

July 25, 2011



Legislative Update: GSE Reform

Regularly over the course of the last few months, we have been asked by clients to update them on the status of GSE reform, and sometimes asked to predict when we will see significant progress toward GSE reform. As a result, we thought it would be helpful to provide an overview of the many bills now pending in Congress that would affect the GSEs. Currently, there are more than 20 distinct bills that address Fannie Mae and Freddie Mac, and more have been proposed but not yet formally introduced. As you will see from the summaries that follow, the bills are diverse—some call for discrete changes, while others call for winding down the GSEs or merging the GSEs into a single FHFA-regulated corporation without profits or shareholders. It may be too early yet to offer any informed guesses as to which of these bills will gain support, so we describe them all.

Table 1 provides a brief summary and the current status of each bill. Table 2 outlines each bill's progress to date. Both include hyperlinks to the official text of each bill.

List of Acronyms

HR ###	House of Representatives Bill ###
S ###	Senate Bill ###
ABS	Asset-Backed Security
CBHUA	Committee on Banking, Housing, and Urban Affairs (Senate)
CFS	Committee on Financial Services (Senate)
SC CMGSE	Subcommittee on Capital Markets and GSEs (House)
FHEFSSA	Federal Housing Enterprises Financial Safety and Soundness Act of 1992
FHFA	Federal Housing Finance Agency
FHLMCA	Federal Home Loan Mortgage Corporation Act
FNMACA	Federal National Mortgage Association Charter Act
FOIA	Freedom of Information Act
GSE	Government Sponsored Enterprise (just Fannie Mae and Freddie Mac, here)
HCDA	Housing and Community Development Act of 1992
HFSC	House Committee on Financial Services
SC IHCO	Subcommittee on Insurance, Housing, and Community Banking (House)
MERS	Mortgage Electronic Registration System, Inc.
PACE	Property Assessed Clean Energy

Table 1 – Brief Summary of Bills

BILL #	TITLE	SUMMARY	STATUS
<u>HR 363</u> <u>S 170</u>	Housing Opportunity and Mortgage Equity Act of 2011 (House)/Helping Responsible Homeowners Act (Senate)	Directs the GSEs to each pursue a one-year program for refinancing qualified single-family housing mortgages.	House: Awaiting SC CMGSE Markup Senate: Awaiting CFS Markup
<u>HR 408</u> <u>S 178</u>	Spending Reduction Act of 2011	Incorporates HR 1182/S 693 (below).	House: Awaiting SC CMGSE Markup Senate: Awaiting CFS Markup
<u>HR 1182</u> <u>S 693</u>	GSE Bailout Elimination and Taxpayer Protection Act	Repeals the housing trust fund, sets a deadline for GSE conservatorship to end or turn into receivership.	House: Awaiting SC CMGSE Markup Senate: Awaiting CBHUA Markup
<u>HR 31</u>	Fannie Mae and Freddie Mac Accountability and Transparency for Taxpayers Act	Expands GSE reporting requirements and increases the powers of the FHFA’s Inspector General.	Approved by SC CMGSE Awaiting HFSC Markup
<u>HR 1221</u>	Equity in Government Compensation Act	Switches GSE executive pay to government rates.	Approved by SC CMGSE Awaiting HFSC Markup
<u>HR 1222</u>	GSE Subsidy Elimination Act	Requires the GSEs to charge guarantee fees.	Approved by SC CMGSE Awaiting HFSC Markup
<u>HR 1223</u>	GSE Credit Risk Equitable Treatment Act	Ensures no special treatment for GSE ABS.	Approved by SC CMGSE Awaiting HFSC Markup
<u>HR 1224</u>	GSE Portfolio Risk Reduction Act	Winds down the GSE assets to \$250 billion over five years.	Approved by SC CMGSE Awaiting HFSC Markup
<u>HR 1225</u>	GSE Debt Issuance Approval Act	Requires Treasury approval prior to GSE issuances of any security or debt.	Approved by SC CMGSE Awaiting HFSC Markup
<u>HR 1226</u>	GSE Mission Improvement Act	Repeals FHEFSSA affordable housing goals.	Approved by SC CMGSE Awaiting HFSC Markup
<u>HR 1227</u>	GSE Risk and Activities Limitation Act	Requires HCDA approval of new GSE products during conservatorship/receivership.	Approved by SC CMGSE Awaiting HFSC Markup
<u>HR 1754</u>	Preserving Equal Access to Mortgage Finance Programs Act	Permanently increases the maximal principal obligation limit on GSE mortgage purchases, unlike HR 2508’s temporary increase.	Awaiting SC IHCO Markup

BILL #	TITLE	SUMMARY	STATUS
<u>HR 1859</u>	Housing Finance Reform Act of 2011 (“Campbell-Peters Bill”)	Replaces the GSE framework with a system of FHFA chartered, privately capitalized “guaranty associations.”	Awaiting HFSC Markup
<u>HR 2093</u>	Fannie Mae and Freddie Mac Investigative Commission Act	Establishes a commission to investigate the GSEs and make recommendations to Congress.	Awaiting CFS Markup
<u>HR 2425</u>	Transparency and Security in Mortgage Registration Act of 2011	Requires the GSEs to reassign their MERS mortgages and cease dealing in such.	Awaiting HFSC Markup
<u>HR 2428</u>	GSE Legal Fee Reduction Act of 2011	Limits the legal fees payable from taxpayer funds for the defense of GSE executives.	Awaiting HFSC Markup
<u>HR 463</u>	Fannie Mae and Freddie Mac Transparency Act of 2011	Applies the FOIA to the GSEs.	Approved by SC CMGSE Awaiting HFSC Markup
<u>HR 2436</u>	Fannie Mae and Freddie Mac Taxpayer Payback Act of 2011	Prevents any reduction of the 10% dividend the GSEs pay to taxpayers.	Approved by SC CMGSE Awaiting HFSC Markup
<u>HR 2439</u>	Removing GSE Charters During Receivership Act of 2011	Authorizes the FHFA to revoke the GSE charters, requires an economic impact report to Congress.	Approved by SC CMGSE Awaiting HFSC Markup
<u>HR 2440</u>	Market Transparency and Taxpayer Protection Act of 2011	Requires sale or other disposal of the GSE’s non-mission critical assets.	Approved by SC CMGSE Awaiting HFSC Markup
<u>HR 2441</u>	Housing Trust Elimination Act	Eliminates the housing trust fund.	Approved by SC CMGSE Awaiting HFSC Markup
<u>HR 2462</u>	Cap the GSE Bailout Act of 2011	Caps the total potential GSE bailout.	Approved by SC CMGSE Awaiting HFSC Markup
<u>HR 2508</u>	<i>No Short Title: Increase in maximum original principal mortgage obligation limit</i>	Temporarily increases the maximum original principal obligation limit on mortgages purchased by the GSEs.	Awaiting HFSC Markup
<u>HR 2599</u>	PACE Assessment Protection Act of 2011	Enjoins the GSEs from refusing to purchase mortgages subject to PACE liens.	Awaiting HFSC Markup
<u>tbd</u>	Secondary Market Facility for Residential Mortgages Act of 2011	Merges the GSEs into one nonprofit organization funded by guarantee fees.	Not Yet Introduced

Table 2 – Progression of 2011 GSE Reform Bills

BILL #	TITLE	ROUND	INTRODUCED	MARKUP	STATUS
<u>HR 363</u> <u>S 170</u>	Housing Opportunity and Mortgage Equity Act of 2011 (House)/Helping Responsible Homeowners Act (Senate)	-	20 January 2011 (House) 25 January 2011 (Senate)	None yet	House: Awaiting SC CMGSE Markup Senate: Awaiting CFS Markup
<u>HR 408</u> <u>S 178</u>	Spending Reduction Act of 2011	-	24 January 2011 (House) 25 January 2011 (Senate)	None yet	House: Awaiting SC CMGSE Markup Senate: Awaiting CFS Markup
<u>HR 1182</u> <u>S 693</u>	GSE Bailout Elimination and Taxpayer Protection Act	-	23 March 2011 (House) 31 March 2011 (Senate)	None yet	House: Awaiting SC CMGSE Markup Senate: Awaiting CBHUA Markup
<u>HR 31</u>	Fannie Mae and Freddie Mac Accountability and Transparency for Taxpayers Act	Round 1 (29 March 2011)	5 January 2011	<u>SC CMGSE</u> <u>5-6 April 2011</u>	Approved by SC CMGSE Awaiting HFSC Markup
<u>HR 1221</u>	Equity in Government Compensation Act	Round 1 (29 March 2011)	29 March 2011	<u>SC CMGSE</u> <u>5-6 April 2011</u>	Approved by SC CMGSE Awaiting HFSC Markup
<u>HR 1222</u>	GSE Subsidy Elimination Act	Round 1 (29 March 2011)	29 March 2011	<u>SC CMGSE</u> <u>5-6 April 2011</u>	Approved by SC CMGSE Awaiting HFSC Markup
<u>HR 1223</u>	GSE Credit Risk Equitable Treatment Act	Round 1 (29 March 2011)	29 March 2011	<u>SC CMGSE</u> <u>5-6 April 2011</u>	Approved by SC CMGSE Awaiting HFSC Markup
<u>HR 1224</u>	GSE Portfolio Risk Reduction Act	Round 1 (29 March 2011)	29 March 2011	<u>SC CMGSE</u> <u>5-6 April 2011</u>	Approved by SC CMGSE Awaiting HFSC Markup
<u>HR 1225</u>	GSE Debt Issuance Approval Act	Round 1 (29 March 2011)	29 March 2011	<u>SC CMGSE</u> <u>5-6 April 2011</u>	Approved by SC CMGSE Awaiting HFSC Markup
<u>HR 1226</u>	GSE Mission Improvement Act	Round 1 (29 March 2011)	29 March 2011	<u>SC CMGSE</u> <u>5-6 April 2011</u>	Approved by SC CMGSE Awaiting HFSC Markup
<u>HR 1227</u>	GSE Risk and Activities Limitation Act	Round 1 (29 March 2011)	29 March 2011	<u>SC CMGSE</u> <u>5-6 April 2011</u>	Approved by SC CMGSE Awaiting HFSC Markup

BILL #	TITLE	ROUND	INTRODUCED	MARKUP	STATUS
HR 1754	Preserving Equal Access to Mortgage Finance Programs Act	-	5 May 2011	None yet	Awaiting SC IHCO Markup
HR 1859	Housing Finance Reform Act of 2011 (“Campbell-Peters Bill”)	-	12 May 2011	None yet	Awaiting HFSC Markup
HR 2093	Fannie Mae and Freddie Mac Investigative Commission Act	-	2 June 2011	None yet	Awaiting CFS Markup
HR 2425	Transparency and Security in Mortgage Registration Act of 2011	-	6 July 2011	None yet	Awaiting HFSC Markup
HR 2428	GSE Legal Fee Reduction Act of 2011	Round 2 (13 May 2011)	6 July 2011	None yet	Awaiting HFSC Markup
HR 463	Fannie Mae and Freddie Mac Transparency Act of 2011	Round 2 (13 May 2011)	26 January 2011	SC CMGSE 12 July 2011	Approved by SC CMGSE Awaiting HFSC Markup
HR 2436	Fannie Mae and Freddie Mac Taxpayer Payback Act of 2011	Round 2 (13 May 2011)	7 July 2011	SC CMGSE 12 July 2011	Approved by SC CMGSE Awaiting HFSC Markup
HR 2439	Removing GSE Charters During Receivership Act of 2011	Round 2 (13 May 2011)	7 July 2011	SC CMGSE 12 July 2011	Approved by SC CMGSE Awaiting HFSC Markup
HR 2440	Market Transparency and Taxpayer Protection Act of 2011	Round 2 (13 May 2011)	7 July 2011	SC CMGSE 12 July 2011	Approved by SC CMGSE Awaiting HFSC Markup
HR 2441	Housing Trust Elimination Act	Round 2 (13 May 2011)	7 July 2011	SC CMGSE 12 July 2011	Approved by SC CMGSE Awaiting HFSC Markup
HR 2462	Cap the GSE Bailout Act of 2011	Round 2 (13 May 2011)	8 July 2011	SC CMGSE 12 July 2011	Approved by SC CMGSE Awaiting HFSC Markup
HR 2508	<i>No Short Title: Increase in maximum original principal mortgage obligation limit</i>	-	13 July 2011	None yet	Awaiting HFSC Markup
HR 2599	PACE Assessment Protection Act of 2011	-	20 July 2011	None yet	Awaiting HFSC Markup
tbd	Secondary Market Facility for Residential Mortgages Act of 2011	-	Not yet introduced	N/A	Not yet introduced

Note: The links under “Markup” provide the latest amendments.

Bill Sponsorship and Brief Summaries

HR 363/S 170: Housing Opportunity and Mortgage Equity Act of 2011/Helping Responsible Homeowners Act

House Sponsorship: Rep. Dennis Cardoza (D-CA); also 28 cosponsors.

Senate Sponsorship: Sen. Barbara Boxer (D-CA); also one cosponsor.

Summary:

- Directs the GSEs to each pursue a one-year program to refinance “qualified” single-family mortgages.
 - o “Qualified” here means essentially a mortgage that the GSE owns and for which the mortgagor’s payments are current.
 - o The bill requires a 40-year term, no borrower fees, and waiver/forgiveness of other fees and penalties.
 - A guarantee fee may still be required.

House Status: Referred to the SC CMGSE, not yet marked up.

Senate Status: Referred to the CBHUA, not yet marked up.

HR 408/S 178: Spending Reduction Act of 2011

House Sponsorship: Rep. Jim Jordan (R-OH); also for 32 cosponsors.

Senate Sponsorship: Sen. Jim DeMint (R-SC)

Summary:

- Among many other spending reduction suggestions, this bill calls for incorporation of HR 1182/S 693 (immediately below in this document).

House Status: Referred to the SC CMGSE, not yet marked up.

Senate Status: Referred to the CFS, not yet marked up.

HR 1182/S 693: GSE Bailout Elimination and Taxpayer Protection Act

House Sponsorship: Rep. Jeb Hensarling (R-TX); also for Rep. Spencer Bachus (R-AL) and 54 other cosponsors.

Senate Sponsorship: Sen. John McCain (R-AZ) and Sen. Orrin Hatch (R-UT).

Summary:

- Sets a deadline for the Federal Housing Finance Agency (FHFA) Director to terminate Fannie Mae and Freddie Mac’s conservatorship (if financially viable) or begin receivership.
- Amends the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA) to repeal its housing goals and the housing trust fund.
 - o Also amends the FHEFSSA to compel the Director to require GSEs to charge a guarantee fee on certain mortgages equivalent to that which private banks would charge.
 - o Amends the FHEFSSA to compel the Director to require GSEs to maintain minimum levels of capital (determined circumstantially).
 - o Amends the Federal National Mortgage Association Charter Act (FNMACA) and the Federal Home Loan Mortgage Corporation Act (FHLMCA) to (1) require GSEs to pay state and local taxes, (2) prohibit them from purchasing mortgages without paying the full downpayment, and (3) prohibit reduction in dividend rates paid on the GSEs’ Variable Liquidation Preference Senior Preferred Stock.
- Establishes new conforming loan limits (repealing some previous ones).
- Amends the Housing and Community Development Act of 1992 (HCDA) to limit GSE mortgage acquisitions after emerging from conservatorship.

House Status: Referred to the SC CMGSE, not yet marked up.

Senate Status: Referred to the CBHUA, not yet marked up.

HR 31: Fannie Mae and Freddie Mac Accountability and Transparency for Taxpayers Act

Sponsorship: Rep. Judy Biggert (R-IL); also for 19 cosponsors.

Summary as Amended:

- Enhances the powers of the FHFA’s Inspector General.
- Increases the reporting requirements for the GSEs (quarterly reports including such things as total liability, executive bonus justifications, foreclosure mitigation efforts, fraud prevention efforts, communication history with the Federal Reserve, investment information, buyback policies, and underwriting standards).

Status: Approved by the SC CMGSE by voice vote on 5-6 April 2011, now pending in the HFSC.

HR 1221: Equity in Government Compensation Act

Sponsorship: Rep. Spencer Bachus (R-AL); also for Reps. Scott Garrett (R-NJ), Jeb Hensarling (R-TX), Steve Pearce (R-NM), Judy Biggert (R-IL), and two other cosponsors.

Summary as Amended:

- Suspends the compensation packages for executive officers of GSEs and replaces them with pay rates akin to those of senior federal government officials.
- Encourages the return (to the Treasury) of 2010 compensation beyond the pay rate of level I in the Executive Schedule.
- Requires GSE employees to be paid according to the General Schedule for federal civil service employees.
- Amendments clarified that this would not classify GSE employees as actual federal employees, and further linked executive compensation to GSE profitability.

Status: Approved by the SC CMGSE by 27-6 on 5-6 April 2011, now pending in the HFSC.

HR 1222: GSE Subsidy Elimination Act

Sponsorship: Rep. Randy Neugebauer (R-TX); also for Reps. Spencer Bachus (R-AL), Scott Garrett (R-NJ), Jeb Hensarling (R-TX), and Steve Pearce (R-NM).

Summary (Was Not Amended):

- Amends the HCDA to require that the GSEs charge guarantee fees in connection with timely payment of obligations, set to an appropriate level.
- Such fees would be increased gradually over two years by the FHFA Director.

Status: Approved by the SC CMGSE by 25-9 on 5-6 April 2011, now pending in the HFSC.

HR 1223: GSE Credit Risk Equitable Treatment Act

Sponsorship: Rep. Scott Garrett (R-NJ); also for Reps. Spencer Bachus (R-AL), Jeb Hensarling (R-TX), and Steve Pearce (R-NM).

Summary as Amended:

- Amends the Securities Exchange Act of 1934 to ensure that GSE asset-backed securities (ABS) are treated no differently from any other entity's ABS.

Status: Approved by the SC CMGSE by 34-0 on 5-6 April 2011, now pending in the HFSC.

HR 1224: GSE Portfolio Risk Reduction Act

Sponsorship: Rep. Jeb Hensarling (R-TX); also for Reps. Spencer Bachus (R-AL), Scott Garrett (R-NJ), Steve Pearce (R-NM), and two other cosponsors.

Summary as Amended:

- Winds down the size of the GSEs by amending the HCDA to prohibit Fannie Mae and Freddie Mac from owning mortgage assets beyond:
 - o \$700 billion one year after enactment of this Act,
 - o \$600 billion two years after enactment of this Act,
 - o \$475 billion three years after enactment of this Act,
 - o \$350 billion four years after enactment of this Act, and
 - o \$250 billion five years after enactment of this Act.

Status: Approved by the SC CMGSE by 18-0 on 5-6 April 2011, now pending in the HFSC.

HR 1225: GSE Debt Issuance Approval Act

Sponsorship: Rep. Steve Pearce (R-NM); also for Reps. Spencer Bachus (R-AL), Scott Garrett (R-NJ), and Jeb Hensarling (R-TX).

Summary (Was Not Amended):

- Amends the HCDA to prohibit the GSEs from issuing any debt security, obligation, or instrument without advance approval from the Secretary of the Treasury.
- Furthermore, the Treasury must explain itself to Congress within seven days.

Status: Approved by the SC CMGSE by 34-0 on 5-6 April 2011, now pending in the HFSC.

HR 1226: GSE Mission Improvement Act

Sponsorship: Rep. Edward Royce (R-CA); also for Reps. Spencer Bachus (R-AL), Scott Garrett (R-NJ), Jeb Hensarling (R-TX), and Steve Pearce (R-NM).

Summary as Amended:

- Amends the FHEFSSA to repeal affordable housing goals to avoid promoting homeownership by risky borrowers.

Status: Approved by the SC CMGSE by voice vote on 5-6 April 2011, now pending in the HFSC.

HR 1227: GSE Risk and Activities Limitation Act

Sponsorship: Rep. David Schweikert (R-AZ); also for Reps. Spencer Bachus (R-AL), Scott Garrett (R-NJ), Jeb Hensarling (R-TX), and Steve Pearce (R-NM).

Summary as Amended:

- Amends the HCDA to prohibit approval of any new GSE products during conservatorship or receivership.

Status: Approved by the SC CMGSE by voice vote on 5-6 April 2011, now pending in the HFSC.

HR 1754: Preserving Equal Access to Mortgage Finance Programs Act

Sponsorship: Rep. Gary Miller (D-CA); also for Rep. Brad Sherman (D-CA) and three other cosponsors.

Summary:

- Amends the FNMACA and the FHLMCA to increase permanently the maximum principal obligation of mortgage limitations that Fannie Mae and Freddie Mac may purchase.
- Gives the FHFA Director discretion in dealing with changes in such limitations.
- Amends the National Housing Act to allow the maximum principal obligation of mortgages that the Secretary of Housing and Urban Development may insure to match the changes.
 - o The secretary also receives some discretion in dealing with such changes.

Status: Referred to the SC IHCO, not yet marked up.

HR 1859: Housing Finance Reform Act of 2011

Sponsorship: Rep. John Campbell (R-CA) and Rep. Gary Peters (D-MI).

Summary:

- Provides a government guarantee (full faith and credit of the U.S.) for the GSEs' obligations and mortgage-backed securities.
- Authorizes the FHFA's Director to charter privately capitalized organizations to securitize residential mortgages.
 - o This would replace the GSE model of "privatized gains and subsidized losses."
 - o The charters would be narrow (limiting the associations' activities to those consistent with traditional mortgage products) and restrict the allowable backing for the associations' securitizations.
 - o Associations would not be allowed to originate or service mortgages.
- The bill guarantees securities rather than their issuing entities and creates a reserve fund to avoid using taxpayer money for the guarantees.
 - o Should the reserve fund run dry and taxpayer money be tapped, a special assessment on the associations would be levied.
- The Government Accountability Office must issue a detailed report concerning risks associated with the government guarantee, and regulators must use this report when determining the appropriate guarantee fee.
- The bill requires the FHFA to determine a way to fully wind down the GSEs while chartering the new private associations.
 - o The GSEs may be gone within one year of five associations being chartered, and must be gone within three years of the first two charters.

Status: Pending in the HFSC.

HR 2093: Fannie Mae and Freddie Mac Investigative Commission Act

Sponsorship: Rep. Marcy Kaptur (D-OH)

Summary:

- Establishes a commission to investigate the GSEs from 1990 forward in order to make recommendations to Congress within 12 months of commission member appointment.

- Membership should be eight people; two each appointed by the House Speaker, House minority leader, Senate majority leader, and Senate minority leader.
- Grants the commission subpoena power, powers to hold hearings, access to all necessary data, and administrative support.
- Requires the GSEs to cooperate fully and provide any requested information.

Status: Referred to the HFSC, not yet marked up.

HR 2425: Transparency and Security in Mortgage Registration Act of 2011

Sponsorship: Rep. Marcy Kaptur (D-OH).

Summary:

- Amends the National Housing Act to prohibit the GSEs (including Ginnie Mae this time) from dealing in any Mortgage Electronic Registration System, Inc. (MERS) mortgage.
- Also requires them to assign all of their current MERS mortgages to the proper servicer, holder, or creditor. Directs the Secretary of Housing and Urban Development to conduct a study on local land title recording systems and the feasibility of creating a federal system.

Status: Referred to the HFSC, not yet marked up.

HR 2428: GSE Legal Fee Reduction Act of 2011

Sponsorship: Rep. Randy Neugebauer (R-TX); also for Reps. Spencer Bachus (R-AL), Scott Garrett (R-NJ), and three other cosponsors.

Summary:

- Limits taxpayer liability for the legal fees being incurred in defending GSE executives.
 - o Such fees have reached about \$162 million so far.

Status: Referred to the HFSC, not yet marked up.

HR 463: Fannie Mae and Freddie Mac Transparency Act of 2011

Sponsorship: Rep. Jason Chaffetz (R-UT); also for 18 cosponsors.

Summary (Was Not Amended):

- Applies the Freedom of Information Act (FOIA) to the GSEs while in conservatorship or receivership.
 - o Previously, the GSEs were not under FOIA because they were government chartered, not part of the government. Applies all of the FOIA public disclosure requirements.

Status: Approved by the SC CMGSE by voice vote on 12 July 2011, now pending in the HFSC.

HR 2436: Fannie Mae and Freddie Mac Taxpayer Payback Act of 2011

Sponsorship: Rep. Don Manzullo (R-IL); also for Reps. Scott Garrett (R-NJ), Edward Royce (R-CA), Spencer Bachus (R-AL), and one other cosponsor.

Summary (Was Not Amended):

- Prevents Congress from lowering the 10% dividend payment Fannie Mae and Freddie Mac pay to taxpayers on their senior preferred stock.

Status: Approved by the SC CMGSE by voice vote on 12 July 2011, now pending in the HFSC.

HR 2439: Removing GSE Charters During Receivership Act of 2011

Sponsorship: Rep. Steve Stivers (R-OH); also for Reps. Spencer Bachus (R-AL) and Scott Garrett (R-NJ).

Summary as Amended:

- Authorizes the FHFA to revoke the charters of Fannie Mae, Freddie Mac, or any limited-life regulated entity established under its receivership (it is required to revoke the charters of such limited life entities upon their dissolution).
- The FHFA Director must also submit a report to Congress within six months of this Act's passage, reporting on the economic impacts of eliminating any federal government role in the residential mortgage secondary market (Rep. Peters' amendment).
 - o Rep. Stivers' amendment thereafter added more topics for the FHFA to study, including costs associated with the GSE conservatorship.
- Rep. Campbell pushed through an amendment (by 18-14) requiring \$1 trillion annual liquidity in the private mortgage-backed security market prior to GSE elimination.
 - o This was (unsuccessfully) opposed by Rep. Stivers and Rep. Garrett.

Status: Approved by the SC CMGSE by voice vote on 12 July 2011, now pending in the HFSC.

HR 2440: Market Transparency and Taxpayer Protection Act of 2011

Sponsorship: Rep. Robert Hurt (R-VA); also for Reps. Spencer Bachus (R-AL), Scott Garrett (R-NJ), and one other cosponsor.

Summary as Amended:

- Fannie Mae and Freddie Mac must sell or dispose of such of their assets as are not critical to the GSEs' missions.
 - o The FHFA Director is to determine which assets are not mission critical and report to Congress (also making certain information available to the public after the GSEs dispose of the relevant assets).
 - o The GSEs must report on their assets within 180 days of the bill's passage, and then have three years to dispose of the relevant assets (with annual reports to Congress).
- Rep. Frank's amendment allows the FHFA Director to grant a six-month extension to the three-year period if such delay would help reduce taxpayer fund losses.
- Rep. Peters found bipartisan support for an amendment that gives the public access to FHFA and GSE housing data (including home addresses and sales prices).
- Rep. Maloney withdrew an amendment that would have clarified the term "non-critical" upon Rep. Hurt's concerns about the amendment's language.
 - o Such an amendment is likely to be reintroduced before the bill goes to consideration in the full HFSC.

Status: Approved by the SC CMGSE by voice vote on 12 July 2011, now pending in the HFSC.

HR 2441: Housing Trust Elimination Act

Sponsorship: Rep. Edward Royce (R-CA); also for Reps. Spencer Bachus (R-AL) and Scott Garrett (R-NJ).

Summary as Amended:

- Eliminates the GSEs' annual allocations to the Housing Trust Fund.
- Terminates the Housing Trust Fund itself.
 - o Existing funds would move to the Treasury to reduce the federal deficit.
- An amendment by Rep. Green added a section detailing Congressional findings on the prevalence of homelessness amongst veterans.
 - o This acknowledges the issue without mandating any action.

Status: Approved by the SC CMGSE by 18-14 on 12 July 2011, now pending in the HFSC.

HR 2462: Cap the GSE Bailout Act of 2011

Sponsorship: Rep. Michael Fitzpatrick (R-VA); also for three cosponsors.

Summary as Amended:

- Limits the bailout of Fannie Mae and Freddie Mac to the larger of:
 - o The amount they may receive from 2010 to 2012 or
 - o \$200 billion.

Status: Approved by the SC CMGSE by voice vote on 12 July 2011, now pending in the HFSC.

HR 2508: Untitled: prohibits taxpayer funding of GSE executives' legal defense; Rep. Neugebauer.

Sponsorship: Rep. John Campbell (R-CA) and Rep. Gary Ackerman (D-NY).

Summary:

- "To extend through fiscal year 2013 the increase in the maximum original principal obligation of a mortgage that may be purchased by the Federal National Mortgage Association or the Federal Home Loan Mortgage corporation, and for other purposes."
- Provides a temporary increase on the conforming loan limit for Fannie Mae and Freddie Mac purchases of mortgages originated during fiscal years 2012 and 2013 (to the limitation in effect for such a loan in 2008, essentially).
- The Federal Housing Act receives an equivalent increase regarding loans that the Secretary of Housing and Urban Development may insure.

HR 2599: PACE Assessment Protection Act of 2011

Sponsorship: Rep. Nan Hayworth (R-NY); also for 14 cosponsors.

Status:

- Property Assessed Clean Energy (PACE) improvements cover clean energy improvement and energy/water conservation/efficiency improvements for residential or commercial properties.
 - o Many state or local regulators establish PACE guidelines and assess fees for assessing properties.
 - o Some properties choose to or must take on a “PACE lien,” in which the property owner receives PACE improvements immediately from the local government in return for a senior lien placed on his or her property in the form of a special tax assessment.
 - o The FHFA on 6 July 2010 announced that it would not purchase loans subject to PACE liens, which greatly reduced PACE programs nationwide.
- This bill compels the FHFA Director to direct Fannie Mae and Freddie Mac to rescind their prior position against PACE liens and to not consider such liens a default or other trigger for their remedies.
- Neither may the GSEs “discriminate” by requiring more restrictive underwriting in PACE areas.
- PACE programs are subject to this Act’s protection only if they meet the Act’s requirements, including:
 - o compliance with state law and a clear schedule of payments/obligations;
 - o disclosures to the property owner by the local government regarding the PACE program;
 - o notice to existing lienholders; and
 - o compliance with confidentiality requirements.
- Commercial programs have further requirements.

House: Secondary Market Facility for Residential Mortgages Act of 2011

Sponsorship: Rep. Gary Miller (R-CA); Rep. Carolyn McCarthy (D-NY) plans to cosponsor.

Summary:

- This bill (currently a discussion draft) would merge Fannie Mae and Freddie Mac into a single corporation (the Facility) regulated by the FHFA.¹
 - o This entity would purchase mortgages and sell them to investors as government-backed securities.
 - o It would not be allowed to profit and would have no shareholders.
 - o Guarantee fees would fund its operations while investor fees built up an insurance fund.
 - o The FHFA would fix guidelines to determine which mortgages would be eligible for purchase by the Facility and which lenders may sell to it, in keeping with broad guidelines already established in the bill.
 - o The Facility’s market share would be limited to 50% of the mortgage market.
- [ASF produced a detailed summary of the bill](#) (accessible by the link at the end of the paragraph).

Status: Not yet introduced – in the discussion draft phase.

¹ American Securitization Forum, “Rep. Miller to Introduce Bill Merging Fannie and Freddie,” July 7, 2011. <http://www.americansecuritization.com/private/story.aspx?id=4952>. Accessed July 18, 2011.

Legislative report produced by Thomas M. Grothe, analyst, Morrison & Foerster LLP.

For questions, please contact:

Jerry R. Marlatt
(212) 468-8024
jmarlatt@mofo.com

Kenneth E. Kohler
(213) 892-
kkohler@mofo.com

James R. Tanenbaum
(212) 468-8163
jtanenbaum@mofo.com

Anna T. Pinedo
(212) 468-8179
apinedo@mofo.com

About Morrison & Foerster

We are Morrison & Foerster—a global firm of exceptional credentials. Our clients include some of the largest financial institutions, investment banks, Fortune 100, technology and life science companies. We've been included on *The American Lawyer's* A-List for eight straight years, and *Fortune* named us one of the "100 Best Companies to Work For." Our lawyers are committed to achieving innovative and business-minded results for our clients, while preserving the differences that make us stronger. This is MoFo. Visit us at www.mofo.com. © 2011 Morrison & Foerster LLP. All rights reserved.

Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations.