Congressional Research Service

The Housing Trust Fund: Background and Issues

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August 28, 2009

Congressional Research Service
7-5700
www.crs.gov
R40781

CRS Report for Congress
Prepared for Members and Committees of Congress
c11173008

Summary

On July 30, 2008, President Bush signed into law the Housing and Economic Recovery Act of 2008 (P.L. 110-289), which created a national Housing Trust Fund. In general, affordable housing trust funds provide dedicated, permanent sources of funding for affordable housing that do not require annual appropriations. Several states and many localities across the United States already have their own affordable housing trust funds, and for years affordable housing advocates had worked to get such a fund created on a national level. Opponents of a national affordable housing trust fund argued that it would be duplicative of other affordable housing programs.

The Housing Trust Fund created by P.L. 110-289 would provide formula-based grants to states to use for affordable housing activities. Ninety percent of the funding would have to be used for rental housing, while the remaining 10% could be used for homeownership activities. Furthermore, all of the funds would have to benefit very low- or extremely low-income households, with at least 75% of the funding for rental housing being used exclusively for the benefit of extremely low-income households.

P.L. 110-289 directed Fannie Mae and Freddie Mac to contribute a percentage of their new business purchases to the Housing Trust Fund as the fund's dedicated funding source. However, the law also gave the director of the Federal Housing Finance Agency (FHFA), Fannie and Freddie's regulator, the authority to suspend those contributions if he determined that they were contributing to financial trouble at the agencies. On September 7, 2008, Fannie and Freddie were placed in conservatorship, and in November 2008, the director of FHFA suspended their contributions to the Housing Trust Fund. The Fund had not yet received any funding at the time the contributions were suspended.

It is unclear whether contributions from Fannie Mae and Freddie Mac to the Housing Trust Fund will ever be reinstated. No new source of funding has been identified to date. President Obama's FY2010 budget request includes $1 billion in mandatory spending for the Fund, but it does not identify a source for the funding. Additionally, some legislative proposals have been made to provide funding to the Housing Trust Fund. Advocates continue to search for a source of funds for the program today.

This report describes the Housing Trust Fund and discusses potential funding sources. It will be updated as events warrant.

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Introduction

Many states and localities across the nation have created housing trust funds that provide dedicated sources of state or local funding for affordable housing activities. For several years, affordable housing advocates campaigned for a national affordable housing trust fund to provide a permanent federal source of funding for affordable housing that is not subject to the annual appropriations process. In July 2008, Congress passed the Housing and Economic Recovery Act of 2008 (P.L. 110-289), which was signed into law by President Bush on July 30, 2008. P.L. 110-289 included a national Housing Trust Fund that would be funded through contributions from Fannie Mae and Freddie Mac. However, Fannie and Freddie were both placed in conservatorship in September 2008, and their contributions to the Housing Trust Fund were suspended before they had begun. To date, no new funding source has been identified for the Housing Trust Fund.

This report briefly describes the structure and eligible uses of the Housing Trust Fund as authorized in P.L. 110-289, and discusses current proposals for new funding sources for the Fund. It will be updated as events warrant.

Background on Efforts to Create a National Affordable Housing Trust Fund

For several years, a coalition of low-income housing organizations has advocated for the establishment of a national affordable housing trust fund. The idea of an affordable housing trust fund is not new; several states and localities have already adopted their own state and local trust funds. In general, affordable housing trust funds are permanent funding streams that are not reliant on annual appropriations, and are dedicated to affordable housing activities for low-income households. According to the Center for Community Change, nearly 600 state, city, and county housing trust funds have been established in 43 states across the nation.[1]

Advocacy organizations such as the National Low Income Housing Coalition, one of the leading proponents of a national affordable housing trust fund, have long argued that a federal fund should be established to complement these state and local efforts.[2] These advocates want this fund to be capitalized with new resources devoted to affordable housing activities, rather than from current appropriations for other affordable housing programs.

Opponents of a national housing trust fund argue that the federal government already provides funding for affordable housing through other programs, and that a national housing trust fund is duplicative of these programs. In recent years, opponents have also pointed to concerns about growing federal budget deficits as an argument against establishing a national affordable housing trust fund.

[1] These numbers are based on a conversation between CRS and the Center for Community Change. For more information on the Center for Community Change's research on housing trust funds, see http://www.communitychange.org/our-projects/htf.

[2] For details on the campaign for a national affordable housing trust fund, see the National Low Income Housing Coalition's website, "National Housing Trust Fund Campaign," available at http://www.nlihc.org/template/page.cfm?id=40.

Legislation to establish a national affordable housing trust fund was introduced several times, beginning in the 106th Congress.[3] One major question surrounding the creation of an affordable housing trust fund was how the program would be funded. Early legislation proposed using a portion of receipts from the Federal Housing Administration (FHA), but diverting FHA receipts to a housing trust fund would count as new spending and would be subject to annual spending limits, including the Pay-As-You-Go rule (PAYGO).[4]

Later legislation proposed using contributions from Fannie Mae and Freddie Mac, two government-sponsored enterprises (GSEs), as a potential funding source. Because of the GSEs' status as private entities, contributions from Fannie Mae and Freddie Mac would not have counted as new government spending. There was some disagreement over whether it was appropriate for the government to require the GSEs to contribute to affordable housing funds. Opponents of GSE contributions argued that the GSEs should not be asked to balance public policy objectives against the interests of their shareholders. Proponents pointed to the special privileges that GSEs received, and the housing goals that they already had, to justify their contributions to the Housing Trust Fund.[5] Ultimately, GSE contributions were identified as the funding source for the Housing Trust Fund created in P.L. 110-289.

The Housing Trust Fund

P.L. 110-289 created a national Housing Trust Fund within the Department of Housing and Urban Development (HUD). The Housing Trust Fund was to be funded by contributions from Fannie Mae and Freddie Mac.[6] However, P.L. 110-289 also required the head of the Federal Housing Finance Agency (FHFA), Fannie's and Freddie's regulator, to suspend their contributions to the Housing Trust Fund if he found that the contributions (1) were contributing or would contribute to financial instability, (2) were causing or would cause a GSE to be classified as undercapitalized, or (3) were preventing or would prevent a GSE from successfully completing a capital restoration project.

Fannie Mae and Freddie Mac were placed in conservatorship on September 7, 2008. In November 2008, FHFA informed Fannie Mae and Freddie Mac that they should suspend their contributions to the Housing Trust Fund until further notice.[7] Neither GSE had begun making contributions to the Housing Trust Fund at the time that the contributions were suspended.

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[3] For a legislative history of affordable housing trust fund proposals, see the National Low Income Housing Coalition's website, "Details about the National Housing Trust Fund Campaign," January 31, 2007, available at http://www.nlihc.org/detail/article.cfm?article_id=3834#prop, or see the **Appendix**.

[4] See CRS Report RL34300, *Pay-As-You-Go Procedures for Budget Enforcement*, by Robert Keith, for more information on Congressional budgeting rules, including PAYGO.

[5] For more information on the GSEs and the privileges that they have historically enjoyed, see CRS Report RL33756, *Fannie Mae and Freddie Mac: A Legal and Policy Overview*, by N. Eric Weiss and Michael V. Seitzinger.

[6] A new Capital Magnet Fund, to be administered by the Department of the Treasury, was to share the contributions. For a fuller discussion of the original funding mechanism, and how that funding was to be divided between the Housing Trust Fund and the Capital Magnet Fund, see CRS Report RL34158, *The New GSE Affordable Housing Funds: The Housing Trust Fund and the Capital Magnet Fund*, by N. Eric Weiss and Katie Jones.

[7] United States Securities and Exchange Commission filing, Form 8-K, Federal National Mortgage Association, November 18, 2008, available at http://www.sec.gov/Archives/edgar/data/310522/000129993308005442/htm_30041.htm, and United States Securities and Exchange Commission Filing, Form 10-Q, Federal Home Loan Mortgage Corporation, November 14, 2008, p. 66, available at http://ir.10kwizard.com/files.php?source=1372.

The suspension of the GSEs' contributions left the Housing Trust Fund without a source of funding. Without a funding source, the Housing Trust Fund is not yet operational.

It is unclear if or when GSE contributions to the Housing Trust Fund will be resumed, and affordable housing advocates have been pursuing additional sources of revenue to capitalize the Fund (see discussion under "Current Funding Issues"). The following section describes how the Housing Trust Fund would operate, according to the statutory authority in P.L. 110-289.

Formula Allocation

The Housing Trust Fund is intended to provide formula-based grants for states to increase housing opportunities for extremely low- and very low-income renters and homeowners. The Secretary of HUD is required to develop a formula[8] for allocating the monies in the Housing Trust Fund among the states[9] based in part on the following factors:

- the relative number of affordable standard rental units available to extremely low-income renter households in the state (this factor is given "priority emphasis");
- the relative number of affordable standard rental units available to very low-income renter households in the state;
- the relative number of extremely low-income renter households living with incomplete kitchen or plumbing facilities, more than one person per room, or spending more than 50% of income on housing costs in the state; and
- the relative number of very low-income renter households spending more than 50% of income on rent in the state.

The sum of these factors is then to be multiplied by the relative cost of construction in the state to arrive at a grant amount. Each state is to receive a minimum annual grant of $3 million.[10]

Funding Distribution

Grants from the Housing Trust Fund are to be awarded to states based on the formula described above. States can designate for-profit or nonprofit organizations such as housing finance agencies, housing and community development entities, or tribally designated entities to administer the funds. The state-designated agency can then distribute funds to sub-recipients to carry out affordable housing activities, or it can use the funds to carry out affordable housing activities itself.

[8] P.L. 110-289 directed the Secretary of HUD to develop a formula for distributing money from the Housing Trust Fund through regulations issued by July 30, 2009. However, as of the date this report was last updated, HUD had yet to release its regulations.

[9] The term "states" includes the fifty states, the District of Columbia, and the territories and possessions of the United States, including Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

[10] The $3 million minimum grant amount applies only to the 50 states and the District of Columbia.

Sub-recipients of Housing Trust Fund grant amounts must have relevant experience. More specifically, an organization receiving funding for a rental housing project must have experience owning, constructing, rehabilitating, managing, or operating affordable multifamily rental projects. An organization receiving funding for homeownership activities is required to have experience in designing, constructing, rehabilitating, or marketing affordable homeownership housing, or in providing assistance with down payments, closing costs, or interest rate subsidies. Recipients also have to demonstrate general financial experience and expertise and familiarity with the requirements of any related federal, state, or local housing programs that will be used in conjunction with grants from the Housing Trust Fund.

Eligible Uses

States must use most of their grants from the Housing Trust Fund to support rental housing, although they can use a portion of their funding for homeownership housing. Similarly, most of the funding is required to be used for extremely low-income families or families with incomes below the poverty line, but some funding can be used for very low-income families as well.[11]

Rental Housing

Grants from the Housing Trust Fund can be used for the production, preservation, rehabilitation, or operation of rental housing. By law, all funding used for rental housing must benefit families that are extremely low- or very low-income. At least 75% of the grant amounts for rental housing must be used for the sole benefit of extremely low-income families or families with incomes at or below the poverty line for a family of its size. No more than 25% of the grant amounts for rental housing can be used for the sole benefit of very low-income families.

Owner-Occupied Housing

Up to 10% of a state's grants from the Housing Trust Fund may be used for the production, preservation, and rehabilitation of homeownership housing, or for related homeownership costs such as down payment assistance, closing cost assistance, and interest-rate buy-downs. By law, both the home and the homebuyer must meet certain requirements,[12] and the funds must be used to benefit families who are extremely low- or very low-income.

Restrictions and Requirements

Restriction on Eligible Activities

Money from the Housing Trust Fund cannot be used for political activities, advocacy, lobbying, counseling services, travel expenses, or preparing or providing advice on tax returns. The

[11] Very low-income households are households that have an income at or below 50% of area median income. Extremely low-income households have an income at or below 30% of area median income.

[12] The home must be available for purchase by extremely low- or very low-income families who will use the home as a principal residence and are first-time home buyers, meaning that they have not owned a home in the prior three years. Home buyers must also complete a pre-purchase financial counseling requirement. The home is subject to initial purchase price and resale restrictions.

Secretary can set a limit of up to 10% of a state or state-designated entity's Housing Trust Fund grant amount that can be used for the cost of administering the programs funded by the grant; using funds for other outreach or other administrative costs of the grantee or fund recipient is prohibited.

Oversight

P.L. 110-289 requires states or the state-designated entities that administer grants from the Housing Trust Fund to develop allocation plans describing how the grant money will be distributed. An allocation plan must explain how the allocation of funds will be based on priority housing needs, and it must include performance goals. The states and state-designated entities are to make their allocation plans available for public comment and consider any public comments they receive.

Any funds not committed for use by a grantee within two years will be recaptured by the Housing Trust Fund and reallocated.

The states or state-designated entities that receive grants from the Housing Trust Fund are responsible for overseeing the proper use of the funds and obtaining reimbursement for improperly used funds. Future grants are to be reduced by the amount of any improperly used money that is not reimbursed.

Current Funding Issues

As described earlier, the Housing Trust Fund's original funding source was suspended when Fannie Mae and Freddie Mac encountered financial trouble in the fall of 2008. Advocates have continued to search for a new source of funding for the Housing Trust Fund. P.L. 110-289 allows other funds to be "appropriated, transferred, or credited" to the Housing Trust Fund. However, to date, no new funding source has been identified for the Housing Trust Fund.

The Congressional Budget Office (CBO) originally estimated that the Housing Trust Fund could receive $624 million from GSE contributions in FY2012, the first year in which the Fund would have received its entire allocation of funding.[13] Advocates such as the National Low-Income Housing Coalition have stated that they want to see the Housing Trust Fund receive $5 billion per year.

Some affordable housing advocates have suggested using Ginnie Mae receipts as a funding source. This was proposed in some of the bills that would have created national housing trust funds in previous Congresses, and Ginnie Mae has recently seen an increase in business. Other sources that have been suggested are dividends from the Troubled Assets Relief Program (TARP), or using receipts generated from other housing programs.

[13] U.S. Congressional Budget Office, *Cost Estimate: H.R. 3221, Housing and Economic Recovery Act of 2008*, July 23, 2008, p. 3, available at http://www.cbo.gov/ftpdocs/95xx/doc9597/hr3221.pdf, and *Cost Estimate: Federal Housing Finance Regulatory Reform Act of 2008*, June 9, 2008, pp. 3, 5-6, available at http://www.cbo.gov/ftpdocs/93xx/doc9366/Senate_Housing.pdf. A portion of the GSEs' contributions were to be diverted to another program prior to FY2012.

The President's FY2010 budget request included $1 billion in mandatory funding for the Housing Trust Fund, but did not identify a funding source. H.R. 3288, the House-passed version of the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2010, did not include any mention of the Housing Trust Fund, nor did the version of the bill passed by the Senate Appropriations Committee. For a full discussion of the Housing Trust Fund and the FY2010 HUD appropriations process, see CRS Report R40727, *The Department of Housing and Urban Development: FY2010 Appropriations*, coordinated by Maggie McCarty.

On June 26, 2009, Representative Barney Frank introduced the TARP for Main Street Act of 2009 (H.R. 3068). The bill would use dividends paid to the Treasury by financial institutions that received funds under the Troubled Assets Relief Program (TARP) to fund certain housing programs, including $1 billion for the Housing Trust Fund. H.R. 3068 was referred to the House Committee on Financial Services, which held a hearing on the bill on July 9, 2009.

Appendix. Legislative History of Housing Trust Fund Bills

Proposals to create an affordable housing trust fund have been included in legislation since the 106th Congress. This report has described the Housing Trust Fund as it was authorized by P.L. 110-289. This appendix discusses the major features of previous housing trust fund proposals.

106th Congress

In the 106th Congress, Senator John Kerry and 10 cosponsors introduced S. 2997, the National Affordable Housing Trust Fund Act of 2000. This bill would have both established a National Affordable Housing Trust Fund within the Department of the Treasury and provided a dedicated funding source for the Fund. The dedicated funding source would have come from FHA Mutual Mortgage Insurance (MMI) funds above a capital adequacy level of 3%, as well as any excess funds from Ginnie Mae. Hearings on the bill were held by the Subcommittee on Housing and Transportation of the Committee on Banking, Housing, and Urban Affairs.

107th Congress

In the 107th Congress, Senator John Kerry and 28 cosponsors introduced S. 1248, the National Affordable Housing Trust Fund Act of 2001. Like S. 2997, this bill would have authorized a trust fund and proposed the same dedicated funding source of FHA MMI funds above a capital adequacy level set at 3% and any excess funds from Ginnie Mae. Again, subcommittee hearings were held, but the bill was never sent to the full committee. In the House, Representative Bernie Sanders and 199 cosponsors introduced H.R. 2349, also called the National Affordable Housing Trust Fund Act of 2001. This bill proposed using the same dedicated funding source of excess Ginnie Mae funds and FHA MMI funds above a capital adequacy level, but it set the capital adequacy level at 2% rather than 3%. The bill was referred to the Subcommittee on Housing and Community Opportunity, but hearings were never held.

108th Congress

In the 108th Congress, Senator John Kerry and 21 cosponsors introduced S. 1411, the National Affordable Housing Trust Fund Act of 2003. The bill proposed the same dedicated source of funding as S. 2997 and S. 1248. S. 1411 was referred to the Committee on Banking, Housing, and Urban Affairs, but the Committee never held hearings on it. Also in the 108th Congress, the Reed Affordable Housing Fund amendment to S. 1508, a GSE reform bill, was unanimously adopted by the Senate Banking Committee. This amendment proposed a dedicated funding source of 5% of Fannie Mae's and Freddie Mac's pretax profits. In the House, Representative Bernie Sanders and 214 cosponsors introduced H.R. 1102, also called the National Affordable Housing Trust Fund Act of 2003. This bill also included both authorizing and appropriating language and specified a dedicated source of funding that was the same as H.R. 2349 (and the same as the Senate bills, except for setting the FHA MMI fund capital adequacy level at 2% rather than 3%). The bill was referred to the Subcommittee on Housing and Community Opportunity, but hearings were never held.

109th Congress

In the 109th Congress, proponents of an affordable housing fund concentrated their efforts on including an affordable housing fund in H.R. 1461, the Federal Housing Finance Reform Act of 2005. The bill would have required each GSE to create an affordable housing fund and to contribute either 3.5% or 5% of the prior year's after-tax income, depending on the year. The bill included a sunset provision after five years, after which the GSEs would no longer have been required to make contributions. The bill was referred to the Senate Committee on Banking, Housing, and Urban Affairs.

110th Congress

In the 110th Congress, Representative Barney Frank and three cosponsors introduced H.R. 1427, the Federal Housing Finance Reform Act of 2007, on March 9, 2007. The bill authorized the creation of a trust fund and directed the GSEs to contribute 1.2 basis points for each dollar of their average total mortgage portfolio for five years, at which point the funding requirement would have ended. H.R. 1427 passed the House and was referred to the Senate Committee on Banking, Housing, and Urban Affairs.

Representative Maxine Waters and 13 cosponsors introduced H.R. 1852, the Expanding American Homeownership Act of 2007, on March 29, 2007. The bill passed the House and was referred to the Senate Committee on Banking, Housing, and Urban Affairs. H.R. 1852 would have set aside a portion of FHA savings for a housing trust fund.

Representative Barney Frank and 16 cosponsors introduced H.R. 2895, the National Affordable Housing Trust Fund Act of 2007, on June 28, 2007. H.R. 2895 was passed by the House and referred to the Senate Committee on Banking, Housing, and Urban Affairs. The bill would have created a permanent affordable housing trust fund and included guidance on how trust fund grantees should use the funds, but it did not create a permanent funding source.

Senator Jack Reed introduced S. 2391, the Government Sponsored Enterprise Mission Improvement Act, on November 16, 2007. The bill would have established an affordable housing block grant program and a Capital Magnet Fund, and would have funded both through GSE contributions of 4.2 basis points for each dollar of the unpaid principal balance of their total new business purchases. The bill did not include a sunset provision. S. 2391 was referred to the Committee on Banking, Housing, and Urban Affairs.

Senator John Kerry and 23 cosponsors introduced S. 2523, the National Affordable Housing Trust Fund Act of 2007, on December 19, 2007. The bill would have established a national affordable housing trust fund but would not have created a dedicated funding source. S. 2523 was referred to the Committee on Banking, Housing, and Urban Affairs.

Representative Nancy Pelosi and 18 cosponsors introduced H.R. 3221, the Housing and Economic Recovery Act of 2008, on July 30, 2007. This is the legislation that eventually became P.L. 110-289, and both authorized the affordable housing funds and created a permanent source of money for those funds. The version of the affordable housing trust fund that was created by P.L. 110-289 most resembles the proposed fund in S. 2391.

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