# LENDERS UPDATE™

**A MONTHLY SERVICE TO THE MORTGAGE LENDING INDUSTRY**



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The purpose of the Lenders Update is to provide a "heads-up" of new legislation and regulations affecting the mortgage lending industry. We try to provide brief summaries of new matters so our readers can judge whether the subject impacts their operations. We recommend that our readers review the entire new material in detail where it is relevant to them. For your convenience, the applicable statute, regulation, cases or website can be easily identified in the summary. Our Update includes information available to Alt & Associates as of August 13, 2008.

# FEDERAL ISSUES

Because of the significance of the new Housing and Economic Recovery Act of 2008, ("HERA") we thought it would be beneficial to summarize the provisions of this new legislation which was passed by Congress on July 24, 2008 and signed by the President on July 30, 2008. The Bill is made up of several separate pieces of legislation, among them, the Federal Housing Finance Regulatory Reform Act of 2008 ("FHFRRA"), the Hope for Homeowners Act of 2008 ("HOPE") and the Foreclosure Prevention Act of 2008 ("FPA"). Most changes become effective October 1, 2008. The following is a brief summary of the 720 pages of the Act.

## HERA 2008

### I. FHFRRA of 2008

**A. <u>Safety and Soundness Regulation of the Housing Agencies (GSEs)</u>**

The "Federal Housing Finance Regulatory Reform Act of 2008" establishes a regulator for Fannie Mae, Freddie Mac, and the Federal Home Loan Banks, the housing government-sponsored enterprises (GSEs). The new regulator will have authority to ensure the safe and sound operations of the GSEs by:

- establishing capital standards;

- establishing management standards, including internal controls, audits, risk management, and management of the portfolio;
- enforcing its orders through cease and desist authority, civil money penalties, and the authority to remove officers and directors;
- restricting asset growth and capital distributions for undercapitalized institutions; and
- reviewing and approving new product offerings.

**B. New Missions**

The new legislation expands the number of families the GSE's can serve by raising the loan limits in high cost areas to 150% of the conforming loan limit. This amount is currently $625,000.

The legislation tightens affordable housing requirements to ensure that the agencies provide liquidity to both ownership and rental housing markets for low and very-low income families, and to serve a number of underserved markets, such as rural areas, manufactured housing and the preservation market.

The legislation also creates a new Housing Trust Fund and a Capital Magnet Fund which will be financed by annual contributions from the enterprises, and used for the construction of affordable rental housing.

**II. The "HOPE for Homeowners Act of 2008"**

**A. Basic Principle**

HOPE creates a new and voluntary program within FHA to back FHA-insured mortgages to distressed borrowers. The new mortgages which can be offered by FHA-approved lenders, will refinance distressed loans at a significant discount for owner-occupants who are at risk of losing their homes to foreclosure. Homeowners will share future appreciation with FHA, as well as newly created equity.

HOPE is based on five principles:

1. Long-term affordability. Creating new equity for troubled homeowners may be an effective way to avoid foreclosures. New loans will be based on ability to repay.
2. No lender bailout. Lenders will take significant losses but less than the losses associated with foreclosure.
3. No windfall. Borrowers will share equity and appreciation equally with FHA.
4. Voluntary. No lenders, servicers, or investors will be compelled to participate in this program.
5. Restore confidence, liquidity, and transparency.

**B. Oversight**. The program will be overseen by a Board made up of the Secretary of HUD, the Secretary of the Treasury, the Chairman of the Federal Reserve Board, and the Chairman of the Federal Deposit Insurance Corporation (FDIC).

**C. Eligible Borrowers**. Owner-occupants who are unable to afford their payments are eligible. To qualify for the program, homeowners must certify that they have not intentionally defaulted and must have a debt to income ratio greater than 31 percent as of March 1, 2008. Lenders must document borrowers' income with the IRS.

**D. Loan Amount and Term**. The size of the new FHA-insured loan will be the lesser of the amount the borrower can afford to repay, as determined by current affordability requirements of FHA; or, 90% of the current value of the home. Loans will be 30-year, fixed rate loans.

**E. Equity & Appreciation Sharing**. In order to avoid a windfall to the borrower, the borrower will share the new equity and future appreciation equally with FHA. This obligation will continue until the borrower sells the home or refinances the FHA-insured mortgage. Access to the new equity will be phased-in over 5 years.

**F. Subordinate Liens**. Before participating, all subordinate liens must be extinguished or satisfied.

**G. Qualified Safe Harbor**. The legislation gives servicers an incentive to participate in the program by offering a safe harbor against legal liability.

**H. Program Size**. The program is authorized to insure up to $300 billion in mortgages and is expected to serve approximately 400,000 homeowners.

**I. Program Duration**. The program will begin October 1, 2008 and end on September 30, 2011.

**III. "Foreclosure Prevention Act of 2008"**

**A. FHA Modernization**.

Significant FHA changes are provided to modernize and expand the reach of the FHA program. Under this bill, the FHA loan limit is increased from 95% to 110% of area median home price capped at 150% of GSE limit (currently, $625,000), allowing families in all areas of the country to access homeownership through FHA. Downpayments of 3.5% will be required for any FHA loan. Counseling is enhanced to help provide for stable homeownership.

**B. Community Assistance.**

Almost four billion dollars is provided to communities hit by foreclosures. Community Development Block Grant Funds will be used to purchase foreclosed homes at a discount and rehabilitate or redevelop the homes to stabilize neighborhoods.

**C. Pre-Foreclosure Counseling.**

To help families avoid foreclosure, $150 million in additional funding for housing counseling is provided. $30 million is provided to provide legal services to borrowers.

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