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SENATE REPUBLICAN POLICY COMMITTEE

Legislative Notice

No. 62 June 18, 2008

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

On May 13, 2008, the Senate received from the House 3 amendments to the Senate amendment to H.R. 3221.

Noteworthy

- On Thursday, June 19, the Senate is expected to begin consideration of various messages from the House regarding H.R. 3221.
- It is expected that Senator Reid will offer substitute language to the House provisions. The substitute language provides housing (Divisions A & B) and tax (Division C) provisions, entitled the "Housing and Economic Recovery Act of 2008."
- The Senate will likely vote on the housing and tax provisions as an amendment to the first House message.
- The Housing and Economic Recovery Act of 2008 contains several provisions of note: (1) creates a new regulator for Fannie Mae, Freddie Mac, and the Federal Home Loan Banks; (2) creates an "affordable" Housing Trust Fund; (3) establishes a new FHA program (HOPE for Homeowners) to refinance defaulted borrowers into a government-insured loan; (4) sets minimum national standards for mortgage brokers; (5) provides mortgage protections for servicemembers; and (6) provides various housing related tax measures.
- On April 1, 2008, the Senate invoked cloture on the motion to proceed to H.R. 3221 by a vote of 94-1.[1] A Dodd/Shelby agreement regarding foreclosure prevention was offered as a complete substitute and passed the Senate 84-12.[2]
- December 2007 housing starts declined by 14.2 percent, falling to their weakest level since May 1991. As a whole, housing starts were down 24.8 percent in 2007, representing the

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[1] A similar cloture vote on the motion to proceed to the measure was not invoked in Senate on February 28, 2008 by a yea-nay vote of 48 - 46. Record Vote Number: 35.
[2] http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=110&session=2&vote=00096

second largest decline on record, exceeded only by a greater decline in 1980. Home prices saw a decline of 8.9 percent in the final quarter of 2007, representing the largest year-to-year drop in the 20-year history of the index.

Background/Overview

While the U.S. economy continues to grow, the economy is no longer enjoying the robust growth it enjoyed over the past several years and economists are predicting a further slowdown in the short term.

The view of the economy is shared by consumers. Brought on by less favorable business conditions and job prospects, consumer confidence has been slowly declining since July 2007 and declined sharply in February, to its lowest reading since February 2003.[3] Another measure of consumers' view of the economy, the expectations index, has fared even worse, declining to a 17-year low earlier this month.[4]

Economic outlook has no doubt been affected by the increase in consumer prices. In 2007, led primarily by the increase in the cost of gasoline and food, consumer prices increased by 4.1 percent, their fastest rate in 17 years, on top of a 2.5 percent increase in 2006. At the same time however, weekly wages failed to keep up with inflation.[5] Over the past 12 months, wholesale prices have risen by 7.5 percent, which is the fastest increase since the fall of 1981 when the country was in recession.[6]

The housing market has also suffered. December 2007 housing starts declined by 14.2 percent, falling to their weakest level since May 1991.[7] As a whole, housing starts were down 24.8 percent in 2007, representing the second largest decline on record, exceeded only by a greater decline in 1980. After 14 years of rising home prices, the housing market saw a decline according to Standard & Poor's/Case-Shiller home price index. Home prices saw a decline of 8.9 percent in the final quarter of 2007, representing the largest year-to-year drop in the 20-year history of the index.[8]

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[3] http://www.conference-board.org/economics/consumerConfidence.cfm See also, *Associated Press*, "Job Worries Sink Consumer Confidence" February 26, 2008. The Consumer Confidence Index fell to 75 in February 2008 from a revised 87.3 in January. This was the lowest reading the index has read since it was 64.8 in February 2003.

[4] *Associated Press*. The expectations index measures consumers' outlook over the next six months. The index dropped to 57.9 from 69.3 in January. The index has not registered this low since 55.3 in January 1991.

[5] *Associated Press*, "Gas, Food Spur Inflation Jump in 2007," January 16, 2008.

[6] *Associated Press*, "Wholesale Prices Jump in January," February 26, 2008.

[7] Breitbart.com, "US Housing Starts Plunge 14.2 Percent," January 17, 2008. Housing starts fell to an annualized level of 1.006 million properties down from the forecast of 1.150 million units.

[8] *Los Angeles Times*, "U.S. Home Prices End 2007 With Record Drop," February 27, 2008.

Despite these short term declines, not all housing data is negative. According to the Census Bureau, homeownership rates were still near an all time high at the end of 2007. Nearly 75.2 million homeowners, or 67.8 percent of households, are living in homes they own.[9] Of the families living in owner-occupied homes, nearly one-third (or 24 million) own their homes free and clear of any mortgage indebtedness while two-thirds (51 million) of homeowners have a mortgage.[10]

The Mortgage Bankers Association tracking of 41 million mortgages shows that foreclosures among prime loans and FHA loans has stayed relatively constant from the beginning of 2001 through the Third Quarter of 2007. Data shows that the slight increase in foreclosure rates is due in large part to the rise in foreclosure rates with subprime loans (a rate which is still lower in Q3, 2007 than it was at point from Q1, 2001 through Q1, 2003).[11]

Percentage of Foreclosures by Aggregate Category

Additional data shows that among subprime mortgages that are in default, the increase in foreclosures is a result of subprime adjustable rate mortgages (ARMs). The foreclosure rate among subprime fixed rate mortgages has actually been in decline since 2002.

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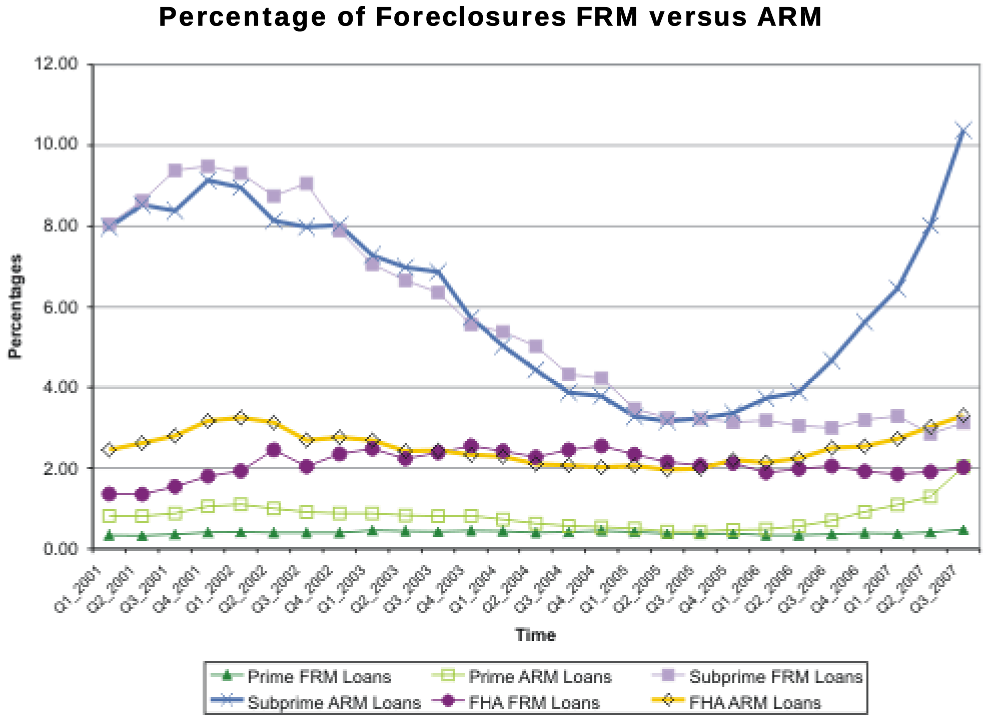
[9] Census Bureau's Housing Vacancy Survey, January 29, 2008. http://www.census.gov/hhes/www/housing/hvs/qtr407/q407press.pdf

[10] Census Bureau's 2006 American Community Survey.

[11] Congressional Research Service (CRS), "Understanding Mortgage Foreclosure: Recent Events, the Process and Costs," CRS Report for Congress RL34232, January 14, 2008.



Despite the fact that foreclosures are predominately limited to subprime ARMs, this issue is impacting the economy. In response to the slowdown in the economy, Congress, the President and the Federal Reserve have all taken action. The collective response from the federal government includes:

- Multiple reductions in interest rates by the Federal Reserve;
- Enactment of H.R. 5140, the original stimulus bill, which raised the conforming loan limits for FHA, Fannie Mae, and Freddie Mac;
- Enactment of H.R. 3648, which became law on December 20, 2007, and extends mortgage insurance premium deductibility for three years and makes mortgage loan forgiveness non-taxable for a three year period;
- Proposal of Home Ownership and Equity Protection Act (HOPEA) regulations by the Federal Reserve, consisting of strong new regulations under HOPEA to greatly improve underwriting standards and protections for mortgage borrowers, regulations which will be finalized this spring; and
- Agreement by the private lending industry to participate in the HOPE NOW program (an effort to reach out to borrowers and offer assistance), and to participate in Project Lifeline (a targeted industry effort to reach out to seriously delinquent homeowners to offer a pause in the foreclosure process). Six major lenders, representing 50 percent of the mortgage market, are working with borrowers to help them stay in their homes under these programs.

State and local governments have also taken steps to assist borrowers who are in default. Many of these efforts, however, have been met with some resistance from citizens who view this assistance as a "taxpayer bailout." For example, in Seattle, a city with a relatively modest foreclosure problem, the city's plan of a $5,000 loan for people in danger of losing their home was met with opposition.[12] A loan program in Massachusetts, which allowed for loan refinancing with bond revenue, was also met with public resistance. MassHousing, the quasi-state agency that was running the program, had to engage in a public-relations effort to assure citizens the effort was "not taxpayer funded." Commentators have stated that programs which involve "government intervention could reward irresponsibility and make markets unpredictable."[13]

Major Bill Provisions

This notice pertains to the Housing and Economic Recovery Act of 2008, the Senate substitute to the House amendments to the Senate amendment to H.R. 3221.

Division A – Housing Finance Reform

Reform of Regulation of Enterprises

GSE Regulator. The bill establishes a new, independent regulator for Fannie Mae, Freddie Mac, and the Federal Home Loan Banks, which are the housing government-sponsored enterprises (GSEs). The legislation endows this regulator with broad new authority, equivalent to the authority of other federal financial regulators, to ensure the safe and sound operations of the GSEs, including the power to: (1) establish capital standards; (2) establish prudential management standards, including internal controls, audits, risk management, and management of the portfolio; (3) enforce its orders through cease and desist authority, civil money penalties, and the authority to remove officers and directors; (4) restrict asset growth and capital distributions for undercapitalized institutions; (5) place a regulated entity into receivership; and (6) review and approve new product offerings, subject to notice and comment.

Conforming Loan Limit. The bill raises the loan limits in high cost areas (areas with median house prices that are higher than the regular conforming loan limit) to 150 percent of the conforming loan limit. Currently, this would be $625,000.

Underserved Markets. The bill adds an enforceable duty for each enterprise to undertake activities that increase the liquidity of mortgage investments on housing for very low, low and moderate income families which may earn them less economic return than other activities. Each enterprise it to accomplish this duty by purchasing or securitizing mortgage investments and

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[12] *New York Times*, "Foreclosure Aid Rising Locally, as Is Dissent," February 26, 2008.
[13] *New York Times.*

improving the distribution of investment capital available for mortgage financing in such markets. Underserved markets for the purposes of this section include: (1) manufactured housing; (2) affordable housing preservation; (3) subprime borrowers; (4) community development financial institutions; (5) rural markets; (6) and such underserved markets as the regulator, by rule, may determine.

Housing Trust Fund. The bill creates a new Housing Trust Fund and a Capital Magnet Fund, financed by annual contributions from the enterprises, which will be used for the construction of affordable rental housing. The Housing Trust Fund creates a permanent housing-related funding stream by levying a fee on Fannie Mae and Freddie Mac based on new purchases. This fee is equal to 4.2 basis points on each dollar of unpaid principle balance of each enterprise's total new business purchases.

Allocation of Funds. The bill clarifies that 75 percent of the amounts in the Housing Trust Fund shall be used for the benefit of low-income families and 25 percent shall be allocated to the federal government to keep the bill deficit neutral. Sixty-five percent of the funds set aside for the Housing Trust Fund shall be allocated by formula to the states to provide affordable housing to extremely low-and very low-income households. (However, please note that because of the foreclosure problem, 100 percent of the amounts allocated to the Affordable Housing Block Grant Program in calendar year 2009 will be allocated to the states to facilitate loan modifications and refinance options for low- and moderate-income borrowers facing foreclosure.)

Capital Magnet Fund. The remaining 35 percent (beginning in the second year) of the funds set-aside for affordable housing shall be allocated to a trust, established by the Treasury Department, called the "Capital Magnet Fund." The Capital Magnet Fund is to be a competitive grant program to attract private capital for, and increase investment in, the development, preservation, rehabilitation, and purchase of affordable housing for primarily extremely low-, very-low, and low-income families; and for economic development activities or community service facilities to stabilize or revitalize an area. The funds given to states can be awarded in grants to provide housing and there is no limitation to what groups may receive these funds.

Federal Home Loan Banks (FHLBs). The bill requires new affordable housing goals similar to those that apply to the enterprises for FHLB mortgage purchase programs. The legislation also requires the FHLBs to create a public use data base for such programs. Treasury-certified Community Development Financial Institutions (CDFIs) would become eligible to join FHLBs. Finally, community financial institution members of the FHLBs may use FHLB advances for community development purposes.

HOPE for Homeowners Program. The bill establishes a new program entitled the HOPE for Homeowners Program. 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). The Board will have the authority to develop standards within the framework of the legislation.

Eligible Borrowers. Only owner-occupants who are unable to afford their mortgage payments are eligible for the program. No investors or investor properties will qualify. Homeowners must certify, under penalty of law, that they have not intentionally defaulted on their loan to qualify for the program and must have a mortgage debt to income ratio greater than 31 percent as of March 1, 2008. Lenders must document and verify borrowers' income with the IRS.

New Loan Amount. The FHA refinancing program will let borrowers who have defaulted on their existing mortgages to refinance into FHA-guaranteed loans. Lenders must write down the principal balance of the loan to no more than 90 percent of the current value (and in some circumstances less), and put the borrower in a 30-year fixed rate mortgage. Loans up to $550,000 are eligible. FHA is not allowed to charge insurance premiums sufficient to cover the risk of these borrowers, so it will result in a cost to the government, which will be paid for at first by funds from the Housing Trust Fund.

Equity & Appreciation Sharing. In order to avoid a windfall to the borrower created by the new 90 percent loan-to-value FHA-insured mortgage, the borrower must share the newly-created equity and future appreciation equally with FHA. This obligation will continue until the borrower sells the home or refinances the FHA-insured mortgage. Moreover, the homeowner's access to the newly created equity will be phased-in over 5 years.

Existing Subordinate Liens. Before participating in this program, all subordinate liens must be extinguished. This will have to be done through negotiation with the first lien holder.

Qualified Safe Harbor. The legislation provides loan servicers with an incentive to participate in the program by offering a safe harbor against legal liability.

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

Program Sunset. The program will begin October 1, 2008 and sunset on September 30, 2011.

S.A.F.E. Mortgage Licensing Act. The bill requires that all residential mortgage loan originators be licensed, provide fingerprints, a summary of work experience, and consent for a background check to authorities. States are given 12 months to develop licensing standards to ensure that applicants meet the following minimum criteria: (1) No felony conviction involving an act of fraud, dishonesty, a breach of trust, or money laundering (no other felony seven years prior to application); (2) No similar license ever revoked; (3) A demonstrated record of financial responsibility; (4) Meet a minimum net worth or bonding requirement (set by state); (5) Successful completion of education requirements (20 hours of approved courses, to include at least 3 hours related to federal laws, 3 hours on ethics and consumer protection in mortgage lending, and 2 hours on the subprime mortgage marketplace); and (6) Passage of a written exam (a minimum score of 75 percent is required to pass). If states do not comply, the Housing and Urban Development (HUD) Secretary is empowered to quickly develop the national database and license, generating revenue for its implementation through fees to license applicants.

Division B – Foreclosure Prevention

FHA Modernization. To ensure that additional families can access the FHA program, which provides safe, fixed-rate mortgages, significant FHA reform is included to modernize, streamline and expand the reach of the FHA program. Under this bill, the FHA loan limit is increased from 95 percent to 110 percent of area median home price with a cap at 150 percent of GSE limit (currently, $625,000), allowing families in all areas of the country to access homeownership through FHA. Down payments of 3.5 percent will be required for any FHA loan and counseling requirements are enhanced to help provide for stable homeownership.

Emergency Assistance for the Redevelopment of Abandoned and Foreclosed Homes. The substitute adds an additional $4 billion to Community Development Block Grants (CDBG) to purchase and rehabilitate foreclosed properties. The spendout rate for CDBG is a 7 year spendout, in which 50 percent of these funds will be spent in the third year of the spendout. Accordingly, the majority of these CDBG funds will not be spent until 2011. Treasury had reported having nearly $20.55 billion in unexpended balances for the regular CDBG program and emergency programs (end of FY2007 data).

Providing Pre-Foreclosure Counseling for Families in Need. The bill provides $150 million in additional funding for housing counseling.

Enhancing Mortgage Disclosure. The bill expands the types of home loans subject to early disclosures (within three days of application) under the Truth In Lending Act (TILA) to include refinancings. The bill requires that disclosures be provided no later than 7 days prior to closing so borrowers can shop for another loan if not satisfied with the terms. The bill requires a new disclosure that informs borrowers of the maximum monthly payments possible under their loan, and also increases the range of statutory damages for TILA violations from the current $200 to $2000 to $400 to $4000.

Preserving the American Dream for Our Nation's Veterans. The bill lengthens the time a lender must wait before starting foreclosure proceedings from three months to nine months after a soldier returns from service and also provides returning soldiers with one-year relief from increases in mortgage interest rates. In addition, the Department of Defense is required to establish a counseling program to ensure veterans and active service members can access assistance if facing financial difficulties. Also included is a provision that increases the VA loan guarantee amount, so that veterans have additional homeownership opportunities. The bill contains provisions to do the following: increase benefits paid to veterans with disabilities such as blindness for the purpose of adapting their housing; provide a moving benefit to servicemen and women who are forced to move out of rental housing because the owner of the housing was foreclosed on; provide that veterans benefits received in a lump sum are treated the same for the purposes of eligibility for housing assistance as monthly benefits; and to allow the Veterans Administration to provide for improvements and structural alterations to homes of veterans with service-connected disabilities.

Division C – Tax Title

Benefits for Multi-Family Low-Income Housing

Temporary increase in low-income housing tax credit. Under current law, there is a state-by-state limit on the annual amount of federal low-income housing tax credits that may be allocated by each state. This limitation is currently set at $2.00 for each person residing in the state. The bill increases this limitation in 2008 and 2009 by an additional 20 cents for each person residing in the state for large population states and increases by 10 percent the small state set-aside. *The estimated cost of this proposal is $1.084 billion over 10 years.*

Low-income housing tax credit simplification. This bill contains numerous proposals to simplify the technical rules relating to the Low-Income Housing Tax Credit (LIHTC). The bill eliminates the distinction between new and existing buildings for purposes of this credit, establishes a minimum credit rate for non-federally subsidized buildings (expires 12/31/2012), clarifies the circumstances under which a building is considered to be federally subsidized and the circumstances in which federal assistance will be taken into account in calculating the LIHTC, provides state housing agencies with greater flexibility to select sites for low-income housing projects and allocates adequate amounts of credit for projects, clarifies the rules relating to determinations of current income, provides developers with more time to begin construction of low-income housing projects after the credits have been awarded (one year instead of current law 6 months), reforms rules pertaining to sales of low-income housing buildings, allows projects to restrict housing units to individuals who share common characteristics, relaxes income rules for rural areas, and eliminates technical barriers to rehabilitating low-income housing projects. *The estimated cost of these proposals is $254 million over 10 years.*

One time recycling of multifamily housing bonds and housing bond simplification.
Under current law, there is a limitation on the annual amount of tax exempt housing bonds that each state may issue. The bill allows a one-time refunding of bonds reissued within 4 years of the original issuance. The bill also updates the tax exempt housing bond rules to conform certain aspects of these rules to the low-income housing tax credit rules. *The estimated cost of these proposals is $592 million over 10 years.*

Benefits for Single Family Housing

Refundable first-time homebuyer credit. The bill includes a refundable tax credit that is equivalent to an interest-free loan equal to 10 percent of the purchase of the home or claimed (up to

$8,000) by first-time homebuyers to help reduce the existing stock of unoccupied housing. The provision applies to homes purchased on or after April 9, 2008 and before April 1, 2009. The credit phases out for taxpayers with modified adjusted gross income in excess of $75,000 ($150,000 in the case of a joint return). *The estimated cost of this proposal is $4.332 billion over ten years.*

Non-Itemizer Property Tax Deduction. Present law allows a taxpayer who itemizers to deduct State and local property taxes from their Federal income. Non-itemizers claim the standard deduction ($10,700 for joint filers or $5,350 for individuals). The bill provides an additional standard deduction, $500 deduction for single filers and a $1,000 deduction for joint filers, for non-itemizers who pay State and local property taxes for one year (tax year 2008). The provision will sunset on January 1, 2009. *The estimated cost of this proposal is $1.537 billion over ten years.*

General Housing Provisions

Temporary increase in mortgage revenue bonds. Under current law, there is a national limit on the annual amount of tax-exempt housing bonds that each state may issue. The bill increases this national limit in 2008 to allow for the issuance of an additional $10 billion of tax-exempt bonds to provide loans to first-time home buyers and to finance the construction of low-income rental housing. The bill also temporarily allows qualified mortgage revenue bonds (a form of tax-exempt bond issued by states to help provide financing to first-time home buyers) to be used to refinance certain subprime loans. *The estimated cost of this proposal is $1.475 billion over ten years.*

Repeal of AMT limitations on tax-exempt housing bonds, low-income housing credit, and rehabilitation credit. The bill allows the low-income housing tax credit and the rehabilitation tax credit to be used to offset the AMT and ensures that interest on tax-exempt housing bonds is not subject to the AMT. *The estimated cost of this proposal is $2.093 billion over ten years.*

Bonds guaranteed by federal home loan banks eligible for treatment as tax-exempt bonds. Under current law, municipal bonds that are guaranteed by federal home loan banks cannot qualify as tax-exempt bonds unless the bonds are used to finance housing programs. State and local governments currently face significant costs when issuing tax exempt municipal bonds to finance state and local projects. The bill will temporarily allow bonds that are guaranteed by federal home loan banks to be eligible for treatment as tax-exempt bonds regardless of whether the bonds are used to finance housing programs. *The estimated cost of this proposal is $126 million over ten years.*

Protection of taxpayer Social Security numbers in real estate transactions. Under current law, an individual selling a home is required to provide the purchaser of the home with an affidavit stating, under penalties of perjury that the seller is not a nonresident alien individual or a foreign corporation (special tax rules apply to sales of real estate by nonresident alien individuals and foreign corporations). This affidavit must contain the seller's Social Security number. The bill will allow the seller to provide this affidavit to the business professional responsible for closing the real estate transaction (e.g., an attorney or title company) instead of sending this affidavit to the purchaser. *The estimated cost of this proposal is $20 million over ten years.*

Historic rehabilitation credit for state and local government leased property. Under current law, taxpayers are not eligible for the full amount of the rehabilitation credit if more than 35 percent of a rehabilitated building is leased to a state or local government. In such a situation, expenditures that are allocable to the portion of the building that is leased by the government will not be counted in calculating the rehabilitation credit. In general, the bill allows taxpayers to qualify for the full amount of the rehabilitation credit so long as less than 50 percent of the rehabilitated building is leased to state and local governments or other tax-exempt entities. *The estimated cost of this proposal is $262 million over ten years.*

Disaster mortgage revenue bonds. Under current law, there are limitations on the qualifying uses of mortgage revenue bonds. This bill expands the qualifying uses of single-family mortgage revenue bonds to victims of presidentially-declared disaster areas. The proposal would apply to bonds issued after May 1, 2008 and prior to January 1, 2010. *The estimated cost of this proposal is $96 million over ten years.*

Real Estate Investment Trust ("REIT") Modifications

REIT Modernization. The bill contains a number of provisions to modernize the rules regulating real estate investment trusts (REITs). REITs are subject to complex rules that can limit the ability of these businesses to adjust to changing market conditions and to manage risk. The bill would clarify that REITs can earn foreign currency income associated with real estate activities, increasing the permissible size of REIT investments in taxable REIT subsidiaries, modifying the REIT safe harbor for dealer sales, and extending the special rules for lodging facilities to health care facilities. *The estimated cost of these proposals is $305 million over ten years.*

Other Provisions

AMT/R&D Credit Monetization. The bill contains a provision which allows taxpayers to receive 20 percent of the value of their old AMT or research and development (R&D) credits to the extent such taxpayers invest in assets that qualify for bonus depreciation. The amount is capped at the lesser of 6 percent of outstanding and unused AMT and R&D credits or $30 million. *The estimated cost of this proposal is $996 million over ten years.*

Extension and expansion of certain GO Zone incentives. The bill allows taxpayers who claimed a deduction for a casualty loss to a principle residence in the GO Zone and subsequently received a casualty loss grant, to amend their returns and reduce the amount of their deduction without being subject to penalties and interest. The bill also provides a waiver of the deadline on construction of GO Zone property eligible for bonus depreciation. Finally, the bill adds additional counties into the GO Zone for purposes of tax-exempt bond financing. *The estimated cost of these proposals is $1.333 billion over ten years.*

Revenue Provisions

Payment Card and Third Party Network Information Reporting. The proposal requires information reporting on payment card and third party network transactions. Payment settlement entities, including merchant acquiring banks and third party settlement organizations, or third party payment facilitators acting on their behalf, will be required to report the annual gross amount of reportable transactions to the IRS and to the participating payee. Reportable transactions include any payment card transaction and any third party network transaction. Participating payees include persons who accept a payment card as payment and third party networks who accept payment from a third party settlement organization in settlement of transactions. A payment card means any card issued pursuant to an agreement or arrangement which provides for standards and mechanisms for settling the transactions. Use of an account number or other indicia associated with a payment card will be treated in the same manner as a payment card. A de minimis exception for transactions of $10,000 or less and 200 transactions or less applies to payments by third party settlement organizations. The proposal applies to returns for calendar years beginning after December 31, 2010. Back-up withholding provisions apply to amounts paid after December 31, 2011. *This proposal is estimated to raise $9.802 billion over ten years.*

Exclusion of Gain on Sale of a Principal Residence Not to Apply to Nonqualified Use. Gain from the sale or exchange of a principal residence allocated to periods of nonqualified use is not excluded from gross income. A period of nonqualified use means any period (not including any period before January 1, 2009) during which the property is not used by the taxpayer or the taxpayer's spouse or former spouse as a principal residence (e.g., rental property). The amount of gain allocated to periods of nonqualified use is the amount of gain multiplied by a fraction the numerator of which is the aggregate periods of nonqualified use during the period the property was owned by the taxpayer and the denominator of which is the period the taxpayer owned the property. *This proposal is estimated to raise $1.394 billion over ten years.*

Increase Information Return Penalties. The proposal (1) increases the penalty for failure to file correct information returns from $50/return to $100/return, and raises the calendar year cap from $250,000 to $1.5 million; (2) increases the penalty in cases of intentional disregard from $100/return to $250/return; (3) increases the failure to furnish correct payee statements from $50/return to $100/return, with the cap increasing from $100,000 to $500,000. Also in the event of intentional disregard, the penalty is increased from $100/return to $250/return. This is based on an FY2009 budget proposal. *This proposal is estimated to raise $347 million over ten years.*

Increase in Failure to File Penalty for S Corporation Returns. The failure to file penalty for S corporation returns is increased from $85/shareholder/month up to twelve months to $100/shareholder/month up to twelve months. *This proposal is estimated to raise $146 million over ten years.*

Increase in Failure to File Penalty for Partnership Returns. The failure to file penalty for partnership returns is increased from $85/partner/month up to twelve months to $100/partner/month up to twelve months. *This proposal is estimated to raise $197 million over ten years.*

Increase in Minimum Penalty for Failure to File. The minimum penalty for the failure to file a tax return is increased from $135 to $225. *This proposal is estimated to raise $217 million over ten years.*

Administration Position

The Statement of Administration Policy (SAP) was not available at press time.

Cost

At press time, there was only a cost estimate for Division A of the bill, the Housing Finance Reform section of the bill. (http://www.cbo.gov/ftpdocs/93xx/doc9366/Senate_Housing.pdf). Of that section of the bill, CBO estimates that enacting this legislation would increase revenues by about $8.0 billion over the 2009-2018 period, net of income and payroll tax offsets. Over that period, CBO estimates that direct spending from those proceeds would total about $7.2 billion. The additional revenues would thus exceed direct spending by an estimated $800 million, decreasing future deficits (or increasing surpluses) by that amount over the next 10 years. In addition, implementing this bill would reduce net discretionary spending over the next 10 years by $31 million, assuming appropriation actions consistent with the bill. Division C of the bill, the tax section, costs $14 billion and contains $12 billion in offsets, resulting in $2 billion that is not paid for.