



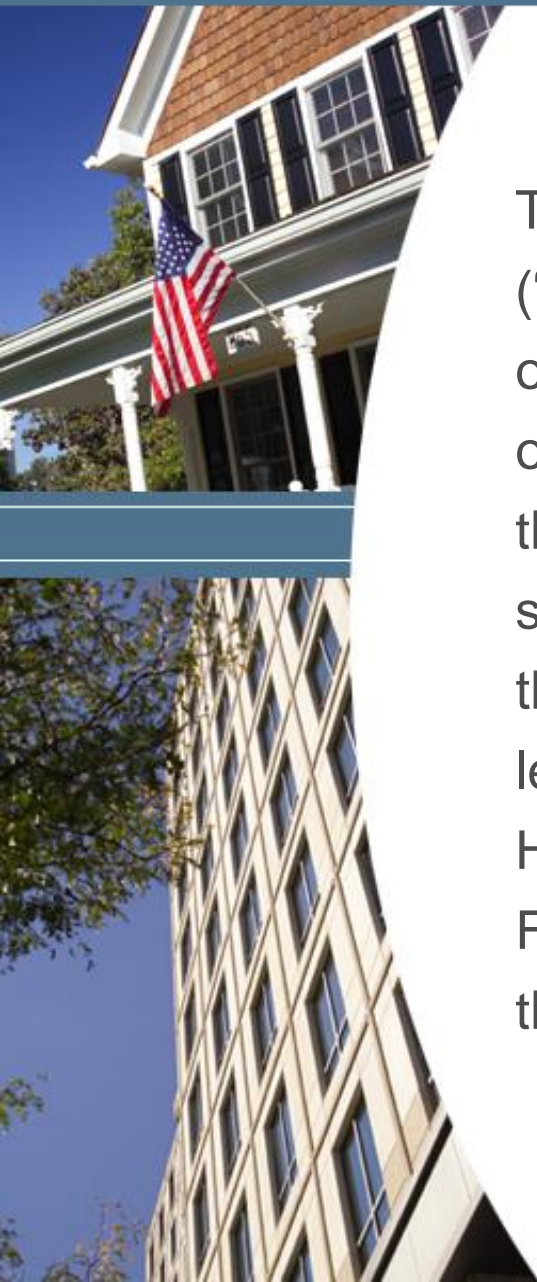
The 2008 Housing and Economic Recovery Act

By

Eric M. Schiffer

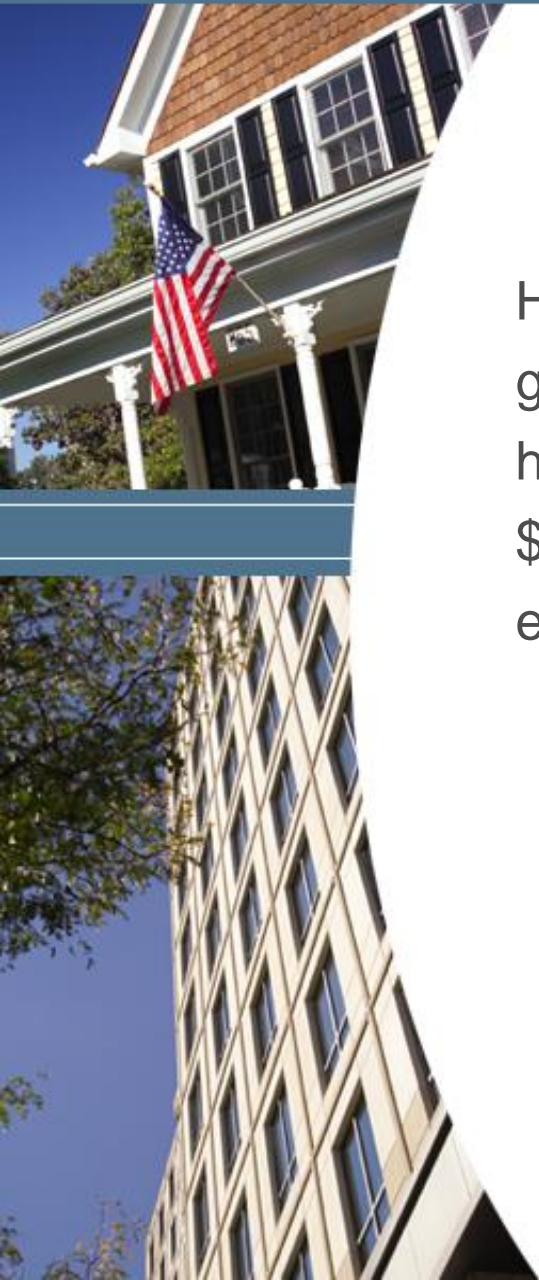


Introduction



The Housing and Economic Recovery Act of 2008 (“HERA”) was passed by the House of Representatives on July 23, 2008 and signed into law by President Bush on July 30, 2008 (Public Law 110-289). The purpose of the legislation includes the reform of government sponsored enterprises (“GSE”) regulation by virtue of the Fair Housing Finance Agency (“FHFA”). The legislation is also intended to modernize the Federal Housing Administration (FHA), and to create a new FHA program designed to help several hundreds of thousands of families avoid foreclosure.

FHA Loan Limit Reform



HERA increases the FHA single family loan limits at the greater of \$271,050.00 or 115% of local area median home price, as determined by HUD, capped at \$625,500.00. (The mortgage amount also cannot exceed 100% of the appraised value of the property)

FHA Loan Limit Reform



Because the FHA Loan Limits are based upon the conforming loan limit of Fannie Mae and Freddie Mac (the GSE limit), when the GSE limit changes, the FHA limit changes.



The GSE regulator sets the GSE conforming loan limit annually, based on the agency's home price index. The GSE limit will be adjusted in years when home prices increase, but the increases must be offset by prior year decreases.

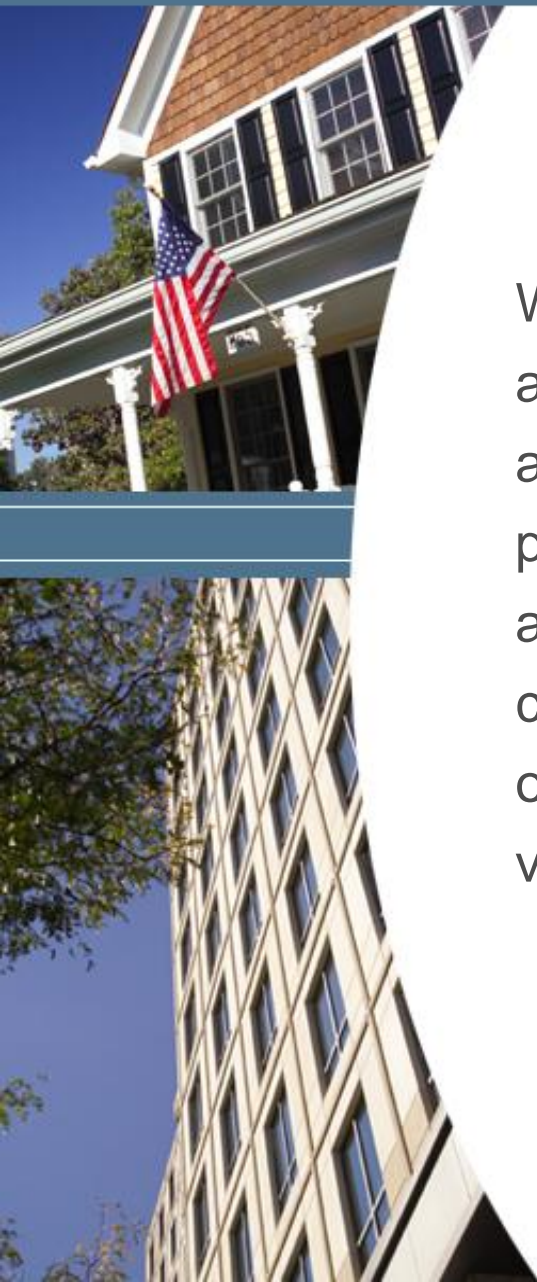
FHA Loan Limit Reform



HERA eliminates the existing percentage limitations on financing and permits financing up to 100% of the appraised value of the property.

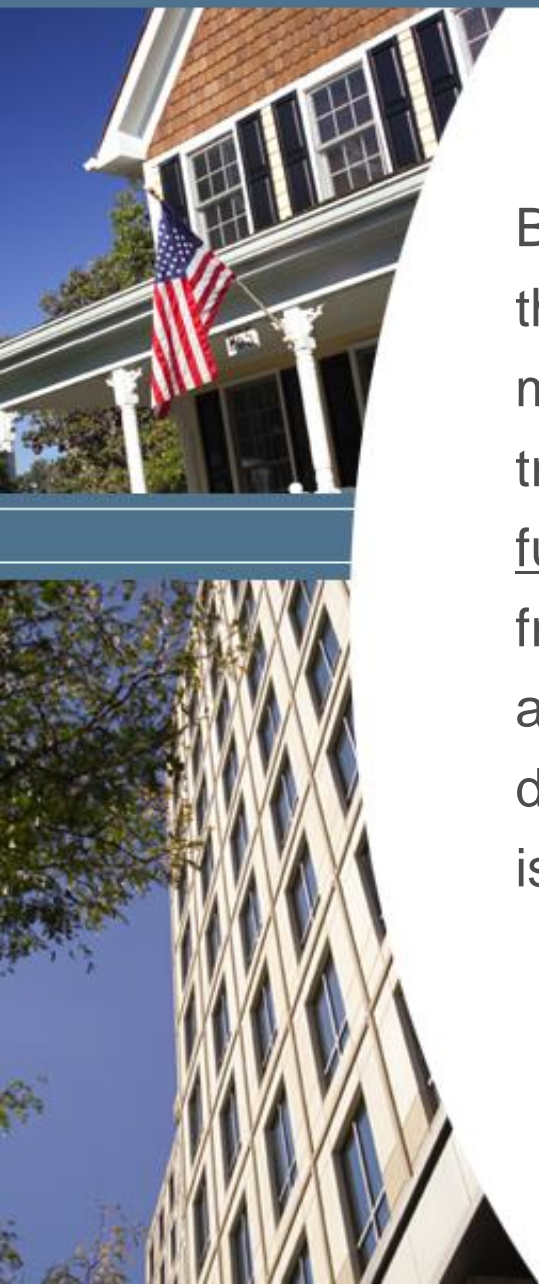


FHA Loan Limit Reform



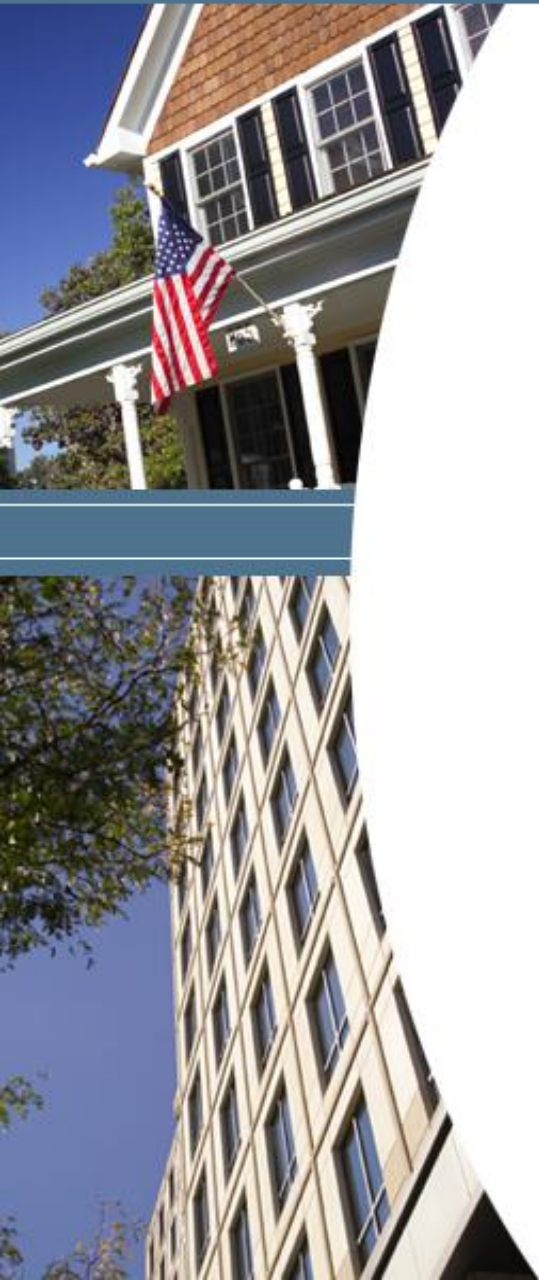
When mortgage insurance is involved, the maximum amount of mortgage cannot be increased by the amount of the mortgage insurance premium when the principal obligation to be insured equals 100% of the appraised value of the property. Mortgage Insurance can, however, be financed as long as the principal obligation does not exceed 100% of the appraised value.

New Cash to Close Requirement



Borrowers must pay (in cash or its equivalent) 3.5% of the appraised value of the property on purchase money mortgages and 3.5% (in cash or equity) in a refinance transaction. Borrowers can no longer accept seller-funded down payments. (Down payment assistance from family members is permitted, and municipalities and other government agencies may continue to offer down payment assistance, provided that the assistance is in the form of a second lien.)

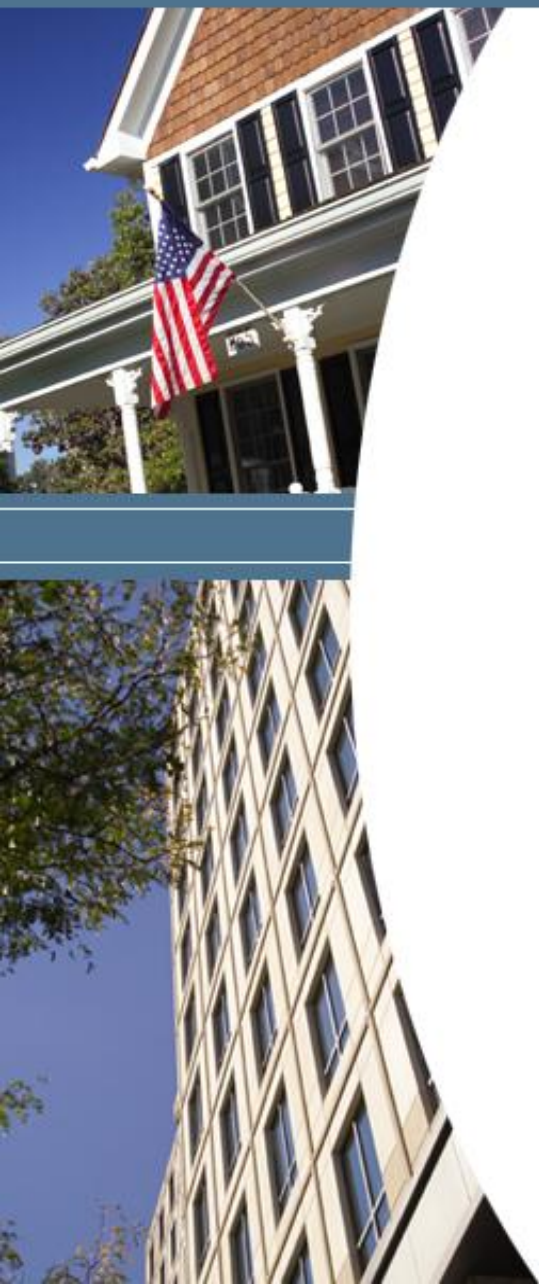
New Cash to Close Requirement



Effective Date

The prohibition against seller-funded assistance applies to loans for which the lender has issued credit approval on or after **October 1, 2008.**

New Cash to Close Requirement (continued)



Definition of Credit Approval

Credit approval is defined for loans scored through FHA's Mortgage Scorecard TOTAL as "Accept/Approve" on or after October 1, 2008. For those loans manually underwritten, credit approval is defined as the date the Direct Endorsement Underwriter approves the loan, as indicated by the DE signature on the Mortgage Credit Analysis Worksheet (MCAW) or Loan Transmittal form.

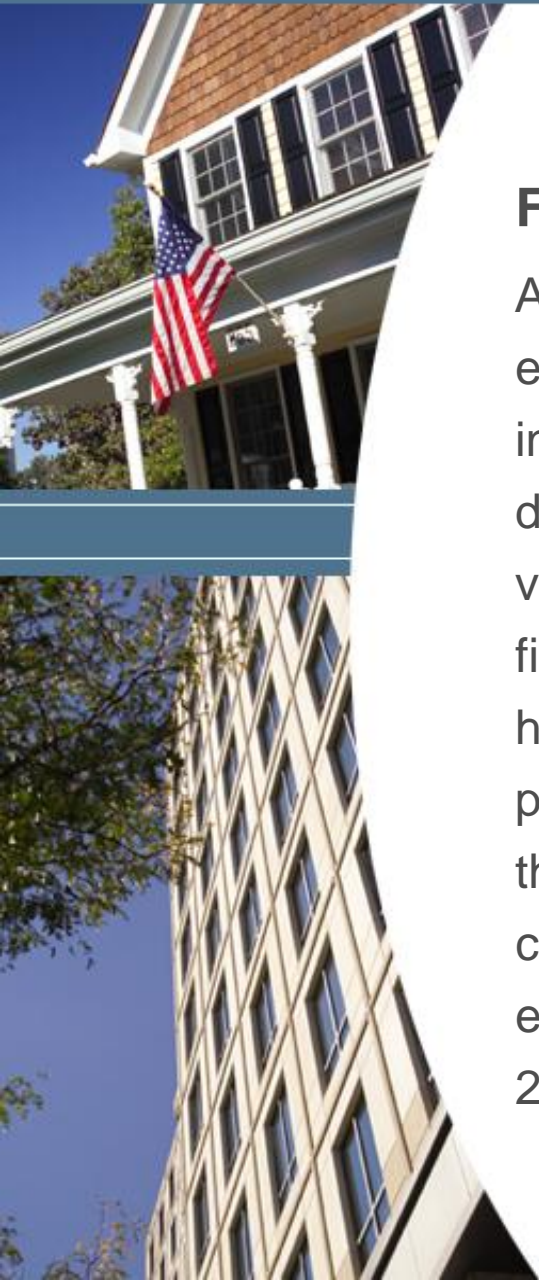
New Cash to Close Requirement (continued)



If a loan closes *after* October 1, 2008, it is still eligible for insurance as long as the credit was approved *prior to* October 1, 2008.



Hope for Homeowners Program



FHA Foreclosure Rescue

Authorizes a new FHA “Hope for Homeowners” program for existing borrowers to refinance problematic subprime loans into fixed-rate FHA mortgage products. Lenders would write down qualified mortgages to 85% of the current appraised value and qualified borrowers would get a new FHA 30-year fixed mortgage at 90% of appraised value. Borrowers would have to share 50% of all future equity with FHA when the property is sold or the loan is refinanced. The loan limit for this program is \$550,440.00 nationwide (132% of the 2007 conforming loan limit--\$417,000.00). The Program is effective on October 1, 2008 and runs until September 30, 2011.

Hope for Homeowners Program

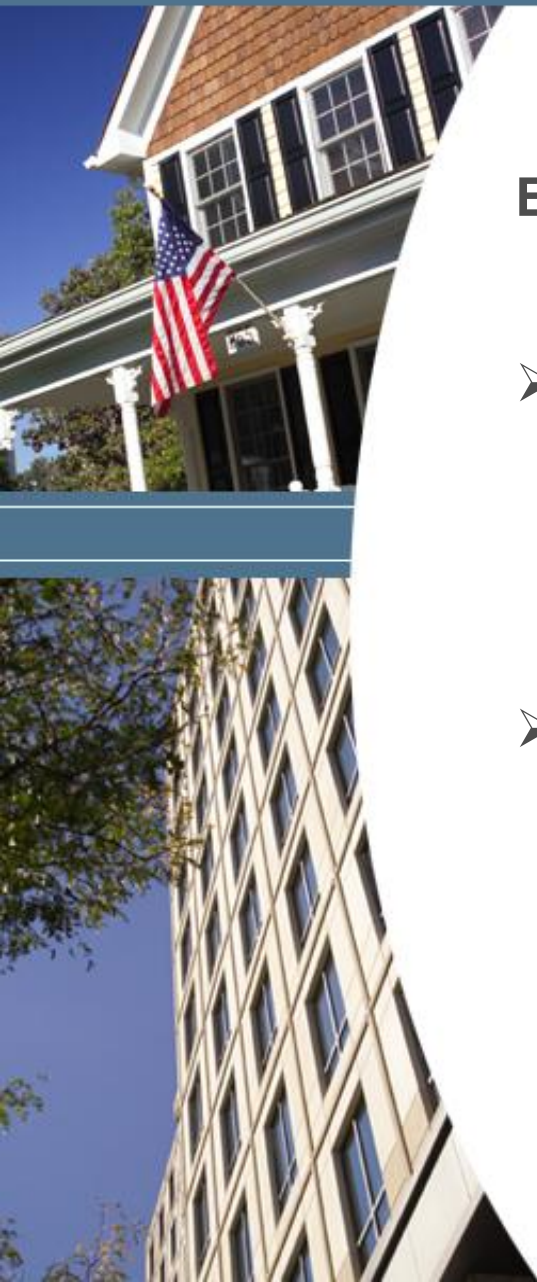


Eligibility Guidelines

- Mortgages eligible for the refinance must have been originated before January 1, 2008.
- Borrowers must have housing debt to income ratios greater than 31% (or a higher ratio set by the program's governing body) as of March 1, 2008.



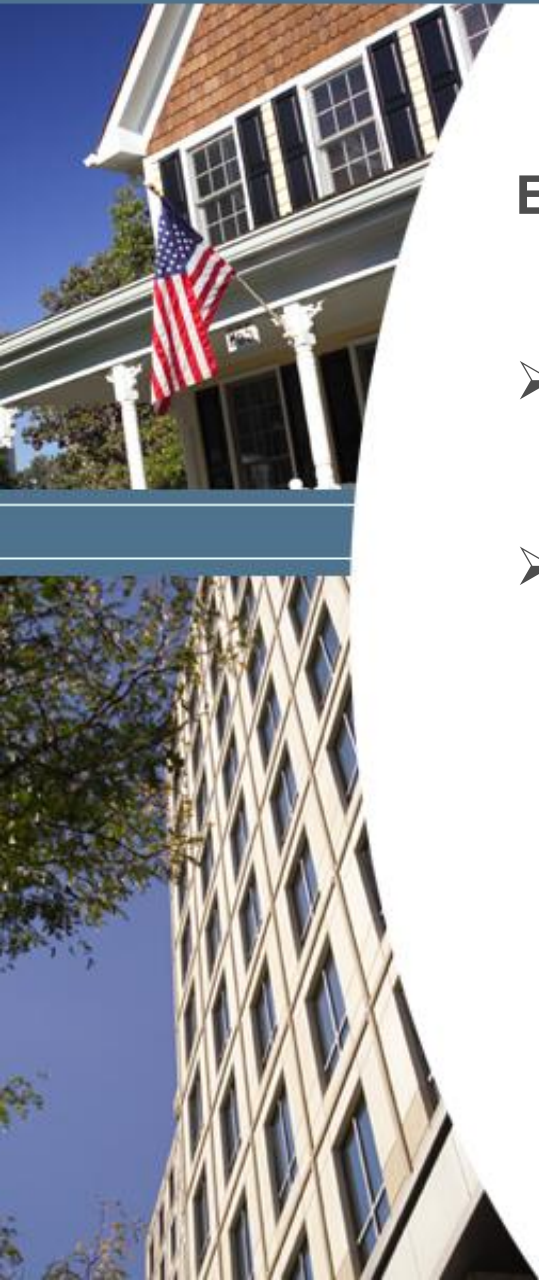
Hope for Homeowners Program



Eligibility Guidelines (continued)

- Borrowers must certify that they did not intentionally default on the original mortgage or other debts or furnish false information to obtain the FHA loan.
- Borrowers are not eligible if they have been convicted of fraud within the last 10 years.

Hope for Homeowners Program



Eligibility Guidelines (continued)

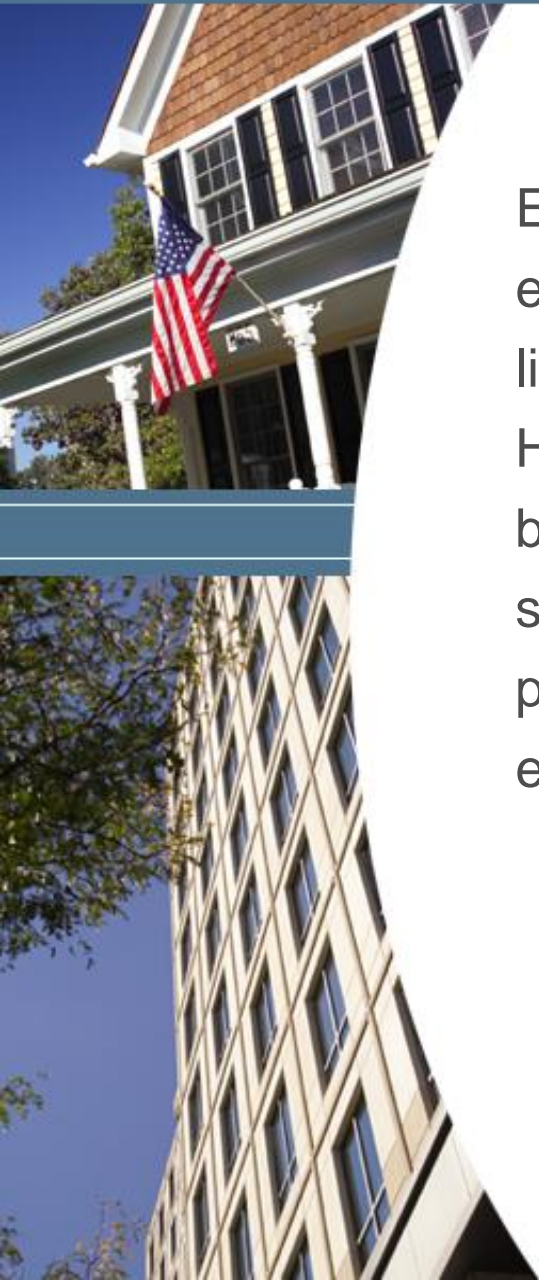
- Borrowers income must be fully documented.
- Borrowers may only have one primary residence.

Hope for Homeowners Program

Voluntary Write-down by Lender

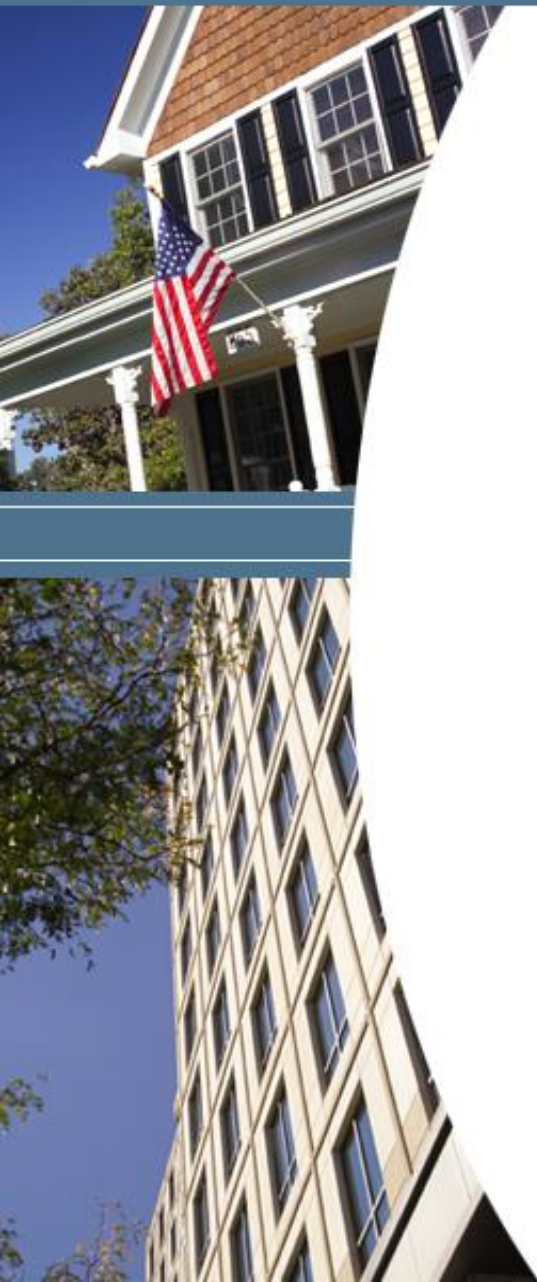
Participating note holders must agree to a reduction in principal to achieve the 90% appraised value requirement. Prepayment penalties and fees related to default or delinquency must also be waived.

New Loan Originator Requirements



Encourages states to establish (or strengthen) the existing state-run nationwide mortgage originator licensing and registration system (and requires a parallel HUD system for states that fail to participate). Federal bank regulators will establish a parallel registration system for FDIC-insured banks. The purpose is to prevent fraud and require minimum licensing and education requirements.

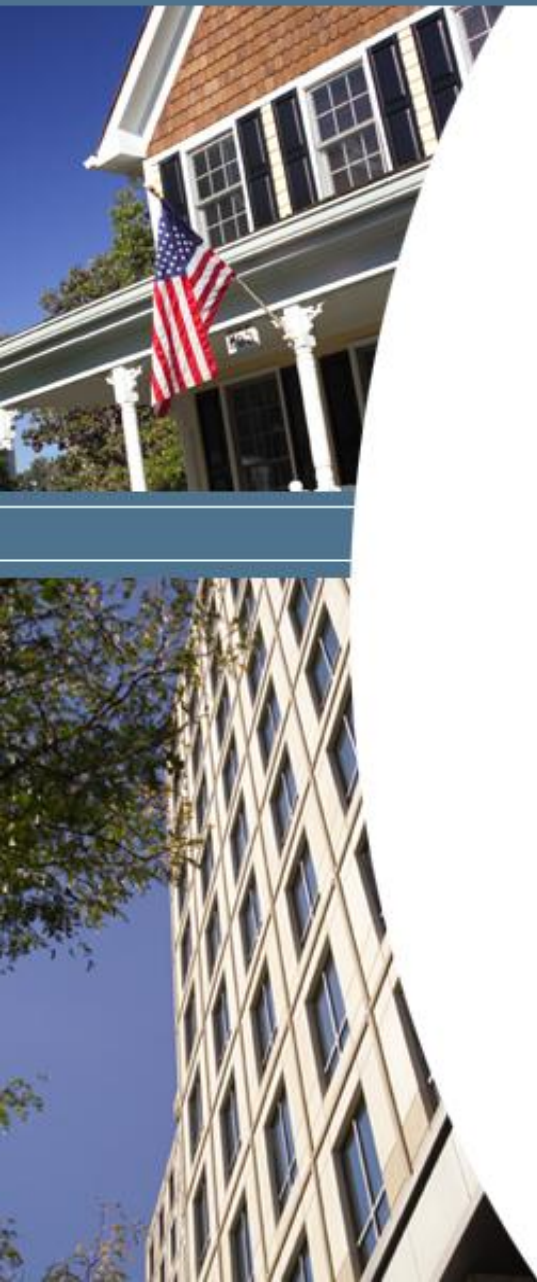
New Loan Originator Requirements



Who it covers

Covers all persons who take residential mortgage loan applications and offer or negotiate mortgage terms except administrative or clerical personnel, or those who only perform real estate brokerage activities.

New Loan Originator Requirements

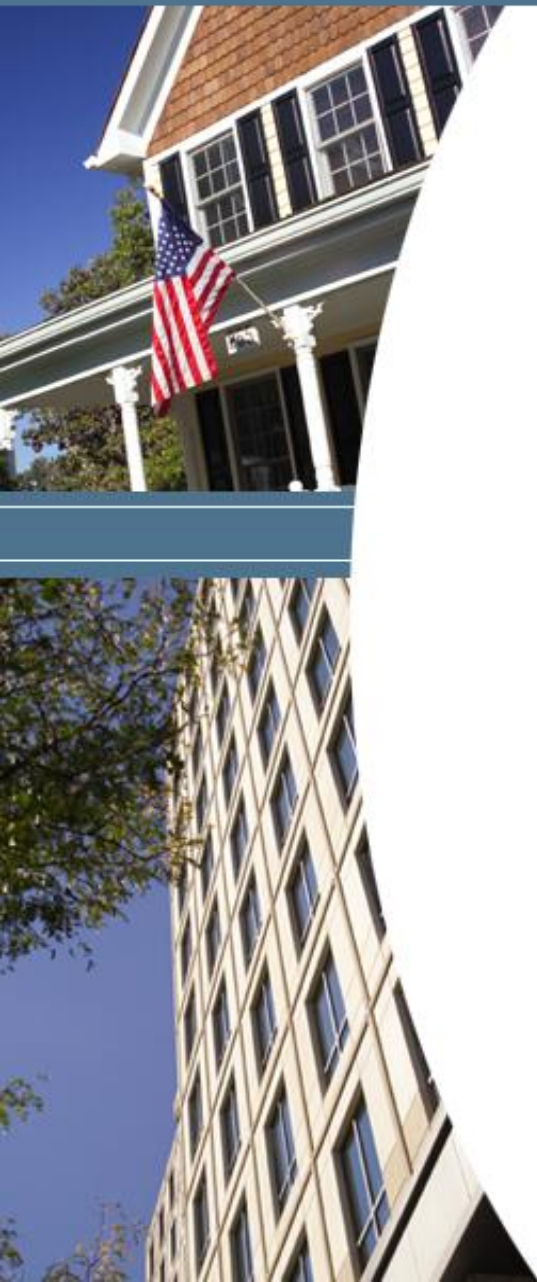


Standards

Establishes minimum standards for licensing and registrations as state-licensed loan originators, and requires that they:

- (1) never have had an originator license previously revoked;
- (2) never have pled guilty or been convicted of a felony during the seven year period prior to licensing or at any time if the felony involved fraud, dishonesty or breach of trust or money laundering;

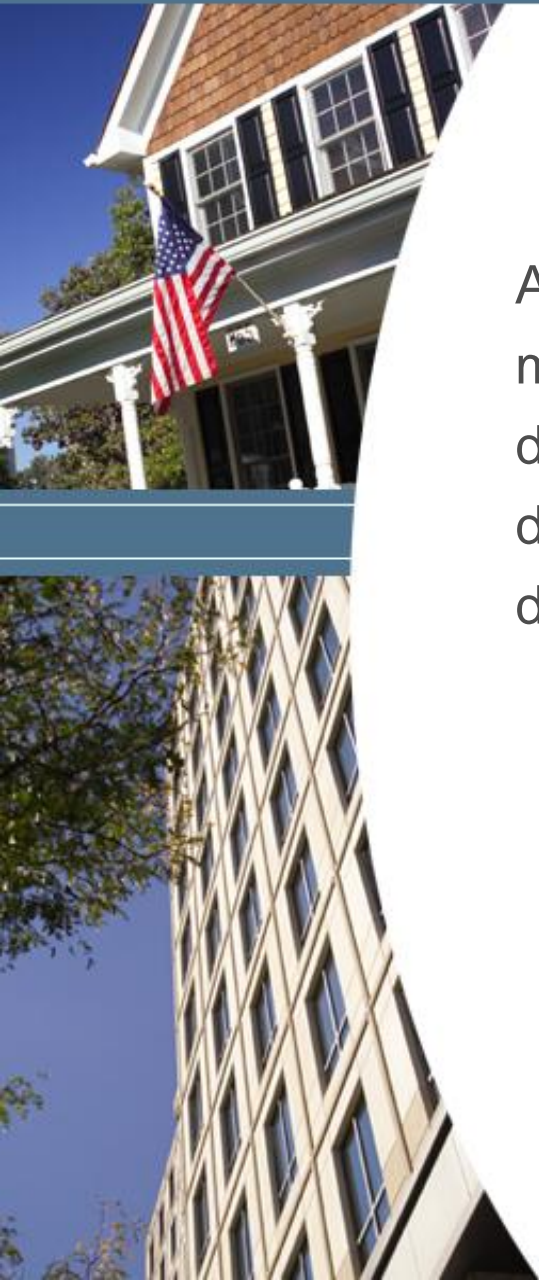
New Loan Originator Requirements



Standards (continued)

- (3) demonstrate financial responsibility, character and general fitness;
- (4) complete pre-licensing educational requirements;
- (5) pass a written test; and
- (6) meet either net worth or a surety bond requirement.

Truth In Lending Act Amendment



Amends the Truth in Lending Act (“TILA”) to expand the mortgage loans subject to early disclosures within three days of application. Also requires disclosure seven days before closing and any correction of an APR three days before closing.

Truth In Lending Act Amendment

Disclosure requirements

Requires a new statement in the TILA disclosures involving dwelling secured transactions:

You are not required to complete this agreement merely because you have received these disclosures and signed a loan application.

Also requires disclosures to better explain adjustable rate products, through examples, including how monthly payments adjust based on interest rate changes.

Truth In Lending Act Amendment (continued)



Fees

Requires consumers receive early TILA disclosures before paying any fee, except possibly a fee for a credit report.

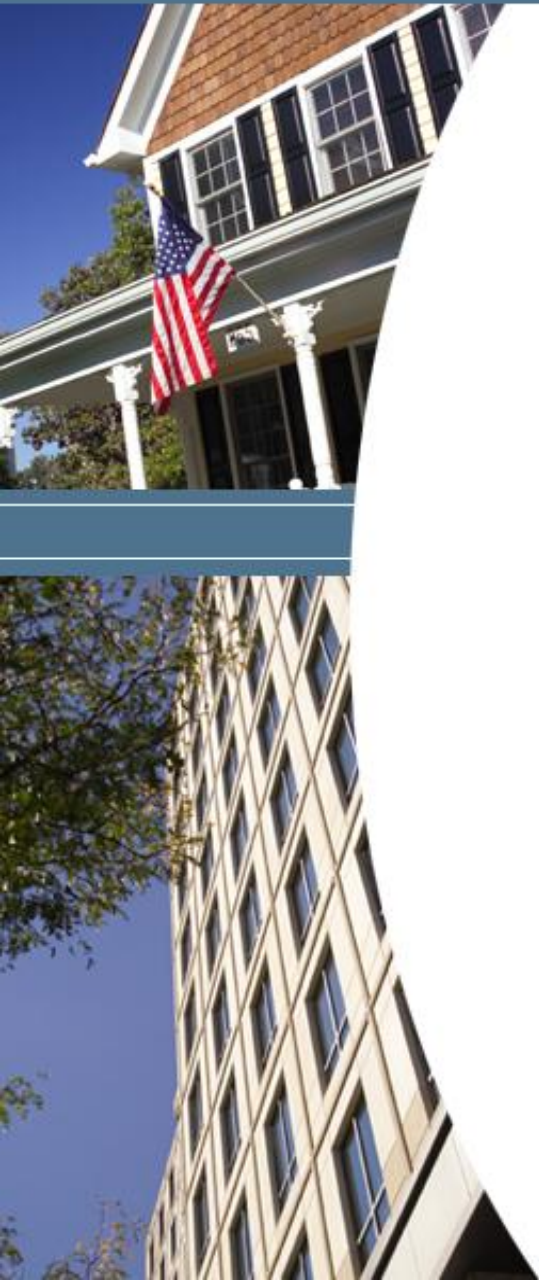
Violations

Increases monetary penalties for violations.



Servicer Liability

Amends TILA to create a fiduciary duty for mortgage servicers to “maximize the net present value of the pooled mortgages in an investment to all investors and parties having a direct or indirect interest.” The duty does not supersede servicing contracts. It also would deem servicers to act in the best interests of all investors if the servicer implements a refinance or modifies a loan through the “Hope for Homeowners” Program.

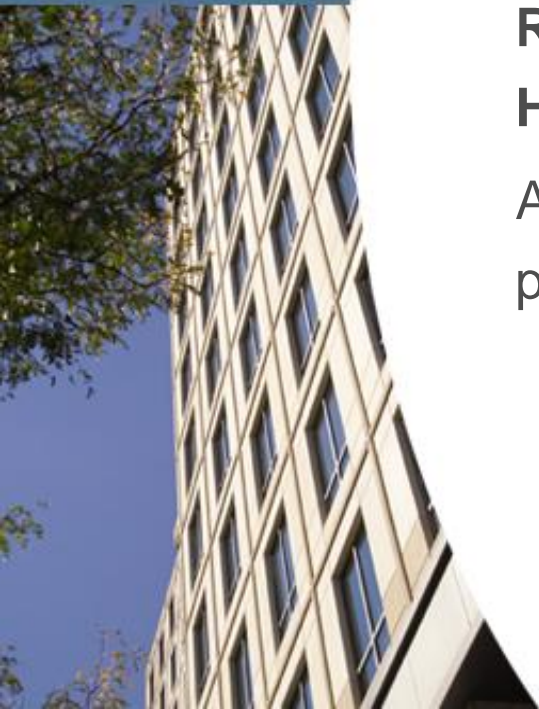


Miscellaneous Provisions of HERA



Affordable Housing Trust Fund

Creates, from assessments on the GSEs' businesses, a fund to help prevent foreclosures and facilitate affordable housing.



Redevelopment of Abandoned and Foreclosed Homes

Authorizes \$4 billion in block grant funds for states to purchase and redevelop foreclosed properties.

Miscellaneous Provisions of HERA



Active Service Members

Extends stays of foreclosure and legal proceedings from 90 days to nine months, and extends the six percent mortgage rate cap for one year after active duty.



Veterans Matters

Provides home improvement benefits for the disabled.

Miscellaneous Provisions of HERA



Counseling

Authorizes funds for the Neighborhood Reinvestment Corporation (NRC) for foreclosure mitigation activities.

Public Housing Authorities

Reduces regulatory requirements for smaller PHAs.



Miscellaneous Provisions of HERA



Tax Incentives

Establishes a range of tax incentives, including a first-time homebuyer tax credit, and expands the Low-Income Housing Tax Credit (LIHTC).

Real Estate Investment Trusts (REITs)

Loosens certain restrictions on REITs.

Public Debt Limit

Increases the federal debt limit to \$10.615 trillion.

