Housing Issues in the 112th Congress

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Summary

As the 112th Congress began, the economy was no longer officially in recession. However, housing markets remain fragile, many economic indicators remain weak, and home foreclosure rates remain high. Against this backdrop, the 112th Congress has considered a number of housing-related issues. Broadly speaking, these issues include long-term questions related to reforms to the housing finance system, short-term concerns related to ongoing turmoil in housing markets, perennial issues related to housing assistance programs, and possible reductions in funding for housing programs administered by the Department of Housing and Urban Development (HUD).

Given the role that housing played in the recent economic downturn, Congress has expressed interest in reforming the housing finance system to help protect the economy from similar problems in the future. In this vein, the 112th Congress has begun to consider long-term questions about the government's role in housing finance going forward. Such questions include the future of Fannie Mae and Freddie Mac, the government-sponsored enterprises (GSEs) currently in government conservatorship, and the role of the Federal Housing Administration (FHA). The 112th Congress has also exercised its oversight powers with regard to the implementation of housing- and mortgage-related provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203), which was enacted during the 111th Congress. Such provisions include ability to repay standards that apply to mortgage originators and risk retention standards that apply to asset securitizers. Many Members of Congress have expressed concern about the implications that some of these provisions could have for private mortgage lending and access to mortgage credit.

At the same time, the ongoing effects of the recent economic turmoil on consumers and housing markets raise questions about whether further government intervention is warranted in the short term to address ongoing foreclosure issues or to stimulate housing demand. The housing markets' fragility has also led to debates about whether policy options considered by the 112th Congress to reduce government involvement in the mortgage market would have negative effects on the housing recovery.

Concerns about the nation's budget deficit have led to increased calls for reduced government spending, and an environment of fiscal austerity will likely have implications for housing-related programs and activities along with other domestic discretionary programs. A law providing full-year FY2011 appropriations was not enacted until several months into the 112th Congress, and that law included cuts to several HUD programs, including reduced funding for the Community Development Block Grant (CDGB) and HOME programs. Appropriations for FY2012 included further cuts to housing programs, although some specific programs saw increases in funding. The 112th Congress has also considered perennial issues related to housing for low-income and other vulnerable populations, including possible reforms to the public housing and Section 8 Housing Choice Voucher programs. The debate over the future of federal housing assistance programs has been affected, and will likely continue to be affected, by both the fiscal environment and the ongoing effects of the recent recession and turmoil in U.S. housing markets.

This report provides a brief summary of major housing issues that have been active in the 112th Congress. It does not provide comprehensive coverage of the issues or closely track active legislation, but it includes references to related CRS products that offer more detailed information and analysis.

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Introduction

At the start of the 112th Congress, the economy was no longer officially in recession. However, housing markets and the economy as a whole have both continued to appear fragile. In the short term, this raises policy questions about whether further government intervention is necessary or desirable to support housing markets, or if such intervention might postpone a necessary market correction. It also raises questions about whether scaling back government involvement in housing finance could further harm already weak housing markets. Finally, given perennial issues related to housing for low-income and other vulnerable populations, the weak economy and the tight fiscal environment raise questions about which housing programs to prioritize in an environment of lower federal spending.

The remainder of this introduction briefly describes the state of U.S. housing markets to provide context for the policy issues discussed in the rest of this report.

The State of Housing Markets

Housing markets are generally considered to be local, rather than national, in nature, and housing market conditions can therefore vary dramatically by area. However, during the 112th Congress, housing markets remained fragile across the country following several years of nearly nationwide home price declines, weak housing demand, and high foreclosure rates.

Homeownership Markets

In recent years, homeownership markets have, broadly speaking, been characterized by falling house prices and low housing demand. Low demand for owner-occupied housing may reflect lower rates of household formation and consumer sentiment that housing prices have not yet reached a bottom, among other factors.

Some housing market indicators began to show some signs of improvement during the first half of 2012. Such positive indicators include lower housing inventory and shadow inventory levels,[1] rising home sales,[2] slower declines or even increases in house prices,[3] and lower rates of delinquent mortgages and mortgages entering the foreclosure process.[4] However, mortgage

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[1] CoreLogic, "CoreLogic Reports Shadow Inventory Fell in April 2012 to October 2008 Levels," June 14, 2012, http://www.corelogic.com/about-us/researchtrends/asset_upload_file848_15423.pdf. Shadow inventory includes properties with mortgages that are seriously delinquent or in the foreclosure process and foreclosed homes held by banks that are not yet listed for sale.

[2] National Association of Realtors, "Existing-Home Sales Improve in July, Prices Continue to Rise," press release, August 22, 2012, http://www.realtor.org/news-releases/2012/08/existing-home-sales-improve-in-july-prices-continue-to-rise.

[3] Federal Housing Finance Agency, "U.S. House Prices Rose 1.8 Percent from First Quarter to Second Quarter 2012," press release, August 23, 2012, http://www.fhfa.gov/webfiles/24216/q22012hpi.pdf.

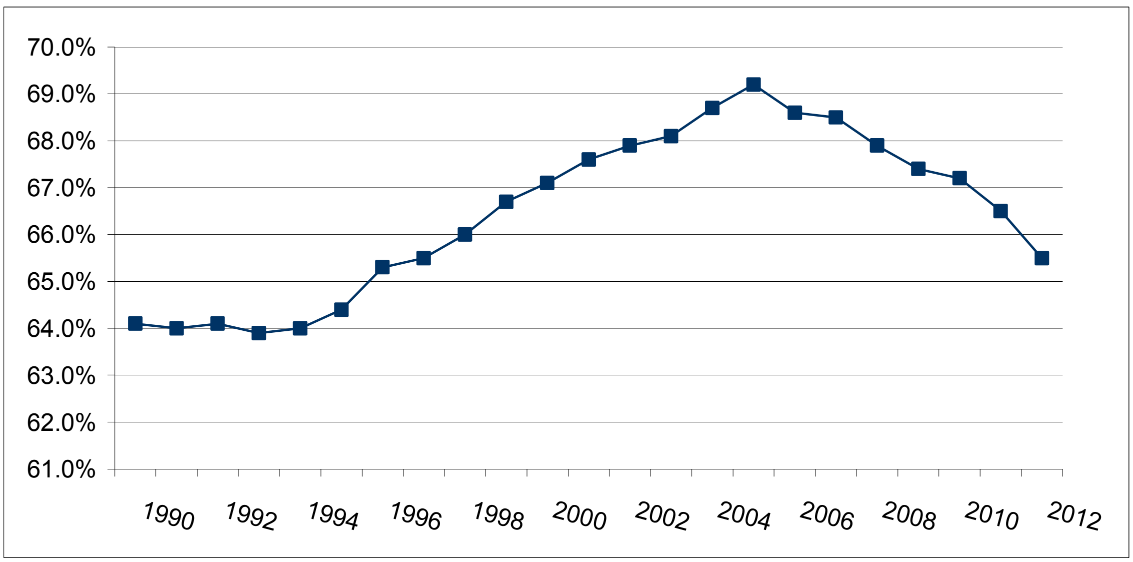
[4] U.S. Department of Housing and Urban Development, *U.S. Housing Market Conditions Second Quarter, 2012*, p. 29, http://www.huduser.org/portal/periodicals/ushmc/summer12/USHMC_2q12_national.pdf, citing data from the Mortgage Bankers Association. These data show that about 7.4% of all mortgages were delinquent in the first quarter of 2012, compared to 8.3% in the same quarter in 2011, and that 0.96% of mortgages entered the foreclosure process, compared to 1.08% in the same quarter in 2011. The percentage of mortgages past due does not include mortgages that are currently in the foreclosure process.

delinquencies and foreclosures remain at elevated levels.[5] Further, many other economic indicators remain weak, and the continuation of such positive signs in housing markets likely depends largely on economic conditions, including job growth, going forward.

Homeownership Rates

By the first quarter of 2012, the national homeownership rate had fallen to a seasonally adjusted rate of 65.6%, its lowest rate since 1997 and down from a peak of over 69% in the second quarter of 2004.[6] The decrease in the homeownership rate is due both to more households delaying homeownership and to former homeowners becoming renter households after losing their homes through foreclosure or distressed sales. **Figure 1** shows the trend in national homeownership rates since 1990. Some analysts note that, when home foreclosures that are likely to occur in the next few years are factored in, the effective homeownership rate is likely to be even lower since many current homeowners will eventually lose their homes to foreclosure and are likely to become renters.[7]

Figure 1. U.S. Homeownership Rates, 1990-2012



Source: Figure created by CRS based on data from the U.S. Census Bureau.

Notes: Homeownership rates are the seasonally adjusted rates as of the first quarter of each year.

More households delaying homeownership or choosing to rent, along with tightened underwriting standards for mortgages, has depressed demand for homes. This depressed demand, along with a

[5] For example, while 7.4% of all mortgages were delinquent in the first quarter of 2012, and 0.96% of mortgages entered the foreclosure process, in the first quarter of 2005 these numbers were 4.31% and 0.42%, respectively. See U.S. Department of Housing and Urban Development, *U.S. Housing Market Conditions Second Quarter, 2005*, p. 23, http://www.huduser.org/periodicals/ushmc/summer05/USHMC_05Q2.pdf, citing data from the Mortgage Bankers Association.

[6] U.S. Census Bureau, "Residential Vacancies and Homeownership in the Second Quarter 2012," press release, July 27, 2012, Table 4SA, p. 6, http://www.census.gov/hhes/www/housing/hvs/qtr212/files/q212press.pdf.

[7] See, for example, Haughwout, Andrew, Richard Peach, and Joseph Tracy, "The Homeownership Gap," Federal Reserve Bank of New York *Current Issues in Economics and Finance*, Volume 16, Number 5, May 2010, http://www.newyorkfed.org/research/current_issues/ci16-5.pdf.

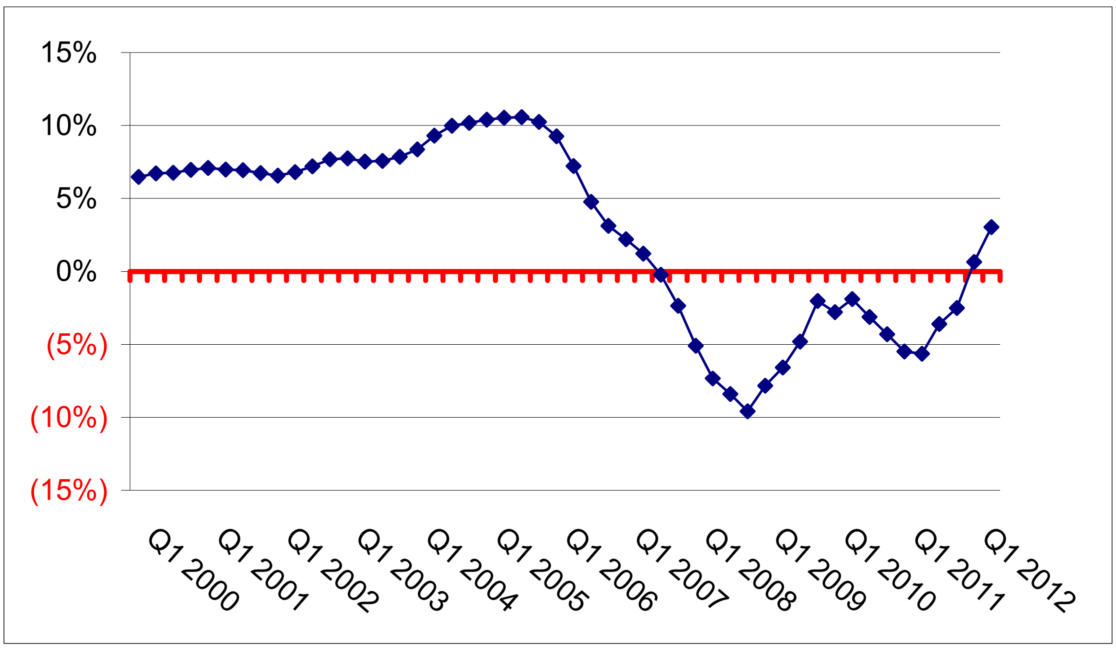
large inventory of unsold homes, has continued to put downward pressure on house prices in many areas of the country.

House Prices

On a national level, home prices increased sharply for several years until the mid-2000s, at which point house prices began to grow more slowly and then eventually to fall precipitously. **Figure 2** illustrates the trend in year-over-year house price appreciation using the housing price index (HPI) published by the Federal Housing Finance Agency (FHFA). The graph shows that, after years of steady gains in house prices, house prices on a national level began to appreciate more slowly, and then depreciate, beginning around 2006. House prices continued to depreciate on a national level for several years, although in the last quarters of 2011 they depreciated at a lower rate. In the first quarter of 2012 house prices increased slightly (0.4%) from the same period the previous year for the first time since 2007,[8] and in the second quarter of 2012 house prices displayed a 3% increase over the same period the previous year.[9]

Figure 2. Year-Over-Year House Price Appreciation

(2000–2012)



Source: Figure created by CRS based on the Federal Housing Finance Agency's seasonally adjusted, purchase-only house price index.

The national trend shown in **Figure 2** masks regional differences in house prices. While some areas saw steep increases in house prices during the housing boom of the mid-2000s, and then saw steep price declines in the recession that followed, other areas experienced only modest

[8] Federal Housing Finance Agency, "U.S. House Prices Increase Slightly: HPI Shows Quarterly Increase and First Annual Increase Since 2007," press release, May 23, 2012, http://www.fhfa.gov/webfiles/23967/Q12012HPI_Report52312F.pdf.

[9] Federal Housing Finance Agency, "U.S. House Prices Rose 1.8 Percent From First Quarter to Second Quarter 2012," press release, August 23, 2012, http://www.fhfa.gov/webfiles/24216/q22012hpi.pdf.

increases in house prices, no increases at all, or less dramatic house price decreases. Similarly, as house price declines begin to slow or reverse on a national level, individual markets may experience very different patterns.

Falling house prices have resulted in many homeowners owing more on their mortgages than their homes are now worth, a situation known as having negative equity or being "underwater" on one's mortgage. Industry analysts have estimated that nearly 24% of households with mortgages were in negative equity positions as of the first quarter of 2012, although the percentage of households with negative equity and the average amount of negative equity vary greatly by state and even within states. For example, Nevada has the highest percentage of households in negative equity positions at 61%, while Alaska has the lowest percentage at 6%.[10]

Negative equity can make it harder for households to avoid foreclosure if they experience income loss or other situations that make it difficult to pay their mortgages, since homeowners with negative equity cannot sell their homes for a high enough price to pay off the mortgage amount that they owe. Negative equity can also impede home sales. If households cannot sell their homes for enough to pay off their mortgage debt, they are unlikely to place their homes on the market, even if they would prefer to move. Negative equity can also limit the ability of a household to refinance. Furthermore, negative equity can contribute to broader economic problems by reducing the amount of wealth that people have in their homes, possibly depressing consumer spending.

Rental Markets

The high rates of foreclosures in the homeownership market could have conflicting implications for U.S. rental markets. Units that had traditionally been owner occupied may be converted to rental housing by homeowners who need to move but cannot sell their properties at their desired price, or by investors who have purchased foreclosed homes. The resulting increase in the supply of rental housing could lead to reduced rental rates in markets. Conversely, as former homeowners become renters, and as fewer families decide to enter a turbulent home purchase market, demand for rental housing may increase, which could lead to increased rents.

While rental markets across the country are mixed, with regional markets ranging from soft to balanced to tight, the overall trend appears to be one of tightening.[11] Tightening rental markets feature vacancy rates that are lowering and rental rates that are rising.

Affordability

According to Harvard's Joint Center for Housing Studies, both weak income gains and rising housing costs have led to decreased affordability in rental markets nationwide. Specifically, they found that real renter incomes declined in the 2000s, while rents and energy costs rose sharply.[12]

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[10] CoreLogic, "CoreLogic Reports Negative Equity Decreases in First Quarter of 2012," press release, July 12, 2012, http://www.corelogic.com/about-us/researchtrends/asset_upload_file912_15196.pdf.

[11] Joint Center for Housing Studies of Harvard University, *The State of the Nation's Housing 2012*, June 14, 2012, pp. 22-26, http://www.jchs.harvard.edu/research/publications/state-nation%E2%80%99s-housing-2012. See also U.S. Department of Housing and Urban Development, *U.S. Housing Market Conditions 1st Quarter 2012*, May 2012, http://www.huduser.org/portal/periodicals/ushmc/spring12/USHMC_1q12.pdf for discussions of regional rental markets.

[12] Joint Center for Housing Studies of Harvard University, *America's Rental Housing—Meeting Challenges, Building* (continued...)

Affordability problems are typically greatest for the lowest income families, and there is evidence that those problems are getting worse. HUD's most recent study of families with worst case housing needs—defined as those families earning less than half of area median income paying more than half their income towards rent or living in substandard housing—found that there had been a 20% increase in the number of families with worst case housing needs between 2007 and 2009. As has been the case in most recent years, HUD found that the vast majority of households experiencing worst case needs in 2009—about 97%—were facing severe rent burdens rather than living in housing that was physically inadequate.[13]

Housing Finance and Homeownership

This section describes issues related to housing finance, mortgage markets, and accessing and maintaining homeownership that have been considered by the 112th Congress.

The Future of Fannie Mae and Freddie Mac

Fannie Mae and Freddie Mac have congressional charters and are known as government-sponsored enterprises (GSEs). In September 2008, they were placed into conservatorship by their regulator, the Federal Housing Finance Agency (FHFA), using authority granted in the Housing and Economic Recovery Act of 2008 (P.L. 110-289). There is also a third set of housing GSEs, the Federal Home Loan Banks, that are not in conservatorship.

In the 111th Congress, the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act, P.L. 111-203) required the Secretary of the Treasury to present recommendations by January 31, 2011, for ending the conservatorship of Fannie Mae and Freddie Mac.[14] HUD and Treasury jointly released a report in February 2011 that recommended winding down Fannie Mae and Freddie Mac, and offered three general options for the government's future role in the housing finance system.[15]

The first option would have the Federal Housing Administration (FHA) and other federal mortgage programs (the Department of Agriculture's rural mortgage programs and the Department of Veterans' Affairs' mortgage guarantees) be narrowly targeted. In particular, FHA would continue to provide mortgage insurance on loans to low- and moderate-income households. The second option would expand on the targeting proposed in the first option and add the capacity to scale up the federal mortgage programs in times of crisis. The third option would also expand on the first option, and add "catastrophic reinsurance behind significant private capital." Under this option, the private sector would take the first losses, with the government providing reinsurance on certain types of mortgages and taking losses only if the private sector

(...continued)

on Opportunities, 2011, p. 4.

13 U.S. Department of Housing and Urban Development, *Worst Case Housing Needs 2009: A Report to Congress*, February 1, 2011, http://www.huduser.org/portal/publications/affhsg/wc_HsgNeeds09.html.

14 For more information about Fannie Mae's and Freddie Mac's financial problems, read CRS Report RL34661, *Fannie Mae's and Freddie Mac's Financial Problems*, by (name redacted).

15 U.S. Department of the Treasury and U.S. Department of Housing and Urban Development, *Reforming America's Housing Finance Market: A Report to Congress*, February 2011, http://portal.hud.gov/hudportal/documents/huddoc?id=housingfinmarketreform.pdf.

guarantors became insolvent. The government would charge the private sector for this re-insurance. More details on these options, including legislative language, have not been provided.

More than 60 bills with provisions to reform, terminate, or modify the business practices of Fannie Mae and Freddie Mac have been introduced in the 112th Congress. To date, two have become law. H.R. 3765,[16] the Temporary Payroll Tax Cut Continuation Act of 2011, requires Fannie Mae and Freddie Mac to increase the fees they charge mortgage sellers to guarantee mortgages by at least 10 basis points (0.10%); the proceeds are to be deposited in the Treasury. S. 2038, the Stop Trading on Congressional Knowledge (STOCK) Act of 2012,[17] prohibits the payment of bonuses to senior executives at Fannie Mae and Freddie Mac while their companies are in conservatorship.

For more information on proposals for the future of the GSEs, see CRS Report R41822, *Proposals to Reform Fannie Mae and Freddie Mac in the 112th Congress*, by (name redacted). For more information on Fannie Mae's and Freddie Mac's financial conditions, see CRS Report RL34661, *Fannie Mae's and Freddie Mac's Financial Problems*, by (name redacted).

Federal Housing Administration (FHA) Issues

The Federal Housing Administration, which is part of HUD, insures home mortgages made by private lenders. If a borrower with an FHA-insured mortgage defaults on that mortgage, FHA pays the lender who owns the loan the unpaid mortgage amount. FHA's single-family mortgage insurance program is funded through the Mutual Mortgage Insurance Fund (MMI Fund) and has historically been self-financing; that is, it takes in enough money in premium revenue paid by borrowers to pay out any claims to lenders on defaulted mortgages.

FHA-insured mortgages, like all mortgages, have experienced increases in default and foreclosure rates in recent years. This, combined with falling house prices and other factors, has strained the MMI Fund. One measure of the health of the MMI Fund, the capital reserve ratio, has fallen below statutorily mandated levels in recent years. The capital reserve ratio measures the amount of funds that the MMI Fund has on hand to cover *unexpected* losses on the mortgages that FHA currently insures, above and beyond reserves set aside to cover expected losses. By law, the capital reserve ratio is to be 2% or higher. In FY2011, the capital reserve ratio fell to 0.24%,[18] raising concerns that FHA may at some point need to draw on its permanent and indefinite budget authority with the Treasury to pay future claims.[19]

To address the strain on the MMI Fund, FHA has taken a number of steps over the past several years to strengthen the Fund, including raising the insurance premiums charged to borrowers, tightening some of its underwriting criteria, and strengthening its oversight of FHA-approved lenders. FHA had the authority to take many of these steps administratively, although some required congressional action.

[16] P.L. 112-78, 125 Stat. 1287.

[17] P.L. 112-105, 126 Stat. 303.

[18] U.S. Department of Housing and Urban Development, *Annual Report to Congress Fiscal Year 2011 Financial Status FHA Mutual Mortgage Insurance Fund*, November 15, 2011, p. 33, http://portal.hud.gov/hudportal/documents/huddoc?id=FHAMMIFundAnnRptFY2011.pdf.

[19] For example, see U.S. Congress, House Committee on Financial Services, *Perspectives on the Health of the FHA Single-family Insurance Fund*, 112th Cong., 1st sess., December 1, 2011.

The 112th Congress has also considered additional measures to strengthen the MMI Fund's financial position, including such possibilities as making further changes to insurance premiums, increasing reporting requirements, or providing FHA more authority with which to pursue lenders who have submitted loans for FHA insurance that do not adhere to FHA's standards. Legislation that has been introduced related to FHA includes one bill, the FHA Emergency Fiscal Solvency Act of 2012 (H.R. 4264), that has been passed by the House of Representatives.

FHA has also seen a sharp increase in its market share in recent years. While some argue that FHA's larger market share is playing a key role in supporting the mortgage market in the current environment, others argue that the government, including FHA, is too involved in the mortgage market and that its role should be reduced. In the short term, Congress may consider actions that could reduce FHA's role in the mortgage market. In the longer term, FHA's future role in the mortgage market is likely to be considered as part of the larger discussion about the U.S. housing finance system and the future of the GSEs. The 112th Congress has held several hearings on the future role of FHA in the mortgage market.[20]

For more information on FHA, see CRS Report RS20530, *FHA-Insured Home Loans: An Overview*, by (name redacted); and CRS Report R40937, *The Federal Housing Administration (FHA) and Risky Lending*, by (name redacted).

GSE Conforming Loan Limits and FHA Maximum Mortgage Amounts

In addition to questions about the long-term future of the GSEs and FHA, another issue confronted by the 112th Congress relates to the GSEs' conforming loan limits and the maximum mortgage amounts that FHA can insure.

The conforming loan limit is a statutory limitation on the size of mortgages that the GSEs can buy. The conforming loan limit is the same in most areas of the country (currently $417,000), but the Economic Stimulus Act of 2008 (ESA, P.L. 110-185) established higher limits in certain areas of the country deemed to be high-cost. ESA set the high-cost area limit at $729,750. The Housing and Economic Recovery Act of 2008 (HERA, P.L. 110-289) established a lower limit in high-cost areas of $625,500. However, the higher limits established by ESA were extended a number of times, until the last extension expired at the end of FY2011. On October 1, 2011, the conforming loan limits in high-cost areas decreased to $625,500.

Much like the GSE conforming loan limits, FHA can only insure mortgages up to a certain principal amount that is set in statute. Unlike the GSE conforming loan limits, the FHA loan limits are based on area median home prices, and therefore vary more widely by area. There are also a national floor and a national ceiling that set loan limits in low-cost and high-cost areas, respectively, and are calculated as percentages of the national GSE conforming loan limit. Along

[20] For example, see U.S. Congress, House Committee on Financial Services, Subcommittee on Insurance, Housing and Community Opportunity, *Legislative Proposals to Determine the Future Role of FHA, RHS and GNMA in the Single- and Multi-Family Mortgage Markets*, 112th Cong., 1st sess., May 25, 2011; and U.S. Congress, House Committee on Financial Services, Subcommittee on Insurance, Housing and Community Opportunity, *Legislative Proposals to Determine the Future Role of FHA, RHS and GNMA in the Single- and Multi-Family Mortgage Markets, Part 2*, 112th Cong., 1st sess., September 8, 2011.

with making changes to the GSE conforming loan limits, ESA temporarily raised the FHA loan limits in high-cost areas and some other areas.

ESA specified that the FHA loan limit would temporarily be set at 125% of area median home prices in most areas, with a high-cost area limit of $729,750. The Housing and Economic Recovery Act established new statutory limits at 115% of area median home prices in most areas with a high-cost area limit of $625,500; however, the higher ESA limits were extended a number of times until the last extension expired at the end of FY2011. At that point, the loan limits briefly fell to HERA levels, until the Consolidated and Further Continuing Appropriations Act, 2012 (P.L. 112-55) reinstated the higher FHA loan limits under ESA until December 31, 2013. The higher GSE conforming loan limits were not extended in that legislation, despite proposals from some Members of Congress.

The 110th Congress acted through ESA to temporarily increase the FHA maximum mortgage amount and the GSE conforming loan limit in high cost areas in response to tightening lending standards as the mortgage market began to deteriorate. As lending standards tightened, fewer borrowers were able to obtain loans that were not guaranteed by the GSEs or insured by FHA; however, the GSE and FHA loan limits prevented some borrowers from being able to purchase a home with a GSE- or FHA-backed mortgage, particularly in high-cost markets. The increased loan limits allowed more borrowers to obtain mortgages that could be purchased by the GSEs or insured by FHA.

Some policymakers have argued that the GSE conforming loan limits and the FHA loan limits should be allowed to fall as a first step in scaling back federal involvement in the mortgage market. Others, however, have argued that the loan limits should not be allowed to fall while housing markets are still fragile, suggesting that the lower limits would result in some qualified borrowers either being unable to purchase homes or paying higher costs to obtain a mortgage.

Oversight of Implementation of Housing-Related Provisions in the Dodd-Frank Act

The 111th Congress enacted broad financial reform legislation in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act, P.L. 111-203). While not primarily a housing law, the Dodd-Frank Act included a number of housing- and mortgage-related provisions. Rulemaking and other administrative actions are taking place to implement a number of provisions that may affect mortgage credit availability. The 112th Congress has exercised oversight of some of these actions by, for example, holding hearings on the proposed implementation of certain provisions.

Ability to Repay Standards and "Qualified Mortgages" (QM)

Title XIV of the Dodd-Frank Act establishes minimum residential mortgage underwriting standards, including a requirement that lenders take into account a borrower's ability to repay mortgages that are offered. Lenders that offer "qualified mortgages" (QM), as the term is defined by the Dodd-Frank Act, will be presumed to comply with the ability to repay requirements. Among other things, to meet the statutory definition of a qualified mortgage, a mortgage must not feature negative amortization, interest-only payments, or balloon payments, and the lender must verify the borrower's income and assets.

On April 19, 2011, the Federal Reserve announced a proposed rule that would implement the ability to repay provisions and certain other mortgage underwriting standards of Title XIV.[21] The comment period on the proposed rule expired on July 22, 2011. Although the Federal Reserve published the proposed rule, authority for this rulemaking transferred to the Consumer Financial Protection Bureau (CFPB) in July 2011. Therefore, any final rule on the matter will be prescribed by the CFPB, which is not bound by the proposed regulations. The CFPB could issue new proposed regulations; prescribe final regulations that are different than the Federal Reserve's proposal; prescribe final regulations substantially similar to those proposed by the Federal Reserve; or not issue final regulations at all. The CFPB re-opened the comment period to seek further comments on the litigation risks that could potentially arise from the new requirements.[22] The comments, however, were to be narrowly focused and based upon analysis that used mortgage data provided by the regulator of Fannie Mae and Freddie Mac. The closing date for comments was July 9, 2012.

For a discussion of potential issues related to the ability to repay standards and the QM definition, see the "Issues Related to the Ability to Repay and Risk Retention Standards" subsection that appears after the following section on risk retention standards.

Risk Retention Standards and "Qualified Residential Mortgages" (QRM)

A separate but related provision of the Dodd-Frank Act requires securitizers, under certain circumstances, to retain a portion of the credit risk in the assets underlying securitizations.[23] This provision is intended to ensure that loan originators have a stake in the quality of the loans that they originate, even if the loans are subsequently sold to investors. Although the standard applies to a broad set of assets, the Dodd-Frank Act provides an exception to the risk retention requirement for "qualified residential mortgages" (QRM) that include "underwriting and product features that historical loan performance data indicate result in a lower risk of default."[24] The specific definition of a QRM is to be established by regulators through rulemaking procedures, taking into account certain features identified in the law. Dodd-Frank also specifies that the definition of a QRM can be "no broader than" the definition of a QM.

On April 29, 2011, six regulatory agencies published a proposed rule that would implement the Dodd-Frank Act's risk retention requirements.[25] The proposed rule's requirements for a mortgage

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[21] See http://www.federalreserve.gov/newsevents/press/bcreg/20110419a.htm. The proposed rule was published in the *Federal Register* on May 11, 2011; see Regulation Z; Truth in Lending, 76 *Federal Register* 27,390 (May 11, 2011), http://www.gpo.gov/fdsys/pkg/FR-2011-05-11/pdf/2011-9766.pdf. General rulemaking authority for the Truth in Lending Act (TILA, P.L. 90-321; 82 Stat. 146), which is implemented under Regulation Z, transferred to the CFPB on July 21, 2011. See CRS Report R41338, *The Dodd-Frank Wall Street Reform and Consumer Protection Act: Title X, The Consumer Financial Protection Bureau*, by (name redacted).

[22] Consumer Financial Protection Bureau, "Consumer Financial Protection Bureau seeks further comment on Ability-to-Repay Mortgage Rule," press release, May 31, 2012, http://www.consumerfinance.gov/pressreleases/consumer-financial-protection-bureau-seeks-further-comment-on-ability-to-repay-mortgage-rule/.

[23] Securitization refers to the practice of gathering assets (such as mortgages) from one or more banks into a pool, and selling securities representing claims on the cash flow of the pool to investors.

[24] 15 U.S.C. §78o-11, as added by Dodd-Frank Act §941.

[25] *Credit Risk Retention*, 76 *Federal Register* 24,090 (April 29, 2011), http://edocket.access.gpo.gov/2011/pdf/2011-8364.pdf. The regulatory agencies are the Office of the Comptroller of the Currency (Department of the Treasury), the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Housing Finance Agency, the Securities and Exchange Commission, and the Department of Housing and Urban Development.

to be considered a QRM appear to be stricter than the requirements for a mortgage to be considered a QM. Among other criteria, the proposed QRM definition establishes minimum downpayments for borrowers. For example, under the proposed rule, a borrower seeking a mortgage to purchase residential property would have to make a 20% downpayment for that mortgage to meet the proposed QRM definition.[26]

The comment period on the proposed rule ended on August 1, 2011; a final rule has not yet been promulgated, and any final rule that is eventually prescribed by the regulatory agencies may or may not be substantially similar to the proposed rule.

Issues Related to the Ability to Repay and Risk Retention Standards

The Dodd-Frank Act's ability to repay and credit risk retention provisions have the potential to reduce the risk of mortgage defaults that played an integral role in the mortgage, housing, and financial market turmoil that began in the summer of 2008. However, these provisions also have the potential to translate into less mortgage credit availability or higher credit costs for borrowers unable to meet the QM and QRM underwriting standards, if lenders become unwilling to make non-QM or non-QRM loans or charge more for such loans. Given these potential tradeoffs, several Members of Congress, as well as industry and consumer groups, have expressed interest in the implementation of the QM and QRM rules and their subsequent effects on mortgage finance activity and the housing markets.[27]

For more information on both the ability to repay standards and the risk retention standards, see CRS Report R42056, *Ability to Repay, Risk-Retention Standards, and Mortgage Credit Access*, by (name redacted).

Mortgage Disclosures

Another aspect of the Dodd-Frank Act being implemented during the 112th Congress relates to mortgage disclosures. High foreclosure rates have led many to question whether borrowers were fully informed about the terms of their mortgage loans. Omissions in disclosure of the terms of a loan can make some borrowers more vulnerable to predatory lending or discriminatory practices. To address these and related concerns, the Dodd-Frank Act mandated that the Consumer Financial Protection Bureau (CFPB) consolidate into one "Loan Estimate" form the required disclosures of credit costs and terms for the Truth In Lending Act (TILA) of 1968 and the Real Estate Settlement Procedures Act (RESPA) of 1974.[28] The CFPB has also developed a prototype settlement disclosure,[29] which consolidates the HUD-1 Settlement Statement and the final TILA disclosure.

For more information on mortgage disclosures, see CRS Report R41980, *Revisiting Mortgage Loan Disclosures Under the Consumer Financial Protection Bureau*, by (name redacted) and

[26] *Credit Risk Retention*, 76 *Federal Register* at 24,124.

[27] For example, see letters to regulators signed by several Members of Congress addressing the proposed QRM rule at http://hagan.senate.gov/files/images/SenateQRMLetter.pdf; and http://isakson.senate.gov/documents/House%20QRM%20Letter.pdf.

[28] See Consumer Financial Protection Bureau, at http://www.consumerfinance.gov/knowbeforeyouowe/#disclosure.

[29] See Consumer Financial Protection Bureau, "Know Before You Owe: The last dance... or is it?" at http://www.consumerfinance.gov/blog/know-before-you-owe-the-last-dance-or-is-it/.

(name redacted). For more information on the CFPB in general, see CRS Report R41338, *The Dodd-Frank Wall Street Reform and Consumer Protection Act: Title X, The Consumer Financial Protection Bureau*, by (name redacted).

Regulation of Real Estate Appraisers

Real estate appraisers attempt to measure the value of a property that is being purchased or refinanced. In mortgage contracts, the property serves as collateral for the loan. Because housing prices fell rapidly following the housing bubble, people raised questions about the effectiveness of the regulation of residential real estate appraisers before and during the financial crisis.

The Housing and Economic Recovery Act of 2008 (HERA), enacted during the 110th Congress, and the Dodd-Frank Act contained changes to the regulation of appraisers. HERA prohibited mortgage industry professionals from influencing appraisers. The Dodd-Frank Act transferred some rulemaking authority for residential appraisals from the banking regulators to the new CFPB. The Dodd-Frank Act also made a number of other regulatory changes, including federal oversight of state registration of appraisal management companies (AMCs), and instructed regulators to set reasonable and customary fees for appraisal services.

The 112th Congress has deliberated on a number of appraiser-related issues. On June 28, 2012, the House Committee on Financial Services held an oversight hearing on appraisal regulation. The committee considered several recent rulemakings by the Federal Reserve, the CFPB, and the banking regulators that affect appraisal regulation. They also examined the activities of the Appraisal Subcommittee (ASC), the federal agency that oversees state regulatory boards.

For more information on real estate appraiser issues, see CRS Report RS22953, *Regulation of Real Estate Appraisers*, by (name redacted).

Foreclosure Mitigation

Home mortgage default and foreclosure rates began to rise sharply beginning in 2006, and have remained high ever since. According to data from the Office of the Comptroller of the Currency (OCC), 7.0% of outstanding single-family mortgages were in some stage of delinquency during the first quarter of 2012, and an additional 4% of mortgages were in the foreclosure process.[30]

Previous Congresses and both the Bush and Obama Administrations established a range of initiatives intended to slow the pace of foreclosures or to mitigate their effects on surrounding communities. While some of these programs are having some limited success, as a whole they have failed to meet expectations. In light of these perceived shortcomings, some Members of Congress and policy experts have argued that existing programs should be changed or replaced with new initiatives that might be better able to address foreclosures. Others contend that federal foreclosure prevention and mitigation initiatives have been ineffective and might have prolonged the downturn in housing markets, and therefore should be eliminated entirely.

[30] Office of the Comptroller of the Currency, *OCC Mortgage Metrics Report: Disclosure of National Bank and Federal Savings Association Mortgage Loan Data First Quarter 2012*, June 2012, p. 13, http://occ.gov/publications/publications-by-type/other-publications-reports/mortgage-metrics-2012/mortgage-metrics-q1-2012.pdf. The OCC data include first-lien mortgages serviced by certain national banks and a federal thrift; OCC estimates that the data cover about 60% of outstanding mortgages.

Early in the 112[th] Congress, the House passed several bills that would terminate several foreclosure prevention and foreclosure mitigation programs.[31] Supporters of these bills argued that the programs had been ineffective and were not a good use of government funds. Opponents of the bills argued that some of the programs may have fallen short of expectations, but that they could be changed to become more effective rather than eliminated entirely. The Senate has not considered the bills.

The 112[th] Congress has also considered additional policy options to limit foreclosures, mitigate their impacts, or ease the financial burden on homeowners. Such options have included expanding opportunities for homeowners to refinance and lower their interest rates, encouraging mortgage modifications that reduce mortgage principal balances for certain borrowers with negative equity, and addressing the excess supply of vacant and foreclosed homes.

In October 2011, the Federal Housing Finance Agency (FHFA) announced that it was making changes to the Home Affordable Refinance Program (HARP), a program that makes it easier for certain borrowers with mortgages owned or guaranteed by the government-sponsored enterprises (GSEs) and who have little or no equity in their homes to refinance.[32] Several bills have been introduced that would attempt to further expand refinancing opportunities and reduce some of the barriers related to refinancing,[33] and President Obama has advocated creating a program similar to HARP targeted at borrowers with non-GSE mortgages.[34]

Legislation has also been introduced related to offering principal reduction for certain borrowers.[35] Advocates of principal reduction argue that it can be a cost-effective way to reduce foreclosures that benefits both borrowers and financial institutions when compared to the cost of a foreclosure. However, opponents of principal reduction argue that it is costly, difficult to target to the borrowers who would benefit from it the most, and could encourage borrowers who are able to pay to default on their mortgages in order to qualify. To date, FHFA has not allowed the GSEs to offer principal reductions on mortgages that they own or guarantee, or to participate in existing programs that include principal reduction. This has been an issue of interest to Congress, with some Members of Congress urging the Director of FHFA to allow the GSEs to offer principal reduction, and other Members of Congress urging the Director to continue to prohibit the GSEs from offering principal reduction.[36]

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[31] H.R. 830 would terminate the FHA Short Refinance Program, H.R. 836 would terminate the Emergency Homeowners Loan Program, H.R. 839 would terminate the Home Affordable Modification Program (HAMP), and H.R. 861 would terminate the Neighborhood Stabilization Program (NSP).

[32] Federal Housing Finance Agency, "FHFA, Fannie Mae and Freddie Mac Announce HARP Changes to Reach More Borrowers," press release, October 24, 2011, http://fhfa.gov/webfiles/22721/HARP_release_102411_Final.pdf.

[33] For example, H.R. 363, S. 170, S. 3047, S. 3085, and S. 3522 all attempt to remove particular barriers to refinancing for certain types of mortgages.

[34] White House Fact Sheet, "President Obama's Plan to Help Responsible Homeowners and Heal the Housing Market," February 1, 2012, http://www.whitehouse.gov/the-press-office/2012/02/01/fact-sheet-president-obama-s-plan-help-responsible-homeowners-and-heal-h.

[35] For example, H.R. 3841 and S. 2093 would each establish principal reduction programs for certain borrowers.

[36] For example, see this May 1, 2012, letter from some Members of Congress to the Director of FHFA demanding further information on the analysis underlying FHFA's decision not to allow principal reduction at http://democrats.oversight.house.gov/images/stories/2012-05-01.EEC-JFT%20to%20FHFA.pdf, and this May 3, 2012, letter from other Members of Congress urging the Director of FHFA to resist calls for principal reduction at http://oversight.house.gov/release/oversight-leaders-caution-fhfa-head-demarco-to-resist-political-pressure-to-enact-taxpayer-funded-principal-reduction-program/.

In addition to impacting affected homeowners, foreclosures can have impacts on surrounding communities and housing markets as a whole. Concerns that the inventory of foreclosed properties is further depressing property prices could lead Congress to act to address the effect of foreclosures on housing markets. Bills have been introduced in the 112th Congress that would address the excess supply of vacant and foreclosed homes, such as H.R. 1548, which would allow former homeowners to continue to occupy their homes as renters. Additionally, the American Jobs Act (H.R. 12 and S. 1549) would establish a program called Project Rebuild that would provide funds to communities to rehabilitate foreclosed properties. Finally, the Obama Administration has solicited ideas for addressing the foreclosed housing inventory held by FHA and Fannie Mae and Freddie Mac,[37] leading to a pilot program in which FHFA expects to sell about 2,500 foreclosed Fannie Mae properties to investors who will turn them into rental properties.[38]

For more information on existing and proposed foreclosure prevention and foreclosure mitigation initiatives, see CRS Report R40210, *Preserving Homeownership: Foreclosure Prevention Initiatives*, by (name redacted); CRS Report R42480, *Reduce, Refinance, and Rent? The Economic Incentives, Risks, and Ramifications of Housing Market Policy Options*, by (name redacted); CRS Report R42577, *An Economic Analysis of Large-Scale Mortgage Refinancing Proposals: A Brief Overview of S. 3522 and S. 3085*, by (name redacted); and CRS Report RS22919, *Community Development Block Grants: Neighborhood Stabilization Program; Assistance to Communities Affected by Foreclosures*, by (name redacted) and (name redacted).

Mortgage Servicing Issues

The role that mortgage servicers play in the housing finance system has received added attention in the wake of high foreclosure rates, recent investigations into possible irregularities in the foreclosure process, and questions about servicers' execution of federal mortgage modification initiatives. Mortgage servicers are the entities that collect payments from borrowers and forward them to the mortgage holders. If a borrower is delinquent, the servicer acts on behalf of the mortgage holder to facilitate a loss mitigation option or to initiate a foreclosure. Given the questions that have been raised about servicers' roles in the modification and foreclosure processes, some in Congress have proposed national servicing standards to protect consumers and mortgage investors. However, some in the mortgage banking industry have argued that, while some standards may be beneficial, some of the options that have been proposed may not make a difference, could overly burden servicers, or could actually harm consumers.[39]

[37] See "Request for Information: Enterprise/FHA REO Asset Disposition," issued by the Federal Housing Finance Agency in consultation with the Departments of Treasury and Housing and Urban Development, http://www.treasury.gov/press-center/Documents/Final%20REO%20RFI.PDF.

[38] Federal Housing Finance Agency, "FHFA Announces Next Steps in REO Pilot Program," press release, July 3, 2012, http://www.fhfa.gov/webfiles/24041/REOInitiative7312.pdf.

[39] For example, see the discussion of servicers' perspectives on specific types of proposed servicing standards included in Mortgage Bankers Association, "Residential Mortgage Servicing for the 21st Century White Paper," http://www.mbaa.org/files/ResourceCenter/ServicingCouncil/ResidentialServicingforthe21stCenturyWhitePaper.pdf.

The 112th Congress has held hearings on proposals for national servicing standards,[40] and a number of bills have been introduced in the 112th Congress that would establish federal mortgage servicing standards to varying degrees. Some national mortgage servicing standards are designed to protect consumers. These proposals generally have at least one of three features.[41] One is a requirement that servicers establish a single point of contact with the borrower. The single point of contact would be a case manager assigned to each borrower seeking a loan modification that would manage communications between the borrower and servicer and have the authority to decide if the borrower is eligible for a loan modification. A second feature is prohibition of dual tracking, which means servicers pursuing a loss mitigation option while simultaneously initiating a foreclosure process. The third feature involves establishing staffing requirements that would set minimum experience, education, and training levels for loan modification staff. Some legislation also proposes caseload limits for individual employees.

Other proposed mortgage servicing standards are designed to ensure that servicers act in the best interest of the holders of the mortgage loans. Such proposals would prohibit servicers from purchasing services offered by their affiliates[42] at inflated costs that are passed on to investors. Servicers would also be prohibited under these proposals from choosing a loss mitigation option that benefits their affiliates' share in the loans at the expense of other investors.

There also are non-legislative avenues through which mortgage servicing standards may be adopted.[43] On August 10, 2012, the Bureau of Consumer Financial Protection (CFPB) issued proposed rules that would establish mortgage servicing standards that would apply to virtually every servicer and every mortgage in the United States.[44] The proposed rules would amend Regulation Z,[45] which implements the Truth in Lending Act (TILA), and Regulation X,[46] which implements the Real Estate Settlement Procedures Act (RESPA). They would require mortgage servicers to comply with a number of billing disclosure and documentation standards, provide more advanced notice to consumers before changes in adjustable interest rates take effect, and to contact, by telephone and in writing, all delinquent mortgage borrowers to provide information on foreclosure mitigation options and to assign a specific employee to serve as the primary point of contact for each delinquent borrower. Additionally, the proposed regulations would impose

[40] For example, see U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, Subcommittee on Housing, Transportation and Community Development, *The Need for National Mortgage Servicing Standards*, 112th Cong., 1st sess., May 12, 2011; U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, *Housing Finance Reform: National Mortgage Servicing Standards*, 112th Cong., 1st sess., August 2, 2011; and U.S. Congress, House Committee on Financial Services, Subcommittee on Financial Institutions and Consumer Credit and Subcommittee on Oversight and Investigations, *Mortgage Servicing: An Examination of the Role of Federal Regulators in Settlement Negotiations and the Future of Mortgage Servicing Standards*, 112th Cong., 1st sess., July 7, 2011.

[41] Different pieces of legislation proposed in the 112th Congress focus on different components of national servicing standards. S. 824 and its companion bill, H.R. 1783, are among the most comprehensive. Other proposals include S. 489, S. 967, H.R. 1477, H.R. 1567, and H.R. 3789.

[42] In this example, an affiliate of a servicer is an organization with the same parent company as the servicer.

[43] The following discussion is adapted from an August 28, 2012, blog post on the CRS Legal Sidebar written by (name redacted), available at http://crs.gov/analysis/legalsid ebar/pages/details.aspx?ProdId=186. See that blog post for more details on the CFPB proposed rules on mortgage servicing standards.

[44] David Silberman, *Putting the 'service' back in 'mortgage servicing'*, Consumer Financial Protection Bureau, August 10, 2012, at http://www.consumerfinance.gov/blog/putting-the-serviceback-in-mortgage-servicing/.

[45] Consumer Financial Protection Bureau, *2012 Truth in Lending Act (Regulation Z) Mortgage Servicing Proposal*, at http://files.consumerfinance.gov/f/201208_cfpb_tila_proposed_rules.pdf.

[46] Consumer Financial Protection Bureau, *2012 Real Estate Settlement Procedures Act (Regulation X) Mortgage Servicing Proposal*, at http://files.consumerfinance.gov/f/201208_cfpb_respa_proposed_rules.pdf.

restrictions on mortgage servicers' ability to charge borrowers for force-placed hazard insurance. The public comment period on the proposed rules is open until October 9, 2012. The CFPB plans to issue final rules by January of next year.

Although the CFPB's proposed rules would, if finalized, apply to the broadest range of mortgages, they are not the only "uniform" mortgage standards that are being considered and implemented by regulators and the industry. In February 2012, the nation's five largest mortgage servicers agreed to comply with extensive new servicing standards as part of a legal settlement with 49 state attorneys general and federal agencies.[47] Separately, in response to deficiencies in the servicing of delinquent mortgages and implementation of foreclosures, the federal banking regulators entered into consent orders with the 14 largest U.S. mortgage servicers that require, among other things, those servicers to comply with various servicing standards.[48] (The legal settlement and the consent orders are described in more detail in the next section.) Additionally, the Federal Housing Finance Agency (FHFA), the regulator of Fannie Mae and Freddie Mac, is in the process of establishing servicing standards for mortgages in default that are either held or guaranteed by the two mortgage companies as part of its Servicing Alignment Initiative.[49]

For more information on mortgage servicing standards, see CRS Report R42041, *National Mortgage Servicing Standards: Legislation in the 112th Congress*, by (name redacted).

Mortgage-Related Enforcement Actions, Lawsuits, and Settlements

Federal and State Regulatory Actions Against Mortgage Servicers

As is described in detail in CRS Report R41491, *"Robo-Signing" and Other Alleged Documentation Problems in Judicial and Nonjudicial Foreclosure Processes*, by (name red acted), in the fall of 2010, the sworn statements of employees from several large mortgage servicers raised concerns that the companies were systematically engaged in mortgage documentation and procedural improprieties, especially when handling mortgages in default. These alleged transgressions included signing affidavits without personal knowledge of the facts presented in the legal documents submitted to courts to support the right to foreclose; back-dating mortgage documents to fabricate evidence to give the appearance of compliance with state foreclosure requirements; failing to adhere to notarization requirements for foreclosure-related documents filed with courts; losing mortgage paperwork; assessing excessive fees against mortgage borrowers; failing to properly account for borrower mortgage payments; and failing to properly assess borrowers for eligibility in mortgage modification and other loss mitigation programs. Concerns about these illicit acts provoked a number of state and federal regulators to initiate multiple investigations, enforcement actions, lawsuits, and legal settlement negotiations.

Although the alleged servicer misconduct is a common thread in these regulatory actions, the legal authorities at the disposal of the regulators vary considerably. These disparate legal

[47] National Mortgage Settlement, at http://www.nationalmortgagesettlement.com/

[48] Federal Reserve System, Office of the Comptroller of the Currency, Office of Thrift Supervision, *Interagency Review of Foreclosure Policies and Practices*, April 2011, at http://www.federalreserve.gov/boarddocs/rptcongress/interagency_review_foreclosures_20110413.pdf.

[49] Federal Housing Finance Agency, "Fannie Mae and Freddie Mac to Align Guidelines for Servicing Delinquent Mortgages," press release, April 28, 2011, http://www.fhfa.gov/webfiles/21190/SAI42811.pdf.

authorities appear to have affected the remedies sought and the speed at which resolutions could be secured. For example, each of the 14 largest U.S. mortgage servicers[50] is organized as a depository institution that is primarily regulated by either the Office of the Comptroller of the Currency (OCC) or the Board of Governors of the Federal Reserve System (FRB).[51] Both the OCC and the FRB have the duty to ensure that the depositories under their jurisdiction are being run in a safe and sound manner in all respects, including in their mortgage servicing activities. To reach this end, these federal banking regulators have the authority to conduct examinations of the institutions under their jurisdiction and have very strong and flexible enforcement powers to rectify any problems, practices, or governing controls found during the course of those examinations that may jeopardize the financial soundness of an institution.[52]

Beginning in the fourth quarter of 2010, the federal banking regulators began on-site examinations of the foreclosure processes and governance protocols of these 14 servicers. During the examinations, they reviewed a sampling of mortgage files for which there were foreclosure actions pending during calendar years 2009 and 2010.[53] The regulators "found critical weaknesses in [the] servicers' foreclosure governance processes, foreclosure document preparation processes, and oversight and monitoring of third-party vendors, including foreclosure attorneys."[54] As a result of these findings, the banking regulators entered into binding consent orders in April 2011 with all 14 mortgage servicers and several of the third-party service providers that the servicers used in various ways during foreclosure processes.[55] The consent orders require servicers to redress homeowners harmed in the past, as well as to improve behavior going forward.[56]

Additionally, all 50 state attorneys general, the Conference of State Bank Supervisors, the U.S. Department of Housing and Urban Development (HUD), the U.S. Department of the Treasury (Treasury), the U.S. Department of Justice (DOJ), and the Bureau of Consumer Financial Protection (CFPB) initiated a separate investigation into foreclosure-related state and federal law violations by the top five mortgage servicers: Ally Financial, Inc. (formerly GMAC, Inc.); Bank of America, Corp.; Citigroup, Inc.; JP Morgan Chase & Co.; and Wells Fargo & Co.[57] On

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[50] The 14 largest U.S. mortgage servicers, which service close to 70% of the total volume of mortgages in the country, are: "Ally Bank/GMAC, Aurora Bank, Bank of America, Citibank, EverBank, HSBC, JPMorgan Chase, MetLife, OneWest, PNC, Sovereign Bank, SunTrust, U.S. Bank, and Wells Fargo." *Interagency Review of Foreclosure Policies and Practices*, Fed. Reserve Sys., Office of the Comptroller of the Currency, Office of Thrift Supervision, at 1, April 2011, available at http://www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-47a.pdf.

[51] Some of these institutions had been primarily regulated by the Office of Thrift Supervision (OTS) until the agency was recently eliminated in accordance with Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203).

[52] See, for example, 12 U.S.C. §1818.

[53] *Interagency Review of Foreclosure Policies and Practices*, Fed. Reserve Sys., Office of the Comptroller of the Currency, Office of Thrift Supervision, April 2011, available at http://www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-47a.pdf.

[54] *Id*. at 2-3 (internal citations omitted).

[55] The third-parties with which consent orders were entered include Mortgage Electronic Registration Systems, Inc. (MERS); DocX, LLC; and Lender Processing Services, Inc.

[56] *Interagency Review of Foreclosure Policies and Practices*, Fed. Reserve Sys., Office of the Comptroller of the Currency, Office of Thrift Supervision, at 13, April 2011, available at http://www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-47a.pdf.

[57] *50 States Sign Mortgage Foreclosure Joint Statement*¸ Nat'l Ass'n. of Attorneys Gen. Press Release, October 13, 2010, available at http://www.naag.org/joint-statement-of-the-mortgage-foreclosure-multistate-group.php. The five largest U.S. mortgage servicers, which account for approximately 60% of the servicing volume in the country, are Ally Bank/GMAC, Bank of America, CitiBank, JP Morgan Chase, and Wells Fargo. *Interagency Review of Foreclosure* (continued...)

February 8, 2012, these state and federal officials, with the exception of Oklahoma's attorney general,[58] announced a "National Mortgage Settlement" covering certain legal claims with these five institutions.[59] The settlement provides mortgage servicers some certainty regarding their legal liability, while securing monetary relief for individuals who lost homes through foreclosure in recent years and current homeowners who are struggling to maintain monthly payments.

The agreements stipulate that the mortgage companies will comply with specified servicing standards going forward and will provide approximately $25 billion in direct aid to homeowners and government programs in exchange for a release of liability for legal claims that otherwise could have been raised against the servicers by the participating regulators. The servicing standards include requirements that servicers establish a single point of contact for each delinquent borrower; hire and maintain adequate levels of loss mitigation staff that meet minimum education, training, and experience standards; and maintain electronic documentation of servicing files and interactions with borrowers.[60] The direct aid to homeowners includes principal reductions as well as restitution for individuals whose homes were foreclosed without them being offered loss mitigation options properly or who suffered other harm from other foreclosure-related improprieties.[61] The agreement also establishes an independent monitor with the authority to conduct oversight of the servicers and to seek court orders to enforce the terms of the agreement.[62]

Other Mortgage-Related Legal Actions

The legal wrangling stemming from the mortgage crisis extends well beyond the foreclosure-related improprieties of mortgage servicers. Virtually every type of player in the mortgage market during the run-up to the housing market crash is suing, being sued, being investigated for potential legal liability, or engaging in negotiations to settle legal claims pertaining to mortgage-related activities. For example, mortgage brokers have been charged with money laundering and other fraudulent activity in violation of federal law.[63] Mortgage originators have been charged with violating fair lending laws for discriminating against protected classes in marketing and originating mortgages.[64] Federal regulators have levied mortgage-related fraud charges against bank directors and officers.[65] Through negotiated settlements and private lawsuits, entities that

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Policies and Practices, Fed. Reserve Sys., Office of the Comptroller of the Currency, Office of Thrift Supervision, at 5, April 2011, available at http://www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-47a.pdf.

[58] The Oklahoma Attorney General entered into a separate settlement agreement. *Oklahoma Mortgage Settlement Information*, Okla. Office of the Attorney Gen., available at http://www.oag.ok.gov/oagweb.nsf/mortgageinfo.html.

[59] See the consent judgments against each company, at Exhibits F (release of federal claims) and G (release of state claims), available at http://www.nationalmortgagesettlement.com/.

[60] *Id.* at Exhibit A.

[61] *Id*. at Exhibits B, C, and D.

[62] *Id*. at Exhibit E.

[63] See, for example, *Philip R. Lochmiller, Sr. Found Guilty of Conspiracy, Money Laundering Conspiracy, Money Laundering, and Mail Fraud*, U.S. Attorney's Office, District of Colorado, Press Release, July 21, 2011, available at http://www.justice.gov/usao/co/press_releases/archive/2011/July2011/7_21_11.html.

[64] See, for example, Justice Department Reaches Settlement with Wells Fargo Resulting in More Than $175 Million in Relief for Homeowners to Resolve Fair Lending Claims, U.S. Dept. of Justice, Press Release, July 12, 2012, available at http://www.justice.gov/opa/pr/2012/July/12-dag-869.html; Complaint, United States v. Citizens Republic Bancorp. Inc., No. 11-cv-11976-LPZ-LJM (E.D. Mich. 2011).

[65] See, for example, *Former Chairman of Taylor, Bean & Whitaker Sentenced To 30 Years In Prison And Ordered To* (continued...)

purchased mortgages in the secondary market are seeking indemnification from sellers for the losses suffered from mortgages that allegedly failed to meet the underwriting standards that were promised pursuant to sales contracts.[66] Mortgage-backed securities investors have raised federal and state securities law and fraud claims against institutions that securitized mortgages, marketed the securities, and sold the securities based on alleged material misstatements or omissions regarding the quality and characteristics of the mortgages underlying the securities.[67]

Billions of dollars have already been paid out as a result of these mortgage-related legal claims, and because these legal battles likely will continue for years to come, many billions of dollars more potentially could be paid out in the future.[68] The claims that remain unsettled have the potential to create prolonged uncertainty in the still-fragile housing market. Additionally, some financial institutions have set aside significant cash reserves to cover potential legal claims.[69] This limits their ability to use that money for other purposes, such as originating new mortgages, which also may negatively impact the market. Thus, Congress may be interested in the outcomes of these legal proceedings and their potential consequences.

Housing for Low-Income Individuals and Families

Perennial issues related to housing assistance for low-income individuals and families and other vulnerable populations have been on the agenda of the 112th Congress. This section describes issues related to such housing assistance, most of which is administered by HUD.

Appropriations for the Department of Housing and Urban Development

Concern in Congress about reducing federal budget deficits has led to increased interest in reducing the amount of discretionary funding provided each year through the annual appropriations process. Reflecting this interest, the Budget Control Act of 2011 (P.L. 112-25) implemented discretionary spending caps for FY2012-FY2021 which are designed to reduce

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Forfeit $38.5 Million, U.S. Attorney's Office, Eastern District of Virginia, Press Release, June 30, 2011, available at http://www.justice.gov/usao/vae/news/2011/06/20110630farkasnr.html.

66 See, for example, Verified Petition, In the Matter of the Application of The Bank of New York Mellon, No. 651786/2011 (N.Y. Sup. Ct. 2011). See, also, Countrywide RMBS Settlement Website, available at http://www.cwrmbssettlement.com/.

67 See, for example, Complaint, Am. Int'l Grp. Inc. v. Bank of Am. Corp., Index No. 652199/2011 (N.Y. Sup. Ct. 2011).

68 See, for example, *Bank of America Announces Agreement on Legacy Countrywide Mortgage Repurchase and Servicing Claims*, Bank of America, Press Release, June 29, 2011, http://mediaroom.bankofamerica.com/phoenix.zhtml?c=234503&p=irol-newsArticle&ID=1580644&highlight=; Federal Housing Finance Agency 2010 Annual Report to Congress, p. 4, June 13, 2011, http://www.fhfa.gov/webfiles/21572/FHFA2010_RepToCongress6_13_11.pdf.

69 See, for example, Bank of Am. Corp., Sec. Exch. Comm'n Form 10-K, filed February 23, 2012, at 222-23. See, also, MSN Money partner, *Mortgage lenders still on the hook*, MSN Money, February 10, 2012, available at http://money.msn.com/saving-money-tips/post.aspx?post=4c41f205-0568-49c8-8bd4-3230bb843ff4; Rob Cox and Antony Currie, *The Hazards of Success in American Banking*, N.Y. Times, August 23, 2011, available at http://www.nytimes.com/2011/08/24/business/the-hazards-of-success-in-american-banking.html.

growth in discretionary spending. The desire to limit discretionary spending has implications for the Department of Housing and Urban Development's (HUD's) budget, since it is made up almost entirely of discretionary appropriations.

More than three-quarters of HUD's appropriations are devoted to three programs: Section 8 rental assistance vouchers, Section 8 project-based rental assistance subsidies, and the public housing program. Section 8 vouchers make up the largest share of HUD's budget, accounting for nearly half of HUD's total budget. The cost of the Section 8 voucher program has been growing in recent years since Congress has created more vouchers each year over the past several years, and since the cost of renewing individual vouchers has been growing as gaps between low-income tenants' incomes and rents in the market have been growing.[70] The cost of the project-based Section 8 program has also been growing in recent years as more and more long-term rental assistance contracts on older properties expire and are renewed, requiring new appropriations. Public housing, the third-largest expense in HUD's budget, has, arguably, been underfunded (based on studies undertaken by HUD of what it should cost to operate and maintain public housing)[71] for many years, which means there is regular pressure from low-income housing advocates and others to increase funding for public housing.

In a budget environment featuring limits on discretionary spending, the pressure to provide more funding for HUD's largest programs must be balanced against the pressure from states, localities, and advocates to maintain or increase funding for other HUD programs, such as the Community Development Block Grant (CDBG) program, grants for homelessness assistance, and funding for Native American housing.

Further, HUD's funding needs must be considered in the context of those for the Department of Transportation. Funding levels for HUD, along with those of the Department of Transportation, are determined by the Transportation, HUD, and Related Agencies (T-HUD) appropriations subcommittee, generally in a bill by the same name. While the Department of Transportation's (DOT's) overall budget is generally larger than HUD's, because the majority of DOT's budget is made up of mandatory funding, HUD's budget makes up the largest share of the discretionary T-HUD appropriations bill each year.

For more information about FY2013 appropriations, see CRS Report R42517, *Department of Housing and Urban Development (HUD): FY2013 Appropriations*, coordinated by (name r edacted); for more information about the Budget Control Act, see CRS Report R41965, *The Budget Control Act of 2011*, by (name redacted), (name redacted), and (name redacted); and for more information about trends in funding for HUD, see CRS Report R42542, *Department of Housing and Urban Development (HUD): Funding Trends Since FY2002*, by (name redacted).

[70] For more information about how these factors are driving cost growth in the Section 8 Housing Choice Voucher program, see U.S. Government Accountability Office (GAO), Housing Choice Vouchers: Options Exist to Increase Program Efficiencies, GAO-12-2003, March 19, 2012, http://www.gao.gov/products/GAO-12-300.

[71] For example, see Meryl Finkel, et. al., *Capital Needs in the Public Housing Program: Revised Final Report*, prepared for the Department of Housing and Urban Development, November 24, 2010, http://portal.hud.gov/hudportal/documents/huddoc?id=PH_Capital_Needs.pdf.

Section 8 Housing Choice Voucher Program Reform

For each of the past several years, Congress has considered reforms to the Section 8 Housing Choice Voucher program that are primarily aimed at streamlining the administration of the program. The Section 8 voucher program is HUD's largest direct housing assistance program for low-income families, both in terms of the number of families it serves (over 2 million) and the amount of money it costs (over $18 billion in FY2012, nearly half of HUD's total appropriation). The program is administered at the local level, by public housing authorities (PHAs), and provides vouchers—portable rental subsidies—to very low-income families, which they can use to reduce their rents in the private market units of their choice (subject to certain cost limits). The program has been criticized for, among other issues, its administrative complexity and growing cost.[72]

Recent reform bills have proposed changes to the income eligibility and rent determination process, designed to make it less complicated, and changes to the physical inspection process to give PHAs more options for reducing the frequency of inspections and increasing sanctions for failed inspections. Proposed legislation has also included changes to the formula by which voucher funding is allocated to PHAs. In recent years, annual appropriations laws have specified different formulas for allocating voucher funding; voucher reform legislation has sought to codify a permanent formula (although, even if enacted it could still be overridden in the appropriations acts). Finally, recent Section 8 voucher reform proposals have included modifications to and expansions of the Moving to Work (MTW) demonstration, which permits a selected group of PHAs to seek waivers of most federal rules and regulations governing the Section 8 voucher program and the public housing program.

In the 111th Congress, the Section 8 Voucher Reform Act of 2009 (SEVRA, H.R. 3045), was reported out of the House Financial Services Committee, but was not considered on the House floor before the end of the 111th Congress. A version of SEVRA has been reintroduced in the 112th Congress (H.R. 1209). However, no action has been taken to date on that bill. Instead, the House Financial Services Committee has held several hearings on versions of a new, draft Section 8 reform bills called the Section Eight Savings Act (SESA) and, most recently, the Affordable Housing and Self Sufficiency Improvement Act (AHISSA). SESA and AHISSA both include many of the administrative streamlining provisions of SEVRA; AHISSA includes a modification and expansion of MTW.

For additional information, see CRS Report RL34002, *Section 8 Housing Choice Voucher Program: Issues and Reform Proposals*, by (name redacted); CRS Report RL32284, *An Overview of the Section 8 Housing Programs: Housing Choice Vouchers and Project-Based Rental Assistance*, by (name redacted); and CRS Report R42562, *Moving to Work (MTW): Housing Assistance Demonstration Program*, by (name redacted).

Public Housing Reform

There are over 1 million units of public housing, owned by local public housing authorities, which receive annual operating and capital funding from Congress through HUD. Much of that

[72] For more information, see U.S. Government Accountability Office (GAO), Housing Choice Vouchers: Options Exist to Increase Program Efficiencies, GAO-12-2003, March 19, 2012, http://www.gao.gov/products/GAO-12-300.

housing stock is old and in need of capital repairs. According to the most recent study conducted by HUD, addressing the outstanding physical needs of the public housing stock would cost nearly $26 billion.[73] The amount Congress typically provides in annual appropriations for capital needs has not been sufficient to address that backlog. In response, PHAs have increasingly relied on other sources of financing, particularly private market loans, to meet the capital needs of their housing stock. However, there are limits on the extent to which PHAs can borrow funds; most notably, they are generally restricted by federal rules from mortgaging their public housing properties.

The Obama Administration's last several budgets requested funding and authority for a Transforming Rental Assistance initiative. Draft legislation to enact the initiative, called Preserving, Enhancing, and Transforming Rental Assistance (PETRA) in the FY2011 budget request and the Rental Assistance Demonstration (RAD) in the FY2012 budget request, was also released by the Administration. PETRA/RAD would create a new form of rental assistance and allow PHAs to convert their public housing contracts to these new rental assistance contracts. The rental assistance contracts would, presumably, pay higher subsidies than the PHA would otherwise receive through the public housing operating fund. Further, by negating the old public housing contracts, the former public housing properties would no longer be encumbered by rules prohibiting them from being mortgaged.

While some aspects of the PETRA/RAD proposal have been supported by PHA industry representatives, the proposal has also met with resistance from low-income housing advocates, who argue that it could result in the privatization of public housing, particularly if PHAs defaulted on the loans secured by their public housing properties.

In the 111th Congress, PETRA was not considered and the House Financial Services Committee reported a different public housing reform bill: H.R. 5814, the Public Housing Reinvestment and Tenant Protection Act of 2010. Rather than converting public housing to a new form of assistance, the bill would have authorized the Secretary of HUD to guarantee notes or other obligations issued by public housing agencies to finance the rehabilitation of public housing units. The bill was not enacted before the end of the 111th Congress, although a version of it has been reintroduced in the 112th Congress (H.R. 762).

A modified version of the Rental Assistance Demonstration was included in the FY2012 appropriations law (P.L. 112-55). It will allow HUD to convert up to 60,000 units of public housing (and some other assisted housing units) to either project-based Section 8 rental assistance contracts or project-based Section 8 voucher contracts. Several tenant protection and long-term preservation-related provisions requested by low-income housing advocates were included. No funding was provided to cover the cost of the conversions, so the cost will have to be paid with existing public housing funding. This may mean that only those units with high enough public housing funding, or low-enough capital and operating needs to be covered by their public housing funding, will be able to convert.

For more information about the public housing program, see CRS Report R41654, *Introduction to Public Housing*, by (name redacted).

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[73] Meryl Finkel et al., *Capital Needs in the Public Housing Program*, U.S. Department of Housing and Urban Development, Revised Final Report, Washington, DC, November 24, 2010, http://portal.hud.gov/hudportal/documents/huddoc?id=PH_Capital_Needs.pdf.

Affordable Housing Preservation

The term "affordable housing preservation" refers to public policy efforts to maintain the affordability of rental properties financed or subsidized by HUD, the USDA Rural Housing Service (RHS), and/or Low Income Housing Tax Credits, but owned by private for-profit or nonprofit organizations. Beginning in the 1960s, owners entered into contracts with HUD (or RHS) to provide affordable housing for a particular period of time. In these transactions, the government provided mortgage financing assistance, rental assistance, or both forms of assistance to property owners in exchange for the owners' agreement to maintain affordability.

A variety of circumstances may lead owners to stop participating in subsidized housing programs. In high-rent areas, owners may decide to pay off their assisted mortgages or choose not to renew affordability restrictions when mortgages mature or allow Section 8 rental-assistance contracts to expire in order to convert a property to market-rate housing or sell the building at a profit. In cases where a property has been allowed to deteriorate significantly or the owner has violated federal program rules in other ways, HUD or the RHS may choose to end a contract with an owner. When the restrictions on these properties end, there is a risk that they will become unaffordable or otherwise unavailable to low- and moderate-income tenants, and that those tenants will be displaced.

In the 111th Congress, the Housing Preservation and Tenant Protection Act (H.R. 4868), which was approved by the House Financial Services Committee, attempted to address some of the issues involved in preserving HUD-subsidized housing. It was not enacted before the end of the 111th Congress. While similar preservation-related legislation has not been introduced in the 112th Congress, HUD has proposed a more limited preservation proposal, referred to as the Rental Assistance Demonstration (RAD), also described in the "Public Housing Reform" section earlier in this report. Under RAD, some older, rent-assisted properties that are at risk of loss to the assisted housing stock (those that receive Rent Supplement, Rental Assistance Program Payments, or Section 8 Moderate Rehabilitation assistance) would be converted to a new form of rental assistance designed to retain the properties as affordable housing. Implementing this new form of rental assistance would require additional appropriations; the HUD FY2012 budget requested $200 million for the proposal (both for the preservation component described here and for the public housing component described earlier in this report).

The final FY2012 appropriations law (P.L. 112-55) did provide authority for HUD's RAD proposal, but limited its availability primarily to public housing and a very limited set of properties considered in need of preservation (those with Section 8 moderate rehabilitation contracts). However, the law did contain some additional preservation provisions, including an expansion of the availability of tenant protection vouchers for tenants at risk of displacement, authority for HUD to renew some older rental assistance and rent supplement contracts, and the continuation of provisions included in appropriations bills over the last several years to allow HUD to transfer certain rental assistance contracts between properties.

For additional information, see CRS Report R41182, *Preservation of HUD-Assisted Housing*, by (name redacted) and (name redacted).

Housing Trust Fund

The 110th Congress established a national Housing Trust Fund in the Housing and Economic Recovery Act of 2008 (HERA, P.L. 110-289). For years, housing advocates had worked to create such a fund, which is intended to provide a dedicated source of funding for affordable housing activities that does not depend on annual appropriations. As enacted in HERA, the Housing Trust Fund would provide annual grants to states for affordable housing activities, particularly rental housing targeted at people with extremely low incomes. The funding source that was included in HERA was contributions from Fannie Mae and Freddie Mac; however, those entities were placed into conservatorship shortly after HERA was enacted, and their conservator, the Federal Housing Finance Agency (FHFA), suspended the contributions to the Housing Trust Fund before they had begun.

Since Fannie Mae's and Freddie Mac's contributions were suspended, affordable housing advocates have worked to identify another source of funding for the Housing Trust Fund. Their efforts have focused on both a new source of dedicated funding, and a one-time appropriation of funds to initially capitalize the Housing Trust Fund and allow it to begin making grants to states. At the same time, critics of the Housing Trust Fund have opposed efforts to fund the program, and have also attempted to eliminate the Housing Trust Fund entirely. Critics of the Housing Trust Fund argue that its purpose is duplicative of other HUD programs, and that it could be used as a slush fund for political activities by favored groups. Advocates for the Housing Trust Fund counter that monies from the Housing Trust Fund are more targeted at providing rental housing for people who are extremely low-income than other HUD programs, and note that HERA included prohibitions on using the funds for political activities.

In the 112th Congress, bills have been introduced both to provide initial funding to the Housing Trust Fund and to eliminate the program entirely. Bills such as H.R. 1477 in the House and S. 489 in the Senate would provide an initial $1 billion to the Housing Trust Fund from the sale of TARP warrants, while bills such as H.R. 2441, H.R. 1182, and S. 693 would repeal the statutory authority for the Housing Trust Fund. None of these bills has been reported out of committee; H.R. 2441 has been reported out of the Subcommittee on Capital Markets and Government Sponsored Enterprises, but has not been considered by the full Committee on Financial Services.

For more information on the Housing Trust Fund, see CRS Report R40781, *The Housing Trust Fund: Background and Issues*, by (name redacted).

HOME Investment Partnerships Program

The HOME Investment Partnerships Program is a block grant program that provides funds to states and localities to be used solely for affordable housing activities that benefit low- and very low-income households. States and localities can use the funds for a wide range of affordable housing activities, including the acquisition, rehabilitation, and construction of either rental or homeownership housing; homebuyer assistance, such as downpayment assistance programs; and rental assistance. In return for this flexibility in using the funds, states and localities take on much of the responsibility for monitoring the use of HOME funds. A stated aim of HOME is to expand the capacity of states and localities to meet their long-term affordable housing needs by leveraging federal funding to attract state, local, and private investment in affordable housing and by strengthening the ability of government and nonprofit organizations to meet local housing needs.

In May 2011, *The Washington Post* published an article that focused on the alleged mismanagement of HOME funds used for rental housing developments.[74] The article indicated that close to 15% of HOME-assisted rental projects are experiencing significant delays, and that almost 700 rental housing projects that had been awarded a total of $400 million in HOME funds over the program's life are stalled. The article also claimed that HUD does not properly oversee the funds that are awarded to states and localities or adequately demand reimbursement for misused funds. A 2009 HUD Office of the Inspector General (OIG) report also stated that HUD should improve its oversight of HOME funds.[75]

In response to *The Washington Post* article, the House Financial Services Committee held hearings on the program in which several Members of Congress expressed concern about HUD's ability to ensure that HOME funds are used in a way that produces the program's intended results.[76] HUD maintains that its oversight of the program is adequate, that the amount of funds that are mismanaged or committed to stalled projects is much smaller than the *Post* article suggested, and that stalled projects are partly the inevitable result of a weak economy.[77] HUD also disputes the methodology that the *Post* used to identify stalled projects.[78]

In FY2011, appropriations to the HOME program were reduced about 12% from FY2010 levels, largely due to an overall more austere funding environment. The Consolidated and Further Continuing Appropriations Act, 2012 (P.L. 112-55), which was enacted in November 2011 and included HUD appropriations for FY2012, appropriated nearly 38% less to the program than in FY2011, and included additional requirements relating to the use and oversight of FY2012 HOME funds. Such requirements have also been included in the FY2013 appropriations bills that have been approved by the House (H.R. 5972) and reported by the Senate appropriations committee (S. 2322).

In November 2011, HUD announced a new proposed rule to strengthen oversight of HOME program funds.[79] If adopted, the proposed rule would represent the first substantive changes to the HOME regulations since 1996. The proposed rule includes a number of provisions related to oversight and other issues, including provisions similar to those that were included in the FY2012

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[74] Cenziper, Debbie and Jonathan Mummolo, "A trail of stalled or abandoned HUD projects," *The Washington Post*, May 14, 2011.

[75] McKay, James D., Regional Inspector General for Audit, Atlanta Region, *HUD Lacked Adequate Controls to Ensure the Timely Commitment and Expenditure of HOME Funds*, U.S. Department of Housing and Urban Development, Office of the Inspector General, Audit Report Number 2009-AT-0001, September 28, 2009.

[76] See U.S. Congress, House Committee on Financial Services, *Oversight of HUD's HOME Program*, 112th Cong., 1st sess., June 3, 2011, and U.S. Congress, House Committee on Financial Services, Subcommittee on Insurance, Housing and Community Opportunity and Subcommittee on Oversight and Investigations, *Fraud in the HUD HOME Program*, 112th Cong., 1st sess., November 2, 2011.

[77] U.S. Department of Housing and Urban Development, "Setting the Record Straight: What the Washington Post Got Wrong About the HOME Program," The HUDdle: U.S. Department of Housing and Urban Development's Official Blog, May 19, 2011, http://blog.hud.gov/2011/05/19/setting-record-straight-washington-post-wrong-home-program/.

[78] U.S. Department of Housing and Urban Development, "HUD's Analysis of the Washington Post's Mislabeled HOME Projects," The HUDdle: U.S. Department of Housing and Urban Development's Official Blog, August 18, 2011, http://blog.hud.gov/2011/08/18/hud%E2%80%99s-analysis-washington-post%E2%80%99s-mislabeled-home-projects/.

[79] U.S. Department of Housing and Urban Development, "HUD Proposes New Rule to Improve HOME Program," press release, November 4, 2011, http://portal.hud.gov/hudportal/HUD?src=/press/press_releases_media_advisories/2011/HUDNo.11-262.

appropriations law. The proposed rule was published in the Federal Register in December 2011,[80] and the final rule is expected by fall 2012.

For more information on the HOME program, see CRS Report R40118, *An Overview of the HOME Investment Partnerships Program*, by (name redacted).

Definition of Rural for USDA Rural Housing Programs

The U.S. Department of Agriculture (USDA) administers a number of housing assistance programs for low and moderate income residents of rural areas. They include both rental housing development and rent subsidy programs, as well as single-family direct loan and mortgage insurance programs. These programs are only available in "rural" areas, as defined by the authorizing statute for the programs.[81] That definition is complicated, and involves maximum population thresholds, and in some cases a determination by USDA that the area is "rural in character" and lacks access to mortgage credit. USDA is currently preparing an updated list of which areas are designated as rural, reflecting Census 2010 population figures, to be released and implemented sometime before the start of FY2013.

It is likely that when the new areas are announced, some areas that had previously been deemed "rural" and therefore eligible for participation in USDA housing programs will lose that designation. In past years, Congress has modified the definition to allow certain areas to continue to be considered rural, despite exceeding population thresholds under updated decennial Census data.[82] Several bills have been introduced in the 112th Congress that would extend this grandfathering for some areas affected by Census 2010 (for example, H.R. 273 and S. 878); similar language was approved during floor debate of the Senate Farm Bill (S. 3240).[83]

For more information about USDA rural housing programs, see CRS Report RL31837, *An Overview of USDA Rural Development Programs*, by (name redacted).

Housing-Related Tax Issues

Tax Benefits Expiring Soon

Two housing-related tax benefits enacted during the housing crisis are set to expire soon, one at the end of 2012, the other at the end of 2013. The expiration of the first benefit, a temporary

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[80] U.S. Department of Housing and Urban Development, "HOME Investment Partnerships Program: Improving Performance and Accountability; and Updating Property Standards," 76 *Federal Register* 78344-78382, December 16, 2011.

[81] 42 U.S.C. §1490.

[82] Specifically, the current definition includes the following clause: "For purposes of this title, any area classified as 'rural' or a 'rural area'prior to October 1, 1990, and determined not to be 'rural' or a 'rural area' as a result of data received from or after the 1990 or 2000 decennial census shall continue to be so classified until the receipt of data from the decennial census in the year 2010, if such area has a population in excess of 10,000 but not in excess of 25,000, is rural in character, and has a serious lack of mortgage credit for lower and moderate-income families." (42 U.S.C. §1490)

[83] Specifically, the amendment would amend the current grandfathering clause (presented in footnote 82) to include the 2010 Census and would raise the population threshold from 25,000 to 35,000.

exclusion for qualified canceled mortgage debt (COD) income, would lead homeowners who have mortgage debt forgiven after 2012 to be responsible for income tax on the amount forgiven.[84] Several bills have been introduced in the 112th Congress that would extend the exclusion of COD income. H.R. 4336 would extend the exclusion through 2013, S. 2250 and H.R. 4202 would extend the exclusion through 2014, and H.R. 4250 and H.R. 4290 would extend the exclusion through 2015. For more information on the exclusion for canceled mortgage debt income, see CRS Report RL34212, *Analysis of the Tax Exclusion for Canceled Mortgage Debt Income*, by (name redacted) and (name redacted).

The second benefit involves the low-income housing tax credit (LIHTC). Traditionally, new affordable housing construction has been eligible for the so-called 9% credit that was designed to subsidize 70% of construction costs. The actual credit rate fluctuated according to market interest rates, and typically fell below 9%, but always delivered a 70% subsidy. The Housing and Economic Recovery Act of 2008 (HERA, P.L. 110-289) temporarily changed the LIHTC rate to not less than 9% for new construction placed in service before December 31, 2013. The change implies that the applicable tax credit rate for new construction is temporarily the greater of 9% or the rate as determined under the original method designed to deliver a 70% subsidy. Given the current interest rate environment, the 9% floors leads new construction to receive a subsidy exceeding 70%.

House and Senate versions of the same proposal (H.R. 3661 and S. 1989) in the 112th Congress would permanently extend the floor on the 9% credit and provide a similar permanent floor for the so-called 4% credit that is reserved for rehabilitated construction. For more detail on the 4% and 9% floors, as well as a analysis of proposals to make the floors permanent, see CRS Report RS22917, *The Low-Income Housing Tax Credit Program: The Fixed Subsidy and Variable Rate*, by (name redacted).

Deficit Reduction and Tax Reform: Implications for Housing

Moving forward, Congress may address the growing concern about the size and sustainability of the United States' recent budget deficits and the country's long-term budget outlook. This concern has brought the issues of the government's revenue needs and fundamental tax reform to the forefront of the congressional debates. One place Congress may choose to turn to address these issues is the set of tax benefits for homeowners. Reducing, modifying, or eliminating all or some of the current tax benefits for homeowners could raise a substantial amount of revenue while simultaneously simplifying the tax code, increasing equity among taxpayers, and promoting economic efficiency.

While it is unclear at this point if Congress will make any housing policy tax changes, recent and past proposals have focused on the mortgage interest deduction. Numerous proposals have been offered, from eliminating the deduction altogether, to limiting the deduction to primary residences, to converting the deduction to a tax credit. Some are concerned, however, that the housing market is still too weak to start scaling back homeowner tax benefits. Others have suggested that a gradual reduction over time of the available tax benefits would give the market time to adjust and reduce uncertainty among current and potential homeowners.

[84] The temporary exclusion was first enacted by the Mortgage Forgiveness Debt Relief Act of 2007, P.L. 110-142. The exclusion was originally available for debt discharged before January 1, 2010. The Emergency Economic Stabilization Act of 2008, P.L. 110-343, extended the exclusion of COD income to debt discharged before January 1, 2013.

For more detail on the various proposals that have been made, along with estimated budget effects, see CRS Report R41918, *The Mortgage Interest and Property Tax Deductions: Brief Overview with Revenue Estimates*, by (name redacted). For an analysis of the rationales for subsidizing homeownership, and an analysis of the effect of current tax incentives on the homeownership rate, see CRS Report R41596, *The Mortgage Interest and Property Tax Deductions: Analysis and Options*, by (name redacted).

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