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

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Summary and Background

Democrats are working to make the American Dream affordable againfor middle-class families struggling with the rising cost of living, the shrinking job market, and a housing foreclosure crisis that threatens *America's hard-working families, their communities, and the economy. Senate Democrats have developed a bipartisan package of legislative initiatives that, if enacted,* would help to stabilize the market and provide relief to hundreds of thousands of Americans who, due to no fault of their own, are struggling to keep their homes. This legislation addresses the root of our current economic problems - the foreclosure crisis - and takes a step in the right direction toward getting our economy back on track.

On July 26, 2008, the Senate is expected vote on a motion to concur House amendment to the Senate amendments to the House amendments to the Senate amendment to **H.R. 3221**,the *Housing and Economic Recovery Act of 2008.* This legislative package would enact:

•*Federal Housing Finance Regulatory Reform Act of 2008*, which would create a new, effective regulator for the government-sponsored enterprises (GSEs) so that these vital institutions can safely and soundly carry out their important mission of providing our nation's families with affordable housing. In addition, this legislation would create a new program at the Federal Housing Administration (FHA) that would help at least 400,000 families save their homes from foreclosure;

•*Treasury Emergency authority*, designed to shore up the confidence of the financial markets in Fannie Mae, Freddie Mac, and the Federal Home Loan Banks;

•The *HOPE for Homeowners Act*, which would establish a new initiative at the FHA to prevent foreclosures for hundreds of thousands of families at no cost to American taxpayers;

•**The *S.A.F.E. Mortgage Licensing Act, wh***ich would create a federal registry and establish minimum national standards for all residential mortgage brokers and lenders;

•The *Foreclosure Prevention Act*, which would provide assistance for communities devastated by foreclosures, foreclosure counseling for families in need, programs to help returning soldiers avoid foreclosure, FHA modernization, and mortgage disclosure enhancements;

•*The Housing Assistance Tax Act of 2008*, which would provide tax benefits for homeowners, homebuyers, and homebuilders aimed at helping the housing market recover; and

•Revenue provisionsto pay for the legislation, consistent with responsible fiscal policy.

This Legislative Bulletin provides a description of major provisions, anticipated amendments, legislative history, the Statement of Administration Policy, and links to related readingresources.

Major Provisions

Federal Housing Finance Regulatory Reform Act of 2008
(GSE Reform)

H.R. 3221, as amended by the *Housing and Economic Recovery Act of 2008*, would strengthen and modernize the regulation of the housing government-sponsored enterprises (GSEs) - Fannie Mae and Freddie Mac (the "enterprises") and the Federal Home Loan Banks (FHLBs) - and would expand the housing mission of these GSEs. In addition, the bill would create a new program at the Federal Housing Administration (FHA) that would help at least 400,000 families save their homes from foreclosure by providing for new FHA loans after lenders take deep discounts.

Specifically, **H.R. 3221**, as amended, would:

- **Provide for the financial security and sound regulation of the housing GSEs.** This legislation would establish a new, independent, "world class" regulator for Fannie Mae, Freddie Mac, and the Federal Home Loan Banks, the housing government-sponsored enterprises (GSEs). The legislation would provide this regulator with broad new authority, equivalent to the authority of other federal financial regulators, to ensure the safe and sound operations of the GSEs, including the power to:

    oEstablish capital standards;

    oEstablish prudential management standards, including internal controls, audits, risk management, and management of the portfolio;

    oEnforce its orders through cease and desist authority, civil money penalties, and the authority to remove officers and directors;

    oRestrict asset growth and capital distributions for undercapitalized institutions;

    oPut a regulated entity into receivership; and

    oReview and approve (subject to notice and comment) new product offerings.

- **Improve the housing mission of the GSEs.** This legislation would alsosignificantly enhance the affordable housing component of the GSEs' mission, and expand the number of families Fannie Mae and Freddie Mac can serve by raising the loan limits in high cost areas (areas with median house prices that are higher than the regular conforming limit) to 150 percent of the conforming loan limit. (*i.e.*, to $625,000).

For the enterprises, the legislation would tighten targeting requirements of the affordable housing goals, and rewrite those goals to ensure that the enterprises provide liquidity to both ownership and rental housing markets for low and very-low income families. The legislation would:

- Require the enterprises to serve a variety of underserved markets, such as rural areas, manufactured housing, and the preservation market (personal property manufactured housing loans may count towards the GSE underserved areas manufactured housing goal);
- Improve reporting requirements for affordable housing activities, including the expansion of the public use data base, and
- Strengthen the new regulator's ability to enforce compliance with the housing goals.

For the FHLBs, the legislation would:

- Require new affordable housing goals similar to those that apply to the enterprises for FHLB mortgage purchase programs; and
- Require the FHLBs to create a public-use data base for such programs.

Treasury-certified Community Development Financial Institutions (CDFIs) would become eligible to join FHLBs, and community financial institution members of the FHLBs may use FHLB advances for community development purposes.

- **Create a new program at the Federal Housing Administration (FHA) that will help families save their homes from foreclosure.** This legislation would create a new Housing Trust Fund and a Capital Magnet Fund, financed by annual contributions from the enterprises, which will be used for the construction of affordable rental housing. The bill specifies that 75 percent of the amounts in the Housing Trust Fund must be used for the benefit of extremely low-income families.

Treasury Emergency Authority

H.R. 3221contains several temporary provisions requested by Secretary of the Treasury Paulson designed to shore up the confidence of the financial markets in Fannie Mae, Freddie Mac, and the Federal Home Loan Banks, including the authority for Treasury to purchase debt securities issued by the GSEs and the authority for Treasury to purchase common stock of the enterprises with the agreement of the companies. This authority expires on December 31, 2009.

Before exercising these temporary powers, Treasury would have to determine that actions taken under this authority are necessary to:

- Protect the taxpayer;

- Provide stability to the financial markets; and,
- Prevent disruptions in the availability of mortgages.

Treasury would set the terms and conditions regarding any use of the temporary authority, including requiring that repayments to the government receive priority or preference. In addition, the emergency authority gives the Director of the Federal Housing Finance Agency the authority over executive compensation, whether or not the government exercises its temporary authority to purchase debt or stock.

Finally, the legislation requires the new Director to consult with Governors of the Federal Reserve when developing regulations or guidance regarding capital, portfolios, and prudential management standards, taking into consideration the risks posed by the regulated entities to the financial system. This requirement also expires on December 31, 2009.

HOPE for Homeowners Act of 2008

H.R. 3221, as amended, would include the *HOPE for Homeowners Act of 2008*, which would create a new, temporary, and voluntary program within the Federal Housing Administration (FHA) to back FHA-insured mortgages to distressed borrowers. These new mortgages offered by FHA-approved lenders would refinance distressed loans at a significant discount for owner-occupants at risk of foreclosure.

Guided by five basic principles -- long-term affordability, no investor or lender bailout, no windfall for borrowers, voluntary participation, and restoring confidence, liquidity, and transparency to markets -- the program would require that:

•**Borrowers certify that they have not intentionally defaulted**on their mortgage or any other debt and, as of March 1, 2008, the borrower had a mortgage debt to income ratio of more than 31 percent;

•**Borrowers be owner-occupants**and not investors, and investor properties cannot be refinanced;

•**The new loan be a 30 year, fixed-rate mortgage for an amount the family can repay**or 90 percent of the current value of the home, whichever is less;

•**All subordinate liens be extinguished**through negotiation with the first lien holder, and all holders receive a portion of any future appreciation of the property;

•**The maximum loan limit not exceed 132 percent**of the *Federal Home Loan Mortgage Cooperation Act*limit;

•**Borrowers not grant a new second lien on the home**within the first five years of the new, refinanced loan; and

•**The borrower share the newly-created equity and future appreciation**equally with FHA until such time as the borrower sells the home or refinances the FHA-insured mortgage, and the borrower's access to the newly-created equity be phased-in over five years.

H.R. 3221, as amended, would authorize the program to insure up to $300 billion in mortgages. The program would be paid for, in part, by the Affordable Housing Trust Fund, but the legislation (in the *Federal Housing Finance Regulatory Reform Act of 2008* title) would provide an additional $2 billion cushion to establish a reserve fund at the Treasury Department over ten years.

The HOPE for Homeowners Program would be overseen by a Board consisting of the Secretary of Housing and Urban Development, the Secretary of the Treasury, the Chairman of the Federal Reserve Board, and the Chairman of the Federal Deposit Insurance Corporation (FDIC).

The program would begin on October 1, 2008 and sunset on September 30, 2011.

S.A.F.E. Mortgage Licensing Act

H.R. 3221, as amended, would include the *Secure and Fair Enforcement for Mortgage Licensing Act of 2008*, which would encourage the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators to create a Nationwide Mortgage Licensing System and Registry ("nationwide system and registry") that would establish minimum national standards for all residential mortgage brokers and lenders in an effort to curb abusive lending practices.

Registration requirements. The legislation would prohibit lenders from issuing loans if they have not registered with the national system and registry as a registered loan originator or obtained a license and registration as a state-licensed loan originator. In the latter case, the applicant must furnish the national system and registry basic identification and background information, including authorization for the obtaining of a credit report and any administrative, civil, or criminal findings by any governmental jurisdiction.

National standards. The legislation would require that state licensing and registration require that applicants: 1) have never had a loan revoked by a governmental jurisdiction; 2) have no felony record; 3) have demonstrated financial responsibility; 4) have satisfied the pre-licensing education requirement; 5) have passed the nationwide system and registry written test; and 6) have met either a net worth or surety bond requirement.

- **Education requirement and test.** The legislation would require at least 20 hours of education to satisfy the pre-licensing education requirement, including three hours of federal law and regulations, three hours of ethics, and two hours of lending standards for nontraditional mortgage product's training. Applicants must then pass a written test on these subjects.

- **Renewal and continuing education.** The legislation would require that state-licensed originators continue to meet the licensing standards and satisfy the annual continuing education requirements.

Federal Banking Agencies. The legislation would also require 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.

HUD authority. The legislation would grant the Secretary of Housing and Urban Develop (HUD) the authority and enforcement power to back-up or create its own nationwide system and registry if the above nationwide system and registry fails or has not been established.

Foreclosure Prevention Act of 2008

FHA Modernization Act of 2008

H.R. 3221, as amended, would include the *FHA Modernization Act of 2008,* which would modernize, streamline, and expand the reach of the FHA program to ensure that additional families can access safe, fixed-rate mortgages. The legislation would:

•**Expand the benefits of FHA insurance to a larger number of families in need, by -**

o***Increasing the FHA loan limit***from 95 percent to 110 percent of area median home price with a cap at 150 percent of the GSE limit (currently, $625,000), allowing families in all areas of the country to access homeownership through FHA;

o***Requiring downpayments***of at least 3.5 percent for any FHA loan;

o***Restructuring FHA insurance for manufactured housing***,which provide an affordable housing option for approximately 17 million Americans; and

o***Increasing consumer protections***for residents of manufactured homes.

•**Enhance counseling requirements** to help provide for stable homeownership, especially for low- and moderate-income homeowners who are having trouble making their mortgage payments and first-time home buyers;

•**Enable more seniors to safely convert their home equity into cash** through Home Equity Conversion Mortgages ("HECM"). HECMs allow seniors to convert equity into cash by taking out a "reverse mortgage," where the lender pays the borrower either a lump sum or a monthly payment. The borrower makes no payments until the ownership of the home is transferred through sale or inheritance;

•**Support homeownership preservation**by improving the FHA loss mitigation process so that more troubled homeowners can retain their homes;

•**Enhance fraud protection** byestablishing a screen to detect and prevent fraud, and by increasing the penalties for committing fraud against FHA;

•**Expand access to credit for borrowers with "thin" credit histories**byestablishing a five-year pilot program to test alternative automated credit rating systems for borrowers without sufficient credit histories at traditional credit bureaus.

Mortgage Foreclosure Protections for Servicemembers

H.R. 3221, as amended, would provide a temporary increase in the maximum loan guarantee for loans guaranteed by the Secretary of Veterans of Affairs (loans that originate from the date of enactment until the end of 2008) by an amount equal to 25 percent of: 1) the *Federal Home Loan Mortgage Corporation Act's* section 305(a)(2)-determined limit for a single-family residence for the year of origination; OR 2) 125 percent of the area median price for a single-family residence (provided the amount does not exceed 175 percent of the section 305(a)(2) limit), whichever is higher.

The bill would also require the Secretary of Defense to create mortgage and foreclosure avoidance counseling program for servicemembers returning from service on active duty abroad.

The legislation would also amend the *Servicemembers Civil Relief Act* to temporarily extend the period a lender must wait before starting foreclosure proceedings from three months to nine months after a serviceperson returns from service. This title would also suspend increases in mortgage interest rates in excess of six percent for one year after a serviceperson ends his/her service (the suspension is also in affect during the service period). "Interest" would include service charges, renewal charges, fees, or other charges (except bona fide insurance).

Emergency Assistance for the Redevelopment of Abandoned and Foreclosed Homes

H.R. 3221, as amended, would provide $4 billion in emergency assistance to communities with the highest foreclosure rates for the purchase and redevelopment of abandoned and foreclosed-upon properties. Other factors that would be considered in determining need are the rates of subprime mortgages and the rates of default or delinquency. The funds would be administered through the Community Development Block Grant (CDBG) program, and all funds would be used to help individuals and families whose incomes do not exceed 120 percent of the area median income (moderate income persons). Moreover, at least 25 percent of the funds appropriated would be used to house individual and families whose incomes do not exceed 50 percent of area median income (low income persons). Any profit from the sale, rental, rehabilitation or redevelopment of these properties would be reinvested to further the goals of this title.

Housing Counseling Resources

H.R. 3221, as amended, would provide $150 million in additional funding that would help housing counselors continue their outreach to families at risk of foreclosure. These added funds would help as many as 250,000 additional families connect with their mortgage servicer or lender to explore options that will help them keep their homes. In addition, $30 million is provided for legal services for distressed borrowers.

Mortgage Disclosure Improvement Act

H.R. 3221, as amended, would also encompass the *Mortgage Disclosure Improvement Act of 2008*, which would amend 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. The bill would require that mortgage loan terms be disclosed no later than seven days before closing, and, if the terms change, no later than three days before closing. Moreover, in the case of variable rate mortgages, the maximum loan payment would be required, not only at application, but no later than seven days before closing, and if it changes, no later than three days before closing.

The legislation would also clarify that lenders are subject to statutory damages for violations of TILA disclosure provisions and increase the maximum damages for mortgage violations from $2,000 to $4,000 per violation.

Tax-Related Provisions

The *Housing and Economic Recovery Act of 2008*, includes a package of tax relief measures developed by Senate Finance Committee Chairman **Baucus** and Senator Grassley for homeowners, homebuyers, and homebuilders aimed at helping the housing market recover. These provisions would help reduce the excess supply of homes on the market, help with rising costs of owning a home, help rebuild the low-income housing industry and lead to additional affordable rental housing. **H.R. 3221**, as amended, wouldprovide tax benefits for:

Multi-Family Low-Income Housing

- Temporary increase in low-income housing tax credit by 20 cents for large-population states and ten percent for low-population states;
- Simplification of the low-income housing tax credit rules; and
- One-time recycling of multifamily housing bonds and housing bonds to simplify the technical rules relating to tax-exempt housing bonds, including the financing of construction and development of low-income housing projects.

Single Family Housing

- Refundable $8,000 first-time homebuyer credit equivalent to an interest-free loan by first-time homebuyers to help reduce the existing stock of unoccupied housing; and
- Up to a $1,000 property tax deduction that allows an additional standard deduction for the 28.3 million non-itemizers who pay state and local property taxes for one year.

General Housing

- $11 billion increase in mortgage revenue bonds to provide for refinancing of subprime loans and first-time homebuyers;
- Repeal of AMT limitations on tax-exempt housing bonds, low-income housing credit, and rehabilitation credit;
- Allow bonds guaranteed by FHLBs to be eligible for tax-exempt treatment;
- Protection of taxpayer Social Security numbers in real estate transactions;
- Increase in historic rehabilitation credit for state and local government-leased property; and
- Expansion of disaster mortgage revenue bonds to extend the qualifying uses of a single-family MRB to victims of Presidentially-declared disaster areas.

Other

- Modernization of REIT rules to liberalize the regulation of real estate investment trusts;

- Monetization of the AMT/R&D credit to expand the use of the bonus depreciation provision enacted as a part of the *Economic Stimulus Act of 2008*; and
- Extension and expansion of certain GO Zone incentives to provide assistance to taxpayers located within the Gulf Opportunity Zone.

Revenue Provisions

H.R. 3221, as amended by the *Housing and Economic Recovery Act of 2008*, includes the following revenue-raising provisions:

Information reporting requirement on payment card and third-party network transactions(estimated to raise $9.802 billion over ten years);

- **Exclusion of gain on sale of a principal residence not to apply to nonqualified use** (estimated to raise $1.394 billion over ten years);
- **Increase in information return penalties** (estimated to raise $347 million over ten years);
- **Increase in failure to file penalty for S corporation returns** (estimated to raise $146 million over ten years);
- **Increase in failure to file penalty for partnership returns** (estimated to raise $197 million over ten years); and
- **Increase in minimum penalty for failure to file** (estimated to raise $217 million over ten years).
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Legislative History

On February 13, 2008, Majority Leader **Reid**introduced the *Foreclosure Prevention Act of 2008* (**S. 2636**), which was placed on the Senate Legislative Calendar. On February 14, a motion to proceed to the consideration of **H.R. 3221** was presented in the Senate as a vehicle to consider **S. 2636** as a substitute amendment. On February 28, the cloture on the motion to proceed to **H.R. 3221** was not invoked by a roll call vote of 48 to 46. On April 1, the Senate agreed to a motion to reconsider this vote by a 94 to 1 vote.

The Majority Leader then asked Chairman **Dodd** and Ranking Member Shelby of the Senate Committee on Banking, Housing, and Urban Affairs to develop a bipartisan compromise version of the *Foreclosure Prevention Act of 2008.* That legislation was completed on April 2 and included tax provisions provided by the Senate Committee on Finance, which is led by Chairman **Baucus** and Ranking Member Grassley. The next day,the Senate resumed consideration of the motion to proceed to **H.R. 3221**, the vehicle for the housing legislation. **H.R. 3221** was amended in its entirety by this new version of the *Foreclosure Prevention Act of 2008* (**S.A.4387**), which was intended to address the national housing crisis and help Americans avoid foreclosure.

On April 10, 2008, the Senate approved, on an 84 to 12 vote, **H.R. 3221,**as amended. The Senate message on the legislation was then returned to the House. On May 8, Representative Frank, Chairman of the House Committee on Financial Services, moved that the House agree with the Senate amendments to **H.R. 3221**, as amended, by three House amendments, each of which received a roll call vote and passed. On May 13, the House message on the legislation was returned to the Senate.

On May 20, the Senate Banking Committee, led by Senators ***Dodd*** *and Shelby, produced additional legislation that includes* provisions to help prevent the rising number of foreclosures, to create more affordable housing for Americans, and reform the GSEs in order to improve their role in the housing finance system. This bill, entitled the *Federal Housing Finance Regulatory Reform Act of 2008,*was reported out of Committee by a vote of 19 to 2.

In an effort to comprehensively address the nation's housing crisis, leaders in the Senate and the House have negotiated a new legislative package, entitled the *Housing and Economic Recovery Act of 2008,*whichhas at its core the *Foreclosure Prevention Act of 2008*, as passed by the Senate,the *Federal Housing Finance Regulatory Reform Act of 2008*, and revised tax provisions. The package was accepted as a substitute amendment to the House Message to Accompany **H.R. 3221** whenit was considered on the Senate floor in June and July, 2008. Specifically, on June 25, 2008, the Senate concurred in House amendment striking section 1 through title V and inserting certain language to the Senate amendment with an amendment (SA 4983) by a 79-16 vote (Record Vote Number 157). It was this amendment that encompassed the *Housing and Economic Recovery Act of 2008*. On July 18, 2008, the Senate agreed to amendments of the House, striking titles VI through XI, to the Senate amendment by Unanimous Consent. On July 11, 2008, the Senate disagreed to the amendments of the House adding a new title and inserting a new section to the amendment of the Senate by a 63-5 vote (Record Vote Number 173).

On July 23, 2008, the House agreed with an amendment to the Senate amendment to the House amendments to the Senate Agreed to by a 272-152 vote (Roll no. 519). Subsequently, Senator Reid presented a cloture motion on the motion to concur to the House amendment to the Senate amendment to the House amendments to the Senate amendment and motions to concur in House amendment to Senate amendment to House amendments to Senate amendment to H.R.3221 with amendments SA 5103 (to establish the effective date) and SA 5104 (to change the enactment date).

On July 25, 2008, the Senate approved a motion to invoke cloture on the motion to concur with the House version of H.R. 3221 by an 80-13 vote.

Expected Amendments

Any information on amendments will be circulated to DPC e-mail lists.

Statementof Administration Policy

On July 23, the Bush Administration released a Statement of Administration Policy (SAP) on the *Housing and Economic Recovery Act of 2008*, stating "[t]he Administration supports House passage of H.R. 3221 as amended. This legislation contains several critically important provisions that the Administration strongly supports, as well as others the Administration opposes. With Congress about to begin its scheduled summer recess, it is important that the desirable aspects of this bill be enacted expeditiously into law, despite the Administration's concerns about other provisions in the legislation." The SAP is available here.