementation of the worldwide interest allocation rules for two years; and
 - Modifies corporate estimated tax payment rules.

Housing Tax Credit Coordination Act of 2008

Key Provisions for HFAs

- Requires state Housing Credit allocating agencies to report Housing Credit tenant data to HUD annually, including tenant race, ethnicity, family composition, age, income, use of rental assistance or other similar assistance, disability status, and monthly rental payments.
- Streamlines FHA multifamily insurance processing for Housing Credit transactions.
- Allows qualified and willing HFAs to underwrite Section 202 program transactions.

Other Significant Provisions

Section 8 Assistance

- Increases project-based voucher program flexibility
 - Increases the maximum Section 8 voucher contract period to 15 years from 10 year.
 - Allows project-based voucher rents in Housing Credit developments to reach normally allowed voucher maximum rent, even if greater than Housing Credit rent.
 - Eliminates HUD's subsidy layering review for project-based vouchers if a state or locality has completed such review for Housing Credit purposes.
 - Repeals the requirement that PHAs undertake environmental review for housing assistance payments contracts unless otherwise required.
 - Clarifies standards for voucher rent reasonableness for Housing Credit developments.

McKinney-Vento Homeless Assistance

- Extends the time period for completion of Shelter Plus Care projects utilizing Housing Credits.
- Authorizes 15 year terms for renewal of Shelter Plus Care permanent housing assistance contracts.

Section 202

- Requires delegated processing of all new Section 202 elderly housing grants that also use funding sources not associated with HUD.