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HOPE for Homeowners Act of 2008

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The HOPE for Homeowners Act of 2008 (the "HOPE Program") is part of the larger Housing and Economic Recovery Act of 2008[1] that was signed into law by President Bush on July 30, 2008. The HOPE Program amends Title II of the National Housing Act by creating a new, voluntary program for the refinancing of distressed loans by providing FHA insurance for refinanced loans that meet certain eligibility requirements. The program runs from October 1, 2008 to September 30, 2011. In order to participate in the HOPE Program, both the borrower and the lender have to agree to participate.[2]

The Hope Program is administered by the HOPE Board, which may issue regulations and guidance for those covered by these provisions. The members of the HOPE Board are the Secretary of HUD, Treasury Secretary, Federal Reserve Chairperson, and FDIC Chairperson. The HOPE Board will manage the HOPE Fund. The Treasury Secretary may issue an aggregate of $300 billion of HOPE bonds. These bonds will be callable at the discretion of the Secretary. The bond proceeds will be used to pay insurance claims under the program and the administrative costs of the HOPE Program. The aggregate principal amount of all mortgages insured under the HOPE Program cannot exceed $300 billion.[3]

To be eligible for the HOPE Program, the following requirements must be met:

1. the mortgagor must occupy the property as a principal residence;[4]
2. the mortgage must have been originated before January 1, 2008;[5]
3. the mortgagor must certify to the Secretary of HUD that it has not intentionally defaulted on the mortgage or **any other debt;** [6]
4. the mortgagor must have an aggregate mortgage-debt-to-income ratio greater than 31%;
5. the principal obligation of the refinanced mortgage must be determined by the reasonable ability of the borrower to pay and may not exceed 90% of the appraised value of the property;[7]
6. the lender must waive or forgive all penalties for prepayment refinancing and all fees and penalties related to default or delinquency;[8]

7. the refinancing must include an extinguishment of all mortgage liens and removal of all encumbrances on the property and thus requires the voluntary participation of all lien holders;[9]
8. the refinanced mortgage must be a fully amortizing fixed-rate product having a maturity of not less than 30 years;[10]
9. the maximum eligible loan amount is $825,000;[11]
10. the mortgagor may not take out a second mortgage on the property during the first five years of the refinanced insured loan, unless the HOPE Board determines that a second mortgage is necessary to ensure the maintenance of the property. In such event, the total indebtedness can not exceed 95% of the appraised value of the property, and the second mortgage cannot reduce the value of the Government's equity in the property;[12]
11. specified appraisal standards must be meet;[13]
12. the mortgagor's income must be verified with tax returns for the two most recent filing years;[14]
13. the mortgagor must not have been convicted of fraud during the previous 10-year period;[15] and
14. the property must be the mortgagor's primary residence and the only residence in which the mortgagor has an ownership interest.[16]

The HOPE Program is quite detailed in its specifications regarding appraisals. Specifically, the appraisal must "(A) be based on the then current value of the property; (B) be conducted in accordance with title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989; (C) be completed by an appraiser who meets the competency requirements of the Uniform Standards of Professional Appraisal Practice; (D) be wholly consistent with the appraisal standards, practices, and procedures under section 202(e) of this Act that apply to all loans insured under this Act; and (E) comply with the requirements of subsection (g) of this section (relating to appraisal independence)." Note that the HOPE Program also amends the appraisal standards under FHA section 202(e) by requiring that such appraisers be certified and demonstrate verifiable education in the appraisal requirements established by the FHA.[17] A civil money penalty may be assessed by the HUD Secretary if a mortgage lender, broker, or banker, real estate broker, appraisal management company, or any other person involved with an appraisal under the HOPE Program attempts or does improperly influence an appraisal under this Program.[18]

The Board must establish a reasonable limit on origination fees and a procedure to ensure that interest rates under the HOPE Program are commensurate with market rates. The cost of insurance under the HOPE Program is an initial premium payment of 3% of the amount of the original insured principal obligation of the refinanced eligible mortgage paid from the proceeds of the refinanced mortgage, plus annual premium payments of 1.5% of the remaining insured principal balance. The HOPE Board will issue rules requiring lenders to meet underwriting and appraisal standards. If these standards are violated or if the borrower fails to make its first refinanced mortgage payment, the HOPE Board may not pay insurance benefits to the mortgagee.[19]

Upon the sale of any property refinanced and insured under the HOPE Program, 50% of the equity and appreciation in appraised value goes to the government (the amount of equity that goes to the government is higher if the property is sold in less than five years). The HOPE Board will establish standards that will allow the holder of a subordinated mortgage to also share in that appreciation. The Government National Mortgage Corporation is authorized to enter into up to $300 billion in commitments to guarantee securities based on or backed by HOPE Program insured mortgages.[20]

Finally, the HOPE Program amends the Truth in Lending Act by adding a new section establishing a fiduciary duty of servicers of pooled residential mortgages.[21] A servicer of pooled residential mortgages owes a duty to investors and parties having an interest in such an investment to maximize the net present value of the pooled mortgages. Such a servicer is deemed to act in the best interests of such investors and parties if the servicer agrees to or implements a modification or workout plan. This presumption of best interests does not appear to be limited to the HOPE Program. It does include a modification or refinancing of a residential mortgage or a class of those mortgages under the HOPE Program. A mortgage modified for the HOPE Program must be in default or default must be reasonably foreseeable; the property must be occupied by the mortgagor; and the anticipated recovery on the modified principal amount must exceed, on a net present value basis, the anticipated recovery to be obtained through foreclosure.

Within 60 days of the enactment of the HOPE Program, the HOPE Board is required to conduct a study and submit a report to the House Financial Services Committee and the Senate Committee on Banking, Housing, and Urban Affairs on the need and efficacy of an auction or bulk refinancing program to facilitate refinancings under the HOPE Program. The HOPE Board may also establish standards to protect against adverse selection, including requiring loans identified by the HUD Secretary as higher risk loans to demonstrate payment performance before being insured under this Program.[22]

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1 Pub. L. No. 110-289.
2 HERA section 1402(a); National Housing Act (NHA) section 257 (b)(1).
3 NHA sections 257(c), 257(s)(2), 257(l), 257(2), and 257(m).
4 NHA section 257(s)(3)(A).
5 NHA section 257(s)(3)(B).
6 NHA section 257 (e)(1)(A).
7 NHA section 257(e)(2). Reasonableness can be measured by NHA 203(b)(4) or any other standard established by the HOPE board.
8 NHA section 257(e)(3).
9 NHA section 257(e)(4). The HUD Secretary may take actions subject to the standards established by the HOPE Board to facilitate coordination and agreement between the holders of senior and subordinated mortgages.
10 NHA section 257(e)(5).
11 NHA section 257 (e)(6). This section states that the maximum loan amount is 132% of the government-sponsored enterprise (GSE) limit for 2007. The GSE limit for 2007 is $625,500 for a single-family residence.
12 NHA section 257 (e)(7).
13 NHA section 257(e)(8).
14 NHA section 257(e)(9).
15 NHA section 257(e)(10).
16 NHA section 257(e)(11).
17 HERA section 1404.
18 NHA section 257(g).
19 NHA sections 257(j), 257(i), and 257(h).
20 NHA sections 257 (k), 257(e)(4)(B), and 257(q).
21 HERA section 1403; Trust in Lending Act section 129A.
22 NHA sections 257(h) and 257(h)(3).