

THE BIPARTISAN HOUSING FINANCE REFORM ACT

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Title I: Strengthening the Secondary Mortgage Market and Improving Borrower Access to Conventional Home Loans

Section 101. Establishment of Ginnie Mae Plus – Directs Ginnie Mae to establish a program called Ginnie Mae Plus that provides borrowers access to conventional home loans by guaranteeing payment to investors of securities backed by eligible conventional mortgages and protected with private capital. Ginnie Mae-approved issuers will be required to purchase eligible private credit enhancement on the loans pooled into eligible mortgage-backed securities (MBS). This form of credit insurance must come from an eligible private credit enhancer (PCE) as approved by the Federal Housing Finance Agency (FHFA) and meet the qualifications and standards set by FHFA to protect taxpayers and maintain the safety and soundness of the mortgage finance system.

Section 102. Authority to Guarantee MBS Protected with Private Capital – Provides Ginnie Mae with the authority to guarantee the timely payment to investors of securities that are backed by eligible conventional mortgages and protected by private capital. It provides certain guardrails to limit the credit risk of mortgages that are eligible for a government guarantee through Ginnie Mae Plus. Eligible conventional mortgages must:

- Have a minimum down payment of at least 5 percent;
- Have a maximum LTV of 85 percent or supplemental private mortgage insurance or equivalent credit risk transfer mechanism that covers loans with an LTV between 85 and 95 percent;
- Have a maximum loan value below a conforming loan limit; and
- Meet the definition of an eligible Qualified Mortgage through a combination of statutory and regulatory requirements, which represent a minimum set of underwriting standards to prevent the government guarantee being used to back high-risk loans.

Cash-out refinance loans that extract equity above an 80 LTV and loans to mortgagees/investors with more than three current mortgages guaranteed by Ginnie Mae are excluded from Ginnie Mae Plus eligibility.

Section 103. Ginnie Mae Standards for Issuers – As with the current system, empowers Ginnie Mae with the authority to manage the government guarantee and the responsibility to protect taxpayers from being called upon to make MBS investors whole under the full faith and credit guarantee. A significant portion of Ginnie Mae's current operations involve the initial approval and ongoing oversight of Ginnie Mae issuers, which use their own capital to make timely payments of principal and interest prior to Ginnie Mae's guarantee. Prospective issuers of loans eligible for Ginnie Mae Plus must be approved by Ginnie Mae after demonstrating that

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they have the organizational, financial, procedural, quality control, and other necessary characteristics to participate in the program.

Section 104. Approved Private Credit Enhancement – Requires FHFA to develop, adopt, and publish standards for the private credit enhancement structures that qualify as approved private credit enhancement for loans eligible for Ginnie Mae Plus. These private credit enhancement structures are intended to protect taxpayer exposure and provide the needed private capital to allow Ginnie Mae Plus to operate on a safe and sustainable basis.

Section 105. Standards for Private Credit Enhancers – Requires FHFA to develop, adopt, and publish standards for the approval of PCEs. PCEs are new entities in the secondary mortgage market that provide eligible private insurance for conventional mortgage loans financed through Ginnie Mae Plus. These standards include a requirement prohibiting discrimination against small mortgage lenders and community institutions, preserving access to a mortgage system that allows lenders of all sizes to flourish.

Section 106. Ownership and Management of Private Credit Enhancers – Requires FHFA to develop, adopt, and publish standards for the ownership structure of PCEs. Ownership guidelines shall take into account management and personnel, regulatory capital requirements, and the alignment of incentives for PCEs within the mortgage finance system. Potential organizational structures include a mutual or a cooperative format which may better align incentives between owners and the provision of credit enhancement.

Section 107. Bright-line Distinction – Institutes a general prohibition between issuance and credit enhancement activities to separate functions and improve the stability of the Ginnie Mae Plus program. Clearly dividing certain responsibilities will allow for additional private sector competition and innovation at different points within the secondary mortgage market, and adds another layer of private capital ahead of taxpayers. Provides a limited exception to allow PCEs to operate a small lender access program, pursuant to the provisions of Section 116, to allow such lenders to continue to serve their communities and build customer relationships through the mortgage lending process.

Section 108. FHFA Oversight and Duties – Provides FHFA with general regulatory authority over approved PCEs. Establishes that the principal duties of the FHFA with respect to PCEs is to ensure that these entities operate in a safe and sound manner and comply with the rules established under this title.

Section 109. Prudential Management – Provides FHFA with prudential management oversight over credit risk.

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Section 110. Capital Requirements – Requires FHFA to establish regulatory capital requirements for PCEs. There will be a directive for bank-like equity requirements at the PCEs to prevent arbitrage between funding channels. This capital requirement will be against the full unpaid principal balance. There will be a requirement for PCEs to engage in approved credit risk transfer (CRT) transactions to diversify risk outside the housing finance system. The capital framework shall recognize the combined coverage between CRT and equity in meeting minimum capital requirements, and include a countercyclical capital buffer.

Section 111. Private Capital Reserves – Creates a Private Capital Reserves fund that will be funded through a fee assessed on PCEs. These reserves, administered by FHFA, would be held to cover “catastrophic” risks and make the MBS holders whole upon insolvency of a PCE. The amount of the fee will be ascertained through a re-insurance bid program administered by FHFA.

Section 112. Portfolios – Prohibit PCEs from holding mortgages as a portfolio investment, which codifies a safeguard against the return to a pre-crisis GSE business model. PCE portfolios are limited to providing liquidity through the pooling and issuance process for the small lender access program and loss mitigation if these functions are appropriate for a PCE’s business model.

Section 113. Conflicts of Interest – Requires FHFA to establish standards for PCEs to avoid conflict of interest.

Section 114. FHFA Coordination with Ginnie Mae – Allows FHFA to coordinate and consult with Ginnie Mae with respect to establishing standards for approval of issuers in Ginnie Mae Plus.

Section 115. Resolution – Requires FHFA, in its capacity as receiver, to transfer the book of business from a failed PCE to one that is healthy. Private Capital Reserves would be used to support any obligation of the insolvent PCE.

Section 116. Small Lender Access Program – Establishes a Small Lender Access Program as a limited exception to the bright-line distinction between issuers and PCEs in the system, but only for eligible small lending institutions. These lenders will be able to sell individual loans to PCEs through a cash window operation. Under the program, PCEs will be responsible for pooling and issuing Ginnie Mae securities that are backed by these loans, but will be barred from holding them as investments. This function allows small lenders to retain servicing for loans sold into the secondary mortgage market, keep their customer relationships, and operate without discrimination based on the size of business done by the lender. Ginnie Mae will oversee the safety and soundness of the issuer function at the PCE and FHFA will continue with the responsibility to oversee the activities of the credit enhancement business at the PCE. To

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maintain an appropriate level of safety and soundness within the Small Lender Access Program, sets a clear definition of “small” for eligible mortgage lenders. Small lenders are defined as generating less than 5 percent market share of all eligible conventional mortgages that are backed by any one PCE.

Section 117. Lender Access to the Cash Window through the Federal Home Loan Banks – Requires the Federal Home Loan Bank System to operate a cash window function as a Ginnie Mae-approved issuer, allowing small- and medium-sized lenders that are members of the Home Loan Bank System to retain servicing for loans sold into the secondary mortgage market and maintain their customer relationships. A similar operational platform for issuing Ginnie Mae securities exists today via the Federal Home Loan Bank of Chicago, which currently provides access for 9 of the 11 Federal Home Loan Banks.

Section 118. CRT Investment by REITs – As part of the requirement for PCEs to engage in credit risk transfer transactions, promotes the development of a deep pool of investors in a liquid market that represent a true transfer of credit risk. Specifically, amends the Investment Company Act of 1940 to facilitate easier access to the credit risk transfer market for investors such as Real Estate Investment Trusts.

Section 119. Definitions – Provides definitions for terms used throughout this title.

Title II: Development and Deployment of a Mortgage Security Market Exchange and Data Repository

Section 201. Purposes – Establishes the purposes for the Mortgage Security Market Exchange (Exchange) and the Common Securitization Platform (CSP) referred to in this title.

Section 202. Definitions – Provides for the definition of terms used in this title, including the Exchange, the CSP, and Common Securitization Solutions (CSS), the GSE joint venture that currently own and operates the CSP.

Subtitle A – Establishment and Authority of the Exchange

Section 211. Establishment – Establishes the rules and guidelines for the creation of the Exchange as a non-profit organization to take over the ownership and operation of the CSP after a transition period. The Exchange shall be an independent, private-sector, non-government entity and have a governance structure that includes a representational sample of all interested stakeholders. FHFA shall approve the application for the creation of the Exchange.

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Section 212. General Powers; Authorized and Prohibited Activities – Establishes the general powers of the Exchange. The Exchange would function as a data standardization body for the reporting, administration, and maintenance of mortgage industry transactions. Requires it to maintain open and non-discriminatory CSP access for all issuers, aggregators, and investors, and set clear transparency and disclosure rules for participants to access the CSP. The Exchange would be prohibited from holding any credit risk in transactions, participating in the issuance or guarantee of MBS, or maintaining a retained mortgage portfolio.

Section 213. Mission and Structure of Common Securitization Solutions – Clarifies the goals of CSS and requires the development and implementation of an open-access module for the CSP so that issuers can directly access it without having to rely upon Fannie Mae and Freddie Mac as intermediaries in the transaction. In addition, requires CSS to develop a uniform contractual and disclosure securitization framework. Expands the Board of Directors of CSS outside of the GSEs to reflect the new mission.

Section 214. Transition Period – Codifies, where needed, the FHFA’s ability to continue the transformation of the CSP into an open-access securitization platform, and establishes target dates by which the project must be completed. Directs the GSEs to provide funds for the new mission and structure while under government control.

Section 215. Transfer Date – To create a natural ownership destination for the new platform, establishes a Transfer Date schedule for the FHFA to transfer CSS and the CSP to the Exchange upon successful conversion of the CSP into an open-access securitization platform, with the mandate to preserve equal access for all issuers and investors. Requires the transfer of both historical loan-level data and the underwriting technologies used by the GSEs to the Exchange and grants public access to this information.

Section 216. Repayment Cost – Establishes a ten year period from the Transfer Date for the repayment of the total cost of the property transferred from the GSEs to the Exchange. Permits the Exchange to charge CSP users a fee to collect the funds needed to make such repayment.

Section 217. Regulation, Supervision, and Enforcement – Establishes FHFA as the formal regulator of the Exchange.

Subtitle B – Standards for Qualified Securities

Section 221. Qualified Securities – Defines a qualified security as a security which is issued through the CSP, not subject to a government guarantee, and abides by the rules of standardization set forth in this subtitle.

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Section 222. Standards for Qualified Securities – The Exchange shall develop and adopt standards for servicing, servicer reporting, aggregators, trustees, mandatory arbitration disputes, data standards, and disclosure standards. Requires the Exchange to develop and adopt standard form mortgage agreements and guidelines covering loan level data disclosures; pooling and servicing; representations and warranties; indemnification and remedies; and trustee responsibilities. Requires all securities issued through the CSP to publicize all pertinent loan-level data for maximum investor transparency. Any mortgage-related document associated with a Qualified Security shall be registered with the Repository.

Subtitle C – Mortgage Data Repository

Section 231. Organization and Operation – Directs the Exchange to organize and operate a national repository for mortgage data (Repository). The Exchange shall establish standards for qualifications of any depositor of mortgage-related documents to the Repository and various activities related to mortgage-related documents.

Section 232. Legal Effect of Registration with Repository – Provides that notwithstanding state or federal law to the contrary, by registering with the Repository, any holder of an interest in any mortgage-related note shall satisfy any requirement for demonstration of a right to act regarding such a note.

Section 233. Grants to States, Repayment – Authorizes \$50 million to be appropriated for states to facilitate participation in the Repository.

Section 234. Judicial Review – Provides the Repository with immunity from lawsuits other than those brought by the FHFA Director and the Department of Justice.

Section 235. Transition Provisions – Directs the FHFA to provide for a transition period to permit efficient implementation of the Repository. Allows for the Repository initially to accept both electronic and paper-based submissions. Upon the expiration of the ten year period following enactment (with a possible extension of up to five additional years), requires that the Repository only accept electronic submissions.

Title III: Affordable Access and Market Modernization Reforms

Section 301. Affordability Principles – The sponsors recognize the growing need for effective affordable housing solutions in the United States and are committed to providing sustainable, dedicated, and transparent funding to assist in addressing underserved individuals and markets that are heavily represented by low-income families and first-time homebuyers. The sponsors

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believe that government resources, combined with other sources of public and private funding and the work of market participants, can be leveraged to provide substantial funding in support of existing programs that contribute to the development of the supply of affordable housing options for low-income individuals and communities, such as the Housing Trust Fund and the Capital Magnet Fund. Combined with other sources of government funding, including current U.S. Department of Housing and Urban Development programs such as the Housing Choice Voucher program, these programs can help provide holistic affordable housing solutions. The sponsors also believe that dedicated funding can be used to directly support underserved individuals, such as low-income and first-time homebuyers who are unable to participate in a mortgage finance market. According to one analysis, “*approximately 23% of those receiving a subsidy under the current system are not LMI [low or moderate income] households.*”¹ The sponsors seek feedback on how to most effectively target the assistance in order to directly help individuals who are most in need.

To provide a substantial increase in financing of the affordable housing activities described in this Title, the sponsors believe that in each fiscal year, all mortgage loans that collateralize any security on which Ginnie Mae guarantees the timely payment of principal and interest pursuant to title III of the National Housing Act (12 U.S.C. 1716 et seq.) should be assessed an affordability fee in conjunction with the benefit of that government guarantee. The fee should be flat, transparent, and fully disclosed to borrowers, and assessed on each dollar of the outstanding principal balance of the mortgage. Funds generated from these assessments should be substantially more than what is available under today’s system and remitted to the federal government which would be responsible for their management and allocation. Funding should be on-budget, fully tracked and held accountable to performance metrics, to ensure that assistance is spent effectively, appropriately and targeted directly to individuals.

Ginnie Mae and FHFA, as the regulators of issuers and private credit enhancers, should ensure that market participants are appropriately providing access to mortgage credit and secondary mortgage market financing for all creditworthy borrowers, including underserved borrowers, across all regions, localities, institutions, and property types (including rental housing) and throughout fluctuations in the business cycle.

Section 302. Multifamily Principles – The sponsors recognize the importance of multifamily financing in providing housing options and affordable rental properties and seek to preserve what works in the market today. The sponsors believe that the current multi-family business of Fannie and Freddie will continue to function within the new multi-family housing market as entities with an explicit government guarantee of their multifamily securities provided by Ginnie Mae.

¹ “Access and Affordability in the New Housing Finance System” by Jim Parrott, Michael Stegman, Phillip L. Swagel, and Mark M. Zandi, February 13, 2018, available at: <https://www.urban.org/research/publication/access-and-affordability-new-housing-finance-system>.

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Section 303. Modernization Principles – The sponsors recognize the importance of continuing to work on reforms that revitalize and update tax, investment, and banking laws to reflect the realities of financing mortgages in a modern age, while maintaining appropriate consumer protections and investor rights. The sponsors recognize the necessity of better engaging private sector capital to inform, compete with, and supplement any guarantees provided by the government to ensure a functioning mortgage market under all economic conditions.

The sponsors believe that utilizing additional private capital in our housing finance system, including capital used to finance mortgage debt, will help increase competition, enhance transparency, spur innovation, reduce moral hazard, and create more choices for consumers to find a safe, affordable mortgage that best matches each borrower's own needs. The sponsors will continue to search for reforms that create meaningful paths for private capital to flow into the mortgage market and seek feedback on how to create appropriate incentives to do so.

Title IV: Enterprise Transition

Section 401. Definitions – Provides for the definition of terms used in this title.

Subtitle A – Transition and Conversion

Section 411. Repeal of the Charters – Requires FHFA to permanently repeal the GSEs' charters no later than 5 years after the date of enactment, and eliminate any statutory advantages and privileges conveyed by those charters on Fannie Mae and Freddie Mac as corporate entities.

Section 412. Termination of Conservatorships; Mandatory Receiverships – No later than the termination of the charters, requires FHFA to begin the wind-down of the legacy GSE business through receivership.

Section 413. Receiver's Authority to Create a Receivership Entity – Requires FHFA to establish a successor entity as a non-government destination to which FHFA will transfer any asset or obligation of the de-chartered GSEs as necessary. All legacy financial assets will be left in a "bad bank" structure along with a formal full faith and credit government guarantee to preserve liquidity in the MBS market.

Section 414. Effect of the Repeal of Enterprise Charter – Upon repeal of the charters, clarifies that Fannie Mae and Freddie Mac shall have no authority to conduct new business under the provisions of such charters.

Section 415. Wind-down and Transition – This section provides for the efficient, effective, and expeditious wind down of the operations of the enterprise in an orderly manner. The successor

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entity to a GSE can apply to FHFA for approval as a private credit enhancer or as a Ginnie Mae-approved issuer.

Subtitle B – Limitations on Authority During Conservatorships

Section 421. Limitation on Enterprise Authority – Prior to the effective date of receivership, places stronger controls on GSE activities during conservatorship by standardizing the guarantee fee pricing and limiting the GSEs’ retained portfolios.

Section 422. Mandatory Risk Sharing – Requires Fannie and Freddie to engage in mandatory risk sharing transactions on their guaranteed book of business.

Title V: Regulatory Structure

Subtitle A – FHFA

Section 501. Board of Directors of FHFA – Restructures FHFA into a 5 member Board of which members are appointed by the President. Each member will serve a 5 year term and may be removed by the President for inefficiency, neglect or malfeasance in office. Not more than 3 members of the Board can be members of any one political party.

Subtitle B – Ginnie Mae

Section 511. Removal from HUD; Establishment as Independent Entity – Removes Ginnie Mae from HUD and establishes Ginnie Mae as its own independent entity governed by a 5 member Board. Each member will serve a 5 year term and may be removed by the President for inefficiency, neglect or malfeasance in office. Not more than 3 members of the Board can be members of any one political party.

Section 512. Optional Use of the Platform – Directs Ginnie Mae to explore use of the CSP as its issuing platform and the adoption any standards developed for the CSP. Ginnie Mae shall determine during the transition period whether the CSP or the current Ginnie Mae infrastructure is best suited for use in the Ginnie Mae Plus program. Ginnie Mae will retain the optionality to move its current operations to the CSP on any future date through a competitive bidding process against other market infrastructure vendors.

Subtitle C – Housing Market Reforms

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Section 521. Basel III Liquidity Coverage Ratio Amendments – In implementing the Basel III Liquidity Coverage Ratio amendments, prohibits regulators from discriminating against residential mortgage-backed securities collateralized by mortgages that do not qualify as full recourse mortgage loans as a condition for status as a high quality liquid asset.

Section 522. Notice of Junior Mortgage or Lien – Requires notification by a creditor of a junior mortgage to the servicer of a senior mortgage of the existence of the new lien.

Section 523. Limitation on Mortgages Held by Loan Servicers – Prohibits a servicer of a residential mortgage from holding an interest in any other security interest on the same dwelling.

Section 524. GNMA Prohibition Relating to Use of Power of Eminent Domain – Prohibits Ginnie Mae from guaranteeing a security backed by a mortgage loan for a home that was obtained by a State during the preceding 120 months by exercise of the power of eminent domain.

Title VI: Conforming Amendments

Section 601 – Conforming amendment to limitation on Ginnie Mae commitment authority for Government-insured mortgage securities.

Section 602 – Conforming amendments to Securities Act of 1933.

Section 603 – Conforming amendments to title 18, United States Code.

Section 604 – Conforming amendment to the Investment Company Act of 1940.

Section 605. Fair Lending Laws – States that nothing in this Act or the amendments made by this Act may be construed to amend or modify any requirements or restrictions applicable to a PCE or other market participant under the Fair Housing Act (42 U.S.C. 3601 et seq.) or the Equal Credit Opportunity Act (15 U.S.C. 1691 et seq.).