

Thursday, November 15, 2007

House Meets At...	Votes Predicted At...
9:00 a.m. For Legislative Business	Last Vote: 8:00-9:00 p.m.
Ten "One-minutes" Per Side	

**Any anticipated Member absences for votes this week should be reported to the Office of the Majority Whip at 226-3210.**

### Floor Schedule and Procedure

- H. Res. 825-Rule Providing for consideration of H.R. 3915 - Mortgage Reform and Anti-Predatory Lending Act of 2007 (Rep. Arcuri-Rules):**  
 The structured rule provides one hour of general debate equally divided and controlled by the Chairman and Ranking Minority Member of the Committee on Financial Services. The rule provides one motion to recommit with or without instructions. Debate on the rule will be managed by Rep. Arcuri, and consideration will proceed as follows:

  - One hour of debate on the rule.
  - Possible vote on a Democratic motion to move the previous question. **Democrats are urged to vote yes on the previous question.**
  - Vote on adoption of the rule. **Democrats are urged to vote yes on adoption of the rule.**
- H. Res. 824-Rule providing for consideration of H.R. 3773-RESTORE Act of 2007 (Rep. Hastings(FL) -Rules):** The closed rule provides for further consideration of the bill pursuant to House Resolution 746. The rule provides that time for debate on the bill pursuant to House Resolution 746 shall be considered as expired. The bill, as amended, shall be debatable for one hour, with 30 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary and 30 minutes equally divided and controlled by the chairman and ranking minority member of the Permanent Select Committee on Intelligence. The rule provides that the further amendment printed in the report of the Committee on Rules accompanying this rule shall be considered as adopted. Debate on the rule will be managed by Rep. Hastings (FL), and consideration will proceed as follows:

  - One hour of debate on the rule.
  - Possible vote on a Democratic motion to move the previous question. **Democrats are urged to vote yes on the previous question.**

- Vote on adoption of the rule. **Democrats are urged to vote yes on adoption of the rule.**
- **H.R. 3915 - Mortgage Reform and Anti-Predatory Lending Act of 2007 (Rep. Frank-Financial Services):** Pursuant to the rule, debate on the bill will be managed by Financial Services Committee Chair Rep. Barney Frank, or his designee, and will proceed as follows:
  - One hour of debate on the bill.
  - Debate and votes on amendments to the bill.
  - Possible Republican Motion to Recommit the Bill.
  - Vote on passage of the bill. **Democrats are urged to vote yes on passage of the bill.**
- **H.R. 3773-RESTORE Act of 2007(Reps. Conyers/Reyes-Judiciary/Intelligence):** Pursuant to the rule, debate on the bill will be managed by Judiciary Committee Chair Rep. John Conyers and Permanent Select Committee on Intelligence Committee Chair Rep. Silvestre Reyes, or their designees, each for thirty minutes, and will proceed as follows:
  - One hour of debate on the bill.
  - Possible Republican Motion to Recommit the Bill.
  - Vote on passage of the bill. **Democrats are urged to vote yes on passage of the bill.**
- **Vote on Overriding the President's Veto of H.R. 3043 - 2008 Labor, Health and Human Services, and Education Appropriations (Rep. Obey – Appropriations):** Debate on the measure will be managed by Appropriations Committee Chair Rep. David Obey. There will be one hour of debate followed by a vote on overriding the President's veto of the bill. **Democrats are urged to vote yes on overriding the President's veto.**
- **Postponed Suspension Vote:** At some point today, the House will take a recorded vote on the following bill, which was debated on Wednesday:
  1. **H.R. 4136** - The Enhancing the Effective Prosecution of Child Pornography Act of 2007 (*Rep. Carney – Judiciary*)

## **Bill Summary and Key Issues**

### **H.R. 3915, The Mortgage Reform and Anti-Predatory Lending Act of 2007**

H.R. 3915, the “The Mortgage Reform and Anti-Predatory Lending Act of 2007” is a bipartisan measure that will create a licensing system for residential mortgage loan originators, establish a minimum standard requiring that borrowers have a reasonable ability to repay a loan, and will attach a limited liability to secondary market securitizers. The legislation will also expand and enhance consumer

protections for “high-cost loans,” will include protections for renters of foreclosed homes, and will establish an Office of Housing Counseling through the Department of Housing and Urban Development. Specifically, the legislation, as reported from committee will do the following:

### **Establishes a Licensing System for Residential Mortgage Loan Originators**

Provides for licensing and registration of individual mortgage brokers and registration of bank employees that originate mortgages, as well as the establishment of a Nationwide Mortgage Licensing System and Registry (NMLSR).

- Applicants for State license and registration will furnish certain information to the NMLSR, including fingerprints and personal history and experience, and meet minimum standards including pre-licensing education and written tests.
- Federal banking agencies will develop and maintain a system for registering the employees of banks and their subsidiaries as registered loan originators with the NMLSR.
- If a State does not have a system that meets the minimum standards for State-licensed loan originators or does not participate in the NMLSR, then HUD will establish a backup licensing system for loan originators that operate in that State. HUD will be granted enforcement authority over such loan originators similar to banking regulators.

### **Creates a Residential Mortgage Loan Origination Standards**

**Federal Duty of Care:** All mortgage originators (including individuals as well as companies and banks that originate mortgages) will be subject to a federal duty of care that requires (1) licensing and registration, as applicable, under State or Federal law (including under subtitle A), (2) presenting consumers with appropriate mortgage loans (i.e., consumer has reasonable ability to repay and receives net tangible benefit, and loan does not have predatory characteristics), (3) making full disclosures to consumers, (4) certifying to lenders compliance with mortgage origination requirements, and (5) including a mortgage originator’s unique identifier in loan documents.

**Anti-Steering:** For mortgage loans that are not prime loans, no mortgage originator can receive, and no person can pay, any incentive compensation (including yield spread premiums) that varies with the terms of the mortgage loan (except for size of the loan and number of loans). Regulations will be promulgated to prohibit mortgage originators from (1) steering any consumer to a loan that the consumer lacks a reasonable ability to repay, does not provide net tangible benefit, or has predatory characteristics, (2) steering any consumer from a prime loan to a subprime loan, and (3) engaging in abusive or unfair lending practices that promote disparities among consumers of equal credit worthiness but different race, ethnicity, gender, or age.

**Remedies:** Remedies will be up to three times broker fees plus costs.

### **Establishes Minimum Standards for All Mortgages**

**Ability to Repay/Net Tangible Benefits:** Based on Federal bank regulatory guidance and North Carolina standard. Requires creditors to make a reasonable determination, at the time the mortgage is consummated, that:

- the consumer has a *reasonable ability to repay* the loan; or
- for refinancing, the refinanced loan will provide a *net tangible benefit* to the consumer.

Safe Harbor: A presumption can be made that the minimum standards (reasonable ability to repay and net tangible benefit) are met for “qualified mortgages” and “qualified safe harbor mortgages.” Qualified mortgages (prime loans) are presumed to meet the minimum standards and this presumption may not be rebutted. For qualified safe harbor loans, the presumption may be rebutted only against creditors.

- *Qualified mortgages* are prime loans with APRs that do not exceed the North Carolina standard.
- *Qualified safe harbor mortgages* are loans with (1) documented consumer income, (2) underwriting process based on fully indexed rate (taking into account taxes, insurance, and assessments), (3) no negative amortization, (4) other requirements that may be established by regulation, AND (5) one of the following: (i) fixed payment for at least 5 years, (ii) for variable-rate loans, APR that varies less than 3% over the interest-rate index, OR (iii) DTI not greater than a percentage prescribed by regulation.

Assignee/Securitizer Liability (does not extend to trusts and investors): Subject to exemptions below, for loans that violate the minimum standards (reasonable ability to repay and net tangible benefits), a consumer has an individual cause of action against assignees and securitizers for rescission of the loan and the consumer’s costs for rescission.

- *Exemption from Liability*: An assignee/secruritizer will not be liable for a loan that violates the minimum standards if the assignee/secruritizer provides a cure to make the loan conform to the minimum standards within 90 days of receiving notice from the consumer, OR (1) has a policy against buying mortgage loans that are not qualified mortgages or qualified safe harbor mortgages and exercises reasonable due diligence to adhere to such policy AND (2) has obtained representations and warranties from the seller or assignor of the loan regarding not selling or assigning loans that violate the minimum standards.

Defense to Foreclosure: When the holder of a mortgage loan or anyone acting on behalf of the holder initiates a judicial or non-judicial foreclosure, (1) the consumer who has a rescission right under this bill may assert such right as a defense to foreclosure against the holder to forestall foreclosure, or (2) if the rescission right has expired, the consumer may seek actual damages (plus costs) against the creditor, assignee, or securitizer.

Effect on State Laws: Provides limited preemption of State laws relating only to assignee/secruritizer liability (but not to creditor liability). Provides for a national standard and unique Federal remedy for assignee/secruritizer liability arising from a claim regarding lack of reasonable ability to repay and lack of net tangible benefit. States, however, may pass laws or add remedies relating to the liability of other parties, including the creditors.

Renters: Provides certain protections for renters when the homes they rent go into foreclosure.

Additional Standards and Requirements: Prohibits certain prepayment penalties, as well as single-premium credit insurance and mandatory arbitration, for mortgage loans.

### **Enhances Consumer Protections for High-Cost Mortgages**

Adopted from the Miller-Watt bill of 109th Congress (HR 1182), this expands the scope of and enhances consumer protections for “high-cost loans” under HOEPA by, among other provisions:

- lowering the APR trigger from 10% to 8% over comparable Treasuries (codifies existing Board standard),

- lowering the points and fee trigger from 8% to 5% and including additional costs and fees in the trigger,
- prohibiting the financing of points and fees,
- prohibiting excessive fees for payoff information, modifications, or late payments,
- prohibiting practices that increase the risk of foreclosure, such as balloon payments, encouraging a borrower to default, and call provisions, and
- requiring pre-loan counseling.

### **Creates the Office of Housing Counseling**

Incorporating Rep. Biggert's bill (HR 3019), this provision establishes within HUD an Office of Housing Counseling that will conduct activities relating to homeownership and rental housing counseling.

- Requires HUD to provide for the certification of various computer software programs for consumers to use in evaluating different residential mortgage loan proposals.
- Authorizes appropriation not to exceed \$3 million for national public service multimedia campaigns for homeownership counseling services for fiscal years 2008, 2009, and 2010.
- Requires HUD to provide financial and technical assistance to States, local governments, and nonprofit organization regarding the establishment and operation of related educational programs, and authorizes appropriation of \$45 million for each of fiscal years 2008 through 2011.
- Directs HUD to study and report to Congress on the root causes of the default and foreclosure of home loans.

### **Anticipated Amendments to H.R. 3915**

**Frank (MA)/Bachus (AL): #13, (REVISED)** The amendment makes a number of technical and conforming changes as well as enhancements to the bill including the following: 1) clarifies the definition of loan originator; 2) narrows the scope of the preemption provision to make it clear that states cannot use or adopt state laws against securitizers/assignees for violations of the national standards or to impose remedies outside of the unique Federal remedy established in the bill, and to make it clear that actions for fraud, misrepresentation, deception, false advertising or civil rights laws are not preempted; 3) clarifies the registration requirements for the Nationwide Mortgage Licensing System and Registry; 4) allows consumers to obtain a cure from assignee or securitizer if creditor or other assignees cease to exist or go bankrupt; 5) clarifies the incentive compensation provision; and 6) adds a monthly disclosure requirement for mortgages., (10 minutes)

**Kanjorski (PA)/Biggert (IL)/Capito (WV)/Hodes (NH)/Moore, Gwen (WI): #9,** The amendment, reflecting provisions from H.R. 3837 (The Escrow, Appraisal, and Mortgage Servicing Improvements Act), would better consumer protection by improving mortgage servicing, protecting appraiser independence, ensuring better appraisal quality and regulatory oversight, requiring escrows for mortgages for borrowers who might experience difficulty with repayment, and establishing disclosure for consumers who waive escrow accounts., (10 minutes)

**Maloney (NY): #22, (REVISED)** Would require a borrower to receive the option of a mortgage without a prepayment penalty, if they are offered an amendment with a prepayment penalty. Sets the maximum time for a prepayment penalty of 3 years and a maximum prepayment amount of 3% of the loan for the first year, 2% for the second year and 1% for the third year., (10 minutes)

**Watt (NC)/Miller, Brad (NC): #15,** This amendment allows for actual damages in the liability section., (10 minutes)

**Watt (NC)/Miller, Brad (NC): #17,** The amendment requires the assignee to have policies/procedures and to cure the loan to avoid being liable for rescission., (10 minutes)

**Watt (NC)/Miller, Brad (NC): #19,** The amendment changes the irrebuttable presumption under Section 203 to a rebuttable presumption for all mortgages that allow a borrower to defer payment of principal or interest., (10 minutes)

**Hensarling (TX): #11, (REVISED)** Amendment would remove the civil liability of a lender and cancel the right of rescission for a borrower in instances when a borrower knowingly lied on their mortgage loan application. , (10 minutes)

**Watt (NC)/Miller, Brad (NC): #20, (REVISED)** The second-degree amendment to Hensarling #11 adds that the obligor must have had actual knowledge of the false material information for the exemption from liability to take effect., (10 minutes)

**Meeks (NY): #23,** The amendment provides that the Nationwide Mortgage Licensing System and Registry shall not directly or indirectly offer educational courses for pre-licensure or continuing education for mortgage originators. In approving courses under this Act, the Nationwide Mortgage Licensing System and Registry shall apply reasonable standards in the review and approval of courses., (10 minutes)

**Putnam (FL): #7,** The amendment would direct the GAO to conduct a study to determine the effects the enactment of H.R. 3915 will have on the availability and affordability of credit for homebuyers and mortgage lending, and to submit a report to Congress containing the findings and conclusions within one year of the enactment of the legislation. , (10 minutes)

**Brown-Waite (FL): #8,** The amendment excludes loans insured by the Federal Housing Administration from the provisions of the bill., (10 minutes)

**Garrett (NJ): #10,** The amendment would strike the rebuttable presumption under section 203, stating that all qualified safe harbor loans that meet the requirements listed in section 203(c)(3)(C) fall under the safe harbor., (10 minutes)

**Miller, Brad (NC)/Frank (MA)/Watt (NC): #14,** Allow regulators to fine mortgage originators, assignees and securitizers who more than occasionally ("pattern or practice") violate the minimum standards for loans established in the bill at least \$1 million, \$25,000 per loan. Proceeds would be held in trust by the US Treasury

for the benefit of borrowers who have no other avenue for obtaining a remedy., (10 minutes)

**Green, Al (TX): #16,** States that educational requirements include instruction on fraud, consumer protection, and fair lending issues., (10 minutes)

**McHenry (NC): #6,** The amendment would strike Title III - High-Cost Mortgages - from the bill., (10 minutes)

**Price, Tom (GA): #2,** This amendment would exempt prime loans from the bill., (10 minutes)

**Van Hollen (MD): #4,** The amendment requires that in the case of a residential mortgage loan, closing costs may not exceed by more than 10% any estimate of closing costs disclosed to the consumer in advance of closing., (10 minutes)

**Sutton (OH): #1, (REVISED)** This amendment would require loan creditors or servicers to provide a written notice to consumers with hybrid adjustable rate mortgages six months before their interest rates are due to reset. This notice would state the new interest rate, an explanation of how the new interest rate would be determined, the creditor's or servicer's good faith estimate of the monthly payment that will apply after the reset, a list of alternatives consumers may pursue before the date of adjustment or reset, and contact information for local HUD-approved housing counseling agencies and the state housing finance authority., (10 minutes)

### **RESTORE Act of 2007**

(Responsible Electronic Surveillance That is Overseen, Reviewed and Effective)  
Bill Summary

***Security and Liberty:*** *The bill provides the Intelligence Community with effective tools to conduct surveillance of foreign targets outside the United States but restores Constitutional checks and balances that were not contained in the Protect America Act (PAA – the Administration's FISA bill.)*

#### **The RESTORE ACT:**

1. **Clarifies That No Court Warrant is Required to Intercept Communications of Non-United States Persons When Both Ends of the Communications are Outside the United States.**
2. **Ensures that Nothing in the Bill Inhibits Lawful Surveillance for the Purpose of Protecting the Nation and the Troops from Threats Posed by Osama Bin Laden and Weapons of Mass Destruction.**
3. **Requires an Individualized Court Warrant from the FISA Court When Targeting Americans in the United States.** (Same as current law.)
4. **Creates a Program of Court Authorized Targeting of Non-U.S. Persons Outside the United States.** Grants the Attorney General and the Director of National Intelligence authority to apply to the FISA Court for a single order to conduct surveillance of multiple foreign targets for up to one year – but RESTORES the following checks and balances that are absent under the PAA:
  - a. **Court Review of Targeting Procedures.** The FISA Court must review targeting procedures on a quarterly basis to ensure that they

are reasonably designed to protect Americans and target only people outside the United States. In emergencies, the Government may conduct surveillance for up to 45 days without advanced court approval

- b. Court Review of Minimization Procedures.** The FISA Court must review minimization procedures on a quarterly basis.
  - c. Court Review of Compliance with Guidelines** on a quarterly basis to ensure that, among other things, when the government seeks to conduct electronic surveillance of Americans, the government obtains a traditional individualized warrant from the FISA Court.
- 5. Clarifies Ambiguous Language on Warrantless Domestic Searches.** The bill clarifies ambiguous language in the PAA that appeared to authorize warrantless searches inside the United States, including physical searches of American homes, offices, computers, and medical records.
- 6. A RESTORE ACT Authorization May Not Be Used to Target Any Known U.S. Person.** If the government learns or has reason to know that the target of surveillance is a U.S. Person (for example, an American traveling abroad), it cannot use this new authority.
- 7. Limits Authority to Terrorism, Espionage, Sabotage, and Threats to National Security.** The Administration's bill allowed for surveillance for all foreign intelligence, including a broad category of information related to "foreign affairs." This bill allows the Intelligence Community to deal with the threats facing the United States from terrorism, espionage, sabotage, clandestine intelligence activities, and to collect information related to the national defense or security of the U.S., without authorizing the collection on the broad category of "foreign affairs."
- 8. Requires Regular Audits and Reports.** Requires audits every 120 days by the Justice Department Inspector General on communications collected under this authority and the number of U.S. persons identified in intelligence reports disseminated pursuant to this collection. These audits would be provided to the FISA Court and to Congress (Intelligence and Judiciary Committees).
- 9. Requires an Audit of the President's Surveillance Program and Other Warrantless Surveillance Programs.** This audit mandates a report and documents related to these programs be provided to Congress in unclassified form with a classified annex. A separate provision requires that the President brief the intelligence committees on such programs within seven days after the date of enactment.
- 10. Requires Recordkeeping of the Use of United States Persons' Information.** Mandates that the Executive Branch record every instance in which the identity of a U.S. Person whose communication was acquired by the Intelligence Community is disseminated within the Executive Branch and that it submit an annual report to Congress on such dissemination.
- 11. Adds Resources for FISA.** Adds funding for training, personnel and technology resources at DOJ, NSA and the FISA Court to speed the FISA process and to ensure that audits can be conducted expeditiously.
- 12. Reiterates the Exclusivity of FISA.** Includes House-passed bipartisan Schiff-Flake language stating that FISA is the exclusive means to conduct

electronic surveillance of Americans for the purpose of foreign intelligence collection.

- 13. No Retroactive Immunity.** The bill is silent on retroactive immunity because the Administration has not provided Congress with documents on the specifics of the President's warrantless surveillance program. However, the bill does provide prospective immunity for those complying with court orders issued pursuant to this authority.
- 14. Establishes En Banc Review.** Allows the FISA Court to sit en banc. The FISA Court requested this, and the Administration does not oppose it.
- 15. Provides Sunset, Transition Procedures and Report on PAA.** Sunsets this new authority on December 31, 2009, when certain PATRIOT Act provisions also sunset. However, the legislation will allow for a transition from the existing warrants to the new ones to ensure that the Intelligence Community does not go "dark" on any surveillance. The Administration will be required to submit a report on U.S.-person information collected and disseminated under the PAA authorities.

### **Summary of the RESTORE Act Manager's Amendment**

- Clarifies that nothing in the Act or the amendments to the Act shall be construed to prohibit lawful surveillance necessary to:
  - prevent Osama Bin Laden, al Qaeda, or any other terrorist organization from attacking the U.S., any U.S. person, or any ally of the U.S.;
  - ensure the safety and security of our Armed Forces or other national security or intelligence personnel;
  - protect the U.S., any U.S. person, or any U.S. ally from the threat of WMD or any other threats to national security.
- Clarifies that the RESTORE Act shall not be construed to prohibit surveillance of, or grant any rights to undocumented aliens.
- NSA and other agencies can only disseminate U.S. person identifying information (e.g., the name, address, phone number of a U.S. person) to other government agencies if a Senior Executive determines that such dissemination is necessary to understand the value of the intelligence and to protect national security.

Establishes criteria for the FISA Court to determine whether the "reverse targeting" guidelines sufficiently protect U.S. person communications intercepted by the NSA.

### **Quote of the Day**

"Freedom to differ is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order." – Justice Robert Jackson