EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
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(House Rules)

STATEMENT OF ADMINISTRATION POLICY

House Amendments to Senate Amendment to
H.R. 3221 – Foreclosure Prevention Act of 2008

The Administration shares many of the goals of the proposed substitute for H.R. 3221, including Title I (formerly H.R. 5830). The Department of Housing and Urban Development's (HUD) *FHASecure* program has already helped more than 180,000 borrowers refinance into safer Federal Housing Administration (FHA)-insured mortgages and stay in their homes. The Administration agrees that, if done in a responsible and targeted manner, FHA's programs could assist still more homeowners threatened by foreclosure. In fact, HUD recently announced administrative actions to expand *FHASecure*. This new plan takes advantage of FHA's current administrative flexibility to assist more families without a subsidy or bailout by the taxpayer. These new FHA-insured loans are expected to commence in July following a 60-day notice period to the mortgage industry.

Unlike the Administration's recent administrative efforts to broaden FHA eligibility, H.R. 3221 is overly burdensome and prescriptive. It would force FHA and taxpayers to take on excessive risk, and jeopardize FHA's financial solvency. The Congressional Budget Office estimates that the FHA loan guarantee program in this bill would produce claim rates of about 35 percent and, for the first time for this type of program, require credit subsidy appropriations to operate. The $1.7 billion price tag would be passed on to taxpayers who are not participating in this new FHA program. This attempt to shift costs to taxpayers constitutes a bailout.

To expand the role of FHA in this way is ill-advised. And to do so without first giving the agency the tools it needs to deal with additional risk -- such as more flexible risk-based pricing and a ban on seller funded gift downpayment assistance -- would be irresponsible. Additionally, the bill includes a number of other objectionable provisions, such as the permanent increase to the FHA and Government Sponsored Enterprise (GSE) loan limits, a largely ineffective homeowner tax credit, an expansion of Federal Home Loan Banks' activities beyond their area of competence, and an objectionable tax offset delaying worldwide interest allocation. If H.R. 3221 were presented to the President in its current form, his senior advisors would recommend a veto.

The Administration strongly supports both GSE Reform and FHA Modernization, but notes that the inclusion of these two measures in H.R. 3221 is largely symbolic. Both bills have previously passed the House, and FHA Modernization has also passed the Senate twice. Passage of these bills for a second time by the House should not take the place of both chambers reaching agreement and sending final comprehensive FHA Modernization and GSE Reform bills consistent with the Administration's principles to the President's desk.

FHA Modernization represents the appropriate next step to address the housing downturn. A final Modernization bill must allow FHA to offer a fair and equitable mortgage insurance premium structure commensurate with the risks presented by the individual loans it insures. It must also include a provision, like that in the Senate passed bill, expressly prohibiting downpayment assistance from the seller or any other person or entity that stands to benefit financially from the transaction. These two provisions are essential to ensure FHA's continued solvency and ability to aid in the recovery of the nation's mortgage markets.

The Administration's views on the major components of the expected substitute are presented below.

H.R. 5720 – Housing Assistance Tax Act of 2008

The Administration strongly opposes H.R. 5720, which would do little to improve conditions in the housing market. The Administration strongly opposes a provision in the bill that would allow tax-exempt treatment for bonds guaranteed by the Federal Home Loan Banks (FHLBs). Under current law, a bond guaranteed by an FHLB may only be treated as tax-exempt if it is used for certain housing programs. This bill would expand the mission and potential liabilities of the FHLBs by permitting them to provide guarantees of other bonds issued by State and local governments. It would be ill-conceived to empower the FHLBs to venture far afield of their current mission by underwriting the credit risks of non-housing, public infrastructure projects.

The Administration opposes the provision to create a new $7,500 refundable credit for taxpayers who become first-time homeowners this year, but require them to pay this amount back to the Treasury over 15 years under an unprecedented recapture provision that would be complex and burdensome for taxpayers and would create concerns for tax administration. Moreover, the vast majority of this tax credit would likely subsidize taxpayers who would have purchased homes anyway; as a result, the tax credit would have only a minimal effect on spurring additional home sales relative to its costs.

The Administration also opposes one of the bill's revenue offsets that would further delay a provision permitting U.S. corporations to elect a favorable method of allocating interest expense for purposes of using foreign tax credits (commonly known as worldwide interest allocation).

H.R. 5830 – Housing Stabilization and Homeownership Retention Act of 2008

As noted above, H.R. 5830 is an overly burdensome and prescriptive attempt to legislate FHA's underwriting standards. The bill would prevent HUD from denying access to FHA loan guarantees solely on the basis of borrowers' payment histories and credit scores, as well as whether they had filed for bankruptcy protection. This could undercut underwriting standards that FHA has employed for years, which have proven to be an effective means of serving a wide range of homeowners while protecting taxpayers from undue risk.

Other provisions of H.R. 5830 are likely to prove ineffective. The requirements to write-down a portion of the principal balance and to waive prepayment penalties by existing lenders will likely result in only the worst loans being approved by servicers to participate in the program. This adverse selection will increase the cost ultimately borne by the taxpayer. The Administration also has concerns with the new exit premium proposed in H.R. 5830. The disposition of any

gains realized in the property sales proceeds should be governed by terms negotiated between lenders and borrowers.

The Administration strongly opposes the establishment of a new policy-making Oversight Board (comprised of the Secretaries of HUD and the Treasury and the Chair of the Federal Reserve Board) because it would only serve to delay FHA's response to the housing market turmoil. FHA already has proven underwriting criteria and the administrative powers to alter them to respond to changes in the housing market. Similarly, FHA already has the information and infrastructure necessary to determine appropriate mortgage insurance premiums and monitor underwriting risk. The Board also would be authorized to set limits on loan fees and interest rates, facilitate coordination among existing lien holders, and establish a formula and mechanism for compensating and obtaining the voluntary waiver of all lien holders. All of these new powers unnecessarily expand the role of government in the market, add another layer of bureaucracy, and would make the FHA program cumbersome and inefficient.

Finally, an amendment to H.R. 5830 adopted during the markup raises serious concerns. More lawsuits will not help our nation address recent problems in the housing market. The amendment could lead to additional foreclosure-related litigation by authorizing appropriations for legal assistance.

H.R. 1852 – Expanding American Homeownership Act of 2007 (FHA Modernization)

The Administration's views on H.R. 1852 were expressed in a Statement of Administration Policy sent to the House Rules Committee on September 17, 2007, and are amplified above.

In addition, the Administration opposes making permanent the FHA loan limits from the 2008 Stimulus Act, P.L. 110-185, which would authorize FHA to guarantee loans as high as $729,750 in some areas.

H.R. 1427 – Federal Housing Finance Reform Act of 2007

The Administration's views on H.R. 1427 were communicated in a Statement of Administration Policy sent to the House on May 16, 2007. In that statement, it was noted that the regulatory regime envisioned by H.R. 1427 -- as reported by the House Financial Services Committee -- is an improvement over current law. As that Statement noted, the version of H.R. 1427 brought to the House floor in May 2007 provided the housing GSE regulator specific authority to regulate the retained mortgage portfolios of Fannie Mae and Freddie Mac in a manner that, while grounded in considerations regarding the mission, and safe and sound operations of Fannie Mae and Freddie Mac, also authorized the new regulator to consider all potential risks posed by the portfolios. This provision as reported would have helped to address the systemic risk that Fannie Mae and Freddie Mac pose to our financial system and ensure that they will better address their core affordable housing mission. At that time, the Administration stated clearly that any efforts to weaken the existing portfolio language contained in H.R. 1427 would threaten the Administration's support for this bill. Unfortunately, the House chose to adopt an amendment that limited the regulator to considering only potential risks posed to the enterprises by the nature of the portfolio holdings. As a result, the House significantly weakened the regulator's abilities to examine systemic risk issues.

The Administration also opposes making permanent the loan limits for GSEs from the 2008 Stimulus Act, P.L. 110-185, which would raise the limit to as high as $729,750 in some areas.

The Administration remains opposed to the creation of an affordable housing trust fund as proposed in Section 340 for the reasons described on our Statement of Administration Policy on HR 1427 issued May 16, 2007.

The Administration remains committed to bringing real reform to the housing GSEs and looks forward to continuing to work with Congress to ensure that the needed reforms are part of any final legislation.

H.R. 5579 - Emergency Loan Modification Act

The Administration opposes this provision because it would do more harm than good. This provision would grant explicit legal protection to servicers that follow certain prescribed steps. In this way, the provision would create a bias in favor of certain loan modifications and against other work-outs that they might have pursued under existing pooling and servicing agreements. The Administration is concerned that taking steps to change contracts, or the interpretation, retroactively in this way could reduce the flow of capital to the mortgage market in the future. The Administration continues to monitor whether servicers have the appropriate flexibility to modify mortgages, and it does not appear that the existing contracts governing servicer loan modifications are unduly restrictive.

Possible Floor Amendments

The Administration strongly opposes amendments that would grant States authority to impair the ability of Federal banking regulators to ensure the safety and soundness of their regulated entities in matters related to foreclosures.

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