

“Do something today that improves your tomorrow”

White Paper HR 3221 8-5-08

HR 3221 Housing and Economic Recovery Act of 2008

Observations and interpretations by Michael F. White CMPS™

Well, here it is. More than 700 pages of law that I have sifted down into a few pages and six areas we all need to be aware of. Not in any particular order, here is what I see and how and where to use this information and how to locate the documents and other interpretations you might find of value. Please understand that many interpretations from HUD and state and local agencies are still to follow and you need to keep up with those changes as they happen.

The first thing I want to look into is that of the DPA elimination. Under this law, all seller-funded programs are eliminated as of 10-1-08. While there is currently a number of people that are in favor of legislation to restore these DPA programs under current law, these are gone as of October 1st 2008 and all loans using DPA must be closed by then.

The reason for this is quite simple. The default rate on FHA loans with DPA is three times higher than those FHA loans not using DPA.

The second area of interest is the new FHA guidelines. The key issues include a \$625,500 limit in high cost areas with each area limit determined by HUD as 115% of the median home sales price in your area up to the new \$625,500.

FHA has also increased the minimum down payment to 3.5%. While this is an increase of .5%, the new law allows for secondary financing from a family member up to 100% financing by placing a second lien on the property. Please be clear, a gift is a gift and can never have an expectation of repayment. Secondary liens require legal documents and payment schedules. There is a website you can go to that will help your clients with setting this up. Go to www.VirginMoneyUS.com and they can help your clients with all the legal requirements, documentation, payments, and servicing of this second lien.

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FHA will also place a one year moratorium on the recent risk based pricing model in favor of an across the board 3% fee as of October 1st 2008.

This bill also includes expansion of the FHA Reverse Mortgage Program to include Home purchases and it establishes new limits of \$625,500.

The third area of interest is that of national licensing. I have long been in favor of this and hope they tighten these requirements further in the future. This new law calls for a National Registry for all loan originators. Bankers, Brokers, and anyone engaged in anything remotely considered “Origination Activities” must register even if they work for a nationally chartered institution. This will include background checks and credit checks.

Those who work for State chartered institutions, they will also have to deal with a few additional items like, minimum net worth and educational standards that will be set by each state. Originators will also be required to have pre-licensing education of 20 hours that includes a minimum of 3 hours of ethics, 3 hours of Federal laws and regulation, and 2 hours of lending standards for all non-30 year fixed rate loans. The balance of the time is to be focused on specific state laws and requirements.

Continuing Education will also become a reality with the mandate of 8 hours of annual education. It will cover 2 hours of lending standards on non-30 year fixed rate loans, 2 hours of ethics, and 3 hours that cover federal law and regulations. Testing is required and you must achieve a 75% or higher score in order to pass the test.

The big news will be the tax incentives for first time home buyers. The definition given for first time buyers is anyone who has not been in title, deed, or note of a residential property for the past three years.

These tax credits are for those who qualify having purchased a property between April 9th 2008 and July 1st 2009. Income requirements allow for individuals with “modified adjusted gross incomes” of \$75,000 or less, and married couples with a MAGI of \$150,000 or less.

For individuals earning between \$75,001 to \$95,000 MAGI, there will be a modified amount and anyone over \$95,000 or \$170,000 for those married filing jointly, there is no benefit.

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The tax refund amounts to 10% of the purchase price up to \$7,500. This is a tax credit and will be applied to the tax return for the year of purchase. This is a credit, not a deduction. You will either have this money applied to your tax obligations or refunded to you. This is not “free money” it needs to be repaid at \$500 per year for 15 years.

There are some additional conditions. You can't purchase a home from a family member or anyone related to you. And you have to pay off any outstanding balance if property is sold at a profit. If the home is sold without gain or at a loss; or if the borrower dies, the credit does not have to be repaid.

The other tax related item is the change in the standard deduction for those who don't itemize their deductions has gone up to \$500 for individuals and \$1,000 for those married filing jointly to help offset property taxes.

Also included in this law are significant changes to FNMA & FHLMC. The big change is the unlimited credit line both agencies will enjoy for the next 18 months to help ease cash flow and to continue to purchase loans. This new credit comes with significant conditions. First, a new regulator with broad powers called the Federal Housing Finance Agency, FHFA. The FHFA will have the power to regulate executive salaries, set minimum and risk based capital requirements, as well as oversee all operations, activities, and corporate governance.

This represents a big change from OFHEO which was pretty powerless and controlled by Congress. The new FHFA will be funded by fees and charges directly from FNMA and FHLMC, not by Congress.

Loan limits will go to \$417,000 in non-high cost areas. Designated high cost areas will be set at 115% of the median area home value not to exceed \$625,500. These limits will remain in place through 2010.

The new HOPE program contains a series of provisions that allow me to think that this is much more political than powerful. I will try and explain it as best I can. Please take into your consideration that both the home owner and the servicing agency must agree to terms in order to make a deal happen. Without trying to get too involved, here are the basics.

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The current servicing agent must agree to accept 90% of current appraised value of the property in question.

The home owner must accept a long list of conditions and restrictions. The most restrictive of which is the home owner must agree to share future equity with the government at the follow rates:

If home sold in one year, 100% appreciation goes to the government. That drops to 90% in year two, 80% in year three, 70% in year four, 60% in year number five, and a 50-50 split there after.

The borrower must prove repayment ability and need based on tax returns and that the current monthly payment exceeds 31% of borrowers income as of March 1st 2008 on a loan originated prior to January 1st 2008.

The borrower must sign a certification stating that they have not intentionally defaulted on current loan to qualify for the new loan and has not made any false statements on a loan application.

There is also an upfront MIP of 3% either paid by the borrower or by the current servicing agent and an annual MIP of 1.5% to be paid by the borrower.

The borrower must agree that there will be no second liens placed on the said property for no less than five years with the exception of a lien to ensure maintenance of the property and not to exceed 95% CLTV and the governments equity may not be reduced. All of which requires a written exception.

This program becomes effective October 1st 2008 and is set to expire September 30th 2011.

All in all, my belief is that very few people will qualify for this program and even fewer service agencies will accept the terms. Certainly not the more than two million people the government thinks will use the program. Many people will either walk away from the property, short sale, or try to modify the loan outside the parameters of this plan.

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Since this law also contains specific language relating to those that service loans for investors. It deems a specific fiduciary duty to modify loans if the following conditions are met. The loan is currently in default or default is reasonably foreseeable. The property is owner occupied and that the current net value of the recovery is more than the net recovery of foreclosure.

Again, be certain you understand these changes and seek local advice. Be careful not to get involved with negotiating short sales, modifications, or loan workouts without the understanding that you may be guilty of practicing law without a license.

Obviously I can't provide all the information of a 700+ page law in these five pages. I wanted to get you the highlights and instruct you to other informational sites you can go to and find more detailed information. As always, please email me or call with any questions or comments.

Here are some helpful websites.

http://www.realtor.org/gapublic.nsf/pages/hr_3221_key_provisions
www.thomas.gov

<http://www.federalhousingtaxcredit.com>

<http://www.realtor.org/gapublic.nsf/pages/hr3221sellerdap?opendocument>

<http://www.getdownpayment.com/updates/legislativeinfo.asp>

www.virginmoneyus.com

<http://www.irs.gov/pub/irs-drop/rp-08-28.pdf>

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