

112TH CONGRESS  
2D SESSION

# S. 3678

To help ensure the fiscal solvency of the FHA mortgage insurance programs of the Secretary of Housing and Urban Development, and for other purposes.

---

## IN THE SENATE OF THE UNITED STATES

DECEMBER 13, 2012

Mr. TOOMEY (for himself and Mr. WARNER) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

---

## A BILL

To help ensure the fiscal solvency of the FHA mortgage insurance programs of the Secretary of Housing and Urban Development, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “FHA Emergency Fiscal Solvency Act of 2012”.

6 (b) TABLE OF CONTENTS.—The table of contents for  
7 this Act is as follows:

- Sec. 1. Short title and table of contents.
- Sec. 2. FHA annual mortgage insurance premiums.
- Sec. 3. Indemnification by FHA mortgagees.
- Sec. 4. Early period delinquencies.

- Sec. 5. Semiannual actuarial studies of MMIF during periods of capital depletion.
- Sec. 6. Delegation of FHA insuring authority.
- Sec. 7. Authority to terminate FHA mortgagee origination and underwriting approval.
- Sec. 8. Authorization to participate in the origination of FHA-insured loans.
- Sec. 9. Reporting of mortgagee actions taken against other mortgagees.
- Sec. 10. Default and origination information by loan servicer and originating direct endorsement lender.
- Sec. 11. Deputy Assistant Secretary of FHA for Risk Management and Regulatory Affairs.
- Sec. 12. Establishment of Chief Risk Officer for GNMA.
- Sec. 13. Report on mortgage servicers.
- Sec. 14. FHA emergency capital plan.
- Sec. 15. FHA safety and soundness review.
- Sec. 16. FHA disclosure standards.
- Sec. 17. Report on streamlining FHA programs.
- Sec. 18. Budget compliance.

**1 SEC. 2. FHA ANNUAL MORTGAGE INSURANCE PREMIUMS.**

2 (a) IN GENERAL.—Subparagraph (B) of section  
 3 203(c)(2) of the National Housing Act (12 U.S.C.  
 4 1709(c)(2)(B)) is amended—

5 (1) in the matter preceding clause (i)—

6 (A) by striking “may” and inserting  
 7 “shall”;

8 (B) by striking “not exceeding 1.5 per-  
 9 cent” and inserting “not less than 0.55 per-  
 10 cent”; and

11 (C) by inserting “and not exceeding 2.0  
 12 percent of such remaining insured principal bal-  
 13 ance” before “for the following periods.”; and

14 (2) in clause (ii), by striking “1.55 percent”  
 15 and inserting “2.05 percent”.

16 (b) EFFECTIVE DATE.—The amendments made by  
 17 subsection (a) take effect upon the expiration of the 6-

1 month period beginning on the date of the enactment of  
2 this Act.

3 **SEC. 3. INDEMNIFICATION BY FHA MORTGAGEES.**

4 Section 202 of the National Housing Act (12 U.S.C.  
5 1708) is amended by adding at the end the following new  
6 subsection:

7 “(i) INDEMNIFICATION BY MORTGAGEES.—

8 “(1) IN GENERAL.—If the Secretary determines  
9 that the mortgagee knew, or should have known, of  
10 a serious or material violation of the requirements  
11 established by the Secretary with respect to a mort-  
12 gage executed by a mortgagee approved by the Sec-  
13 retary under the direct endorsement program or in-  
14 sured by a mortgagee pursuant to the delegation of  
15 authority under section 256 such that the mortgage  
16 loan should not have been approved and endorsed  
17 for insurance, and the Secretary pays an insurance  
18 claim with respect to the mortgage within a reason-  
19 able period specified by the Secretary, the Secretary  
20 may require the mortgagee approved by the Sec-  
21 retary under the direct endorsement program or the  
22 mortgagee delegated authority under section 256 to  
23 indemnify the Secretary for the loss, irrespective of  
24 whether the violation caused the mortgage default.

1           “(2) FRAUD OR MISREPRESENTATION.—If  
2 fraud or misrepresentation was involved in connec-  
3 tion with the origination or underwriting and the  
4 Secretary determines that the mortgagee knew or  
5 should have known of the fraud or misrepresenta-  
6 tion, the Secretary shall require the mortgagee ap-  
7 proved by the Secretary under the direct endorse-  
8 ment program or the mortgagee delegated authority  
9 under section 256 to indemnify the Secretary for the  
10 loss regardless of when an insurance claim is paid.

11           “(3) APPEALS PROCESS.—The Secretary shall,  
12 by regulation, establish an appeals process for mort-  
13 gagees to appeal indemnification determinations  
14 made pursuant to paragraph (1) or (2).

15           “(4) REQUIREMENTS AND PROCEDURES.—The  
16 Secretary shall issue regulations establishing appro-  
17 priate requirements and procedures governing the  
18 indemnification of the Secretary by the mortgagee,  
19 including public reporting on—

20                   “(A) the number of loans that—

21                           “(i) were not originated or under-  
22 written in accordance with the require-  
23 ments established by the Secretary; and

1                   “(ii) involved fraud or misrepresenta-  
2                   tion in connection with the origination or  
3                   underwriting; and

4                   “(B) the financial impact on the Mutual  
5                   Mortgage Insurance Fund when indemnification  
6                   is required.”.

7 **SEC. 4. EARLY PERIOD DELINQUENCIES.**

8                   Subsection (a) of section 202 of the National Hous-  
9                   ing Act (12 U.S.C. 1708(a)) is amended by adding at the  
10                  end the following new paragraphs:

11                  “(8) PROGRAMMATIC REVIEW OF EARLY PE-  
12                  RIOD DELINQUENCIES.—The Secretary shall estab-  
13                  lish and maintain a program—

14                         “(A) to review the cause of each early pe-  
15                         riod delinquency on a mortgage that is an obli-  
16                         gation of the Mutual Mortgage Insurance Fund;

17                         “(B) to require indemnification of the Sec-  
18                         retary for a loss associated with any such early  
19                         period delinquency that is the result of a mate-  
20                         rial violation, as determined by the Secretary,  
21                         of any provision, regulation, or other guideline  
22                         established or promulgated pursuant to this  
23                         title; and

24                         “(C) to publicly report—

1 “(i) a summary of the results of all  
2 early period delinquencies reviewed under  
3 subparagraph (A);

4 “(ii) any indemnifications required  
5 under subparagraph (B); and

6 “(iii) the financial impact on the Mu-  
7 tual Mortgage Insurance Fund of any such  
8 indemnifications.

9 “(9) DEFINITION OF EARLY PERIOD DELIN-  
10 QUENCY.—For purposes of this section, the term  
11 ‘early period delinquency’ means, with respect to a  
12 mortgage, that the mortgage becomes 90 or more  
13 days delinquent within 24 months of the origination  
14 of such mortgage.”.

15 **SEC. 5. SEMIANNUAL ACTUARIAL STUDIES OF MMIF DUR-**  
16 **ING PERIODS OF CAPITAL DEPLETION.**

17 (a) IN GENERAL.—Paragraph (4) of section 202(a)  
18 of the National Housing Act (12 U.S.C. 1708(a)(4)) is  
19 amended—

20 (1) in the first sentence, by inserting “except as  
21 provided in subparagraph (B),” after “to be con-  
22 ducted annually,”;

23 (2) in the second sentence, by inserting “, ex-  
24 cept as provided in subparagraph (B),” after “annu-  
25 ally”;

1           (3) by striking the paragraph designation and  
 2 heading and all that follows through “The Secretary  
 3 shall provide” and inserting the following:

4           “(4) INDEPENDENT ACTUARIAL STUDY.—

5                   “(A) ANNUAL STUDY.—The Secretary  
 6 shall provide”; and

7           (4) by adding at the end the following new sub-  
 8 paragraph:

9                   “(B) SEMIANNUAL STUDIES DURING PERI-  
 10 ODS OF CAPITAL DEPLETION.—During any pe-  
 11 riod that the Fund fails to maintain sufficient  
 12 capital to comply with the capital ratio require-  
 13 ment under section 205(f)(2)—

14                           “(i) the independent study required by  
 15 subparagraph (A) shall be conducted semi-  
 16 annually and shall analyze the financial po-  
 17 sition of the Fund as of September 30 and  
 18 March 31 of each fiscal year during such  
 19 period; and

20                           “(ii) the Secretary shall submit a re-  
 21 port meeting the requirements of subpara-  
 22 graph (A) for each such semiannual  
 23 study.”.

24           (b) ANALYSIS OF QUARTERLY ACTUARIAL STUD-  
 25 IES.—The Secretary of Housing and Urban Development

1 shall conduct an analysis of the cost and feasibility of pro-  
2 viding for an independent actuarial study of the Mutual  
3 Mortgage Insurance Fund on a calendar quarterly basis,  
4 which shall compare the cost and feasibility of conducting  
5 such a study on a quarterly basis as compared to a semi-  
6 annual basis and shall determine whether such an actu-  
7 arial study can be conducted on a quarterly basis without  
8 substantial additional costs to the taxpayers. Not later  
9 than the expiration of the 90-day period beginning on the  
10 date of the enactment of this Act, the Secretary shall sub-  
11 mit a report to the Congress setting forth the findings and  
12 conclusion of the analysis conducted pursuant to this sub-  
13 section.

14 **SEC. 6. DELEGATION OF FHA INSURING AUTHORITY.**

15 Section 256 of the National Housing Act (12 U.S.C.  
16 1715z-21) is amended—

17 (1) by striking subsection (c);

18 (2) in subsection (e), by striking “, including”  
19 and all that follows through “by the mortgagee”;  
20 and

21 (3) by redesignating subsections (d) and (e) as  
22 subsections (c) and (d), respectively.



1 **SEC. 7. AUTHORITY TO TERMINATE FHA MORTGAGEE**  
2 **ORIGINATION AND UNDERWRITING AP-**  
3 **PROVAL.**

4 Section 533 of the National Housing Act (12 U.S.C.  
5 1735f-11) is amended—

6 (1) in the first sentence of subsection (b), by in-  
7 serting “or areas or on a nationwide basis” after  
8 “area” each place such term appears; and

9 (2) in subsection (c), by striking “(c)” and all  
10 that follows through “The Secretary” in the first  
11 sentence of paragraph (2) and inserting the fol-  
12 lowing:

13 “(c) **TERMINATION OF MORTGAGEE ORIGINATION**  
14 **AND UNDERWRITING APPROVAL.**—

15 “(1) **TERMINATION AUTHORITY.**—If the Sec-  
16 retary determines, under the comparison provided in  
17 subsection (b), that a mortgagee has a rate of early  
18 defaults and claims that is excessive, the Secretary  
19 may terminate the approval of the mortgagee to  
20 originate or underwrite single family mortgages for  
21 any area, or areas, or on a nationwide basis, not-  
22 withstanding section 202(c) of this Act.

23 “(2) **PROCEDURE.**—The Secretary”.

1 **SEC. 8. AUTHORIZATION TO PARTICIPATE IN THE ORIGINA-**  
2 **TION OF FHA-INSURED LOANS.**

3 (a) SINGLE FAMILY MORTGAGES.—Section 203(b) of  
4 the National Housing Act (12 U.S.C. 1709(b)) is amended  
5 by striking paragraph (1) and inserting the following new  
6 paragraph:

7 “(1) Have been made to a mortgagee approved  
8 by the Secretary or to a person or entity authorized  
9 by the Secretary under section 202(d)(1) to partici-  
10 pate in the origination of the mortgage, and be held  
11 by a mortgagee approved by the Secretary as re-  
12 sponsible and able to service the mortgage prop-  
13 erly.”.

14 (b) HOME EQUITY CONVERSION MORTGAGES.—Sec-  
15 tion 255(d) of the National Housing Act (12 U.S.C.  
16 1715z–20(d)) is amended by striking paragraph (1) and  
17 inserting the following new paragraph:

18 “(1) have been originated by a mortgagee ap-  
19 proved by, or by a person or entity authorized under  
20 section 202(d)(1) to participate in the origination  
21 by, the Secretary;”.

22 **SEC. 9. REPORTING OF MORTGAGEE ACTIONS TAKEN**  
23 **AGAINST OTHER MORTGAGEES.**

24 Section 202 of the National Housing Act (12 U.S.C.  
25 1708), as amended by the preceding provisions of this Act,



1           “(C) For each entity that services insured  
2 mortgages, data on the number of claims paid  
3 to each servicing mortgagee during each cal-  
4 endar quarter occurring during the applicable  
5 collection period.”.

6           (b) **APPLICABILITY.**—Information described in sub-  
7 paragraph (C) of section 540(b)(2) of the National Hous-  
8 ing Act, as added by subsection (a) of this section, shall  
9 first be made available under such section 540 for the ap-  
10 plicable collection period (as such term is defined in such  
11 section) relating to the first calendar quarter ending after  
12 the expiration of the 12-month period that begins on the  
13 date of the enactment of this Act.

14 **SEC. 11. DEPUTY ASSISTANT SECRETARY OF FHA FOR RISK**  
15 **MANAGEMENT AND REGULATORY AFFAIRS.**

16           (a) **ESTABLISHMENT OF POSITION.**—Subsection (b)  
17 of section 4 of the Department of Housing and Urban De-  
18 velopment Act (42 U.S.C. 3533(b)) is amended—

19           (1) by inserting “(1)” after “(b)”; and

20           (2) by adding at the end the following new  
21 paragraph:

22           “(2) There shall be in the Department, within the  
23 Federal Housing Administration, a Deputy Assistant Sec-  
24 retary for Risk Management and Regulatory Affairs, who  
25 shall be appointed by the Secretary and shall be respon-

1 sible to the Federal Housing Commissioner for all matters  
 2 relating to managing and mitigating risk to the mortgage  
 3 insurance funds of the Department and ensuring the per-  
 4 formance of mortgages insured by the Department.”.

5 (b) TERMINATION.—Upon the appointment of the  
 6 initial Deputy Assistant Secretary for Risk Management  
 7 and Regulatory Affairs pursuant to section 4(b)(2) of the  
 8 Department of Housing and Urban Development Act, as  
 9 amended by subsection (a) of this section, the position of  
 10 chief risk officer within the Federal Housing Administra-  
 11 tion, filled by appointment by the Federal Housing Com-  
 12 missioner, is abolished.

13 **SEC. 12. ESTABLISHMENT OF CHIEF RISK OFFICER FOR**  
 14 **GNMA.**

15 Section 4 of the Department of Housing and Urban  
 16 Development Act (42 U.S.C. 3533) is amended by adding  
 17 after subsection (g), as added by section 1442 of the  
 18 Dodd-Frank Wall Street Reform and Consumer Protec-  
 19 tion Act (Public Law 111–203; 124 Stat. 2163), the fol-  
 20 lowing new subsection:

21 “(h) There shall be in the Department a Chief Risk  
 22 Officer for the Government National Mortgage Associa-  
 23 tion, who shall—

24 “(1) be designated by the Secretary;

1           “(2) be responsible to the President of the As-  
2           sociation for all matters related to evaluating, man-  
3           aging, and mitigating risk to the programs of the  
4           Association;

5           “(3) be in the competitive service or the senior  
6           executive service;

7           “(4) be a career appointee;

8           “(5) be designated from among individuals who  
9           possess demonstrated ability in general management  
10          of, and knowledge of and extensive practical experi-  
11          ence in risk evaluation practices in large govern-  
12          mental or business entities; and

13          “(6) shall not be required to obtain the prior  
14          approval, comment, or review of any officer or agen-  
15          cy of the United States before submitting to the  
16          Congress, or any committee or subcommittee there-  
17          of, any reports, recommendations, testimony, or  
18          comments if such submission include a statement in-  
19          dicating that the views expressed therein are those  
20          of the Chief Risk Officer of the Association and do  
21          not necessarily represent the views of the Sec-  
22          retary.”.

23 **SEC. 13. REPORT ON MORTGAGE SERVICERS.**

24          (a) EXAMINATION.—The Secretary of Housing and  
25          Urban Development shall conduct an examination into

1 mortgage servicer compliance with the loan servicing, loss  
2 mitigation, and insurance claim submission guidelines of  
3 the FHA mortgage insurance programs under the Na-  
4 tional Housing Act (12 U.S.C. 1701 et seq.), and an esti-  
5 mate of the annual costs to the Mutual Mortgage Insur-  
6 ance Fund, since 2008, resulting from any failures by  
7 mortgage servicers to comply with such guidelines.

8 (b) REPORT.—Not later than the expiration of the  
9 120-day period that begins upon the date of the enactment  
10 of this Act, the Secretary shall submit a report to the Con-  
11 gress on the results of the examination conducted pursu-  
12 ant to subsection (a), including recommendations for any  
13 administrative and legislative actions to improve mortgage  
14 servicer compliance with the guidelines referred to in sub-  
15 section (a).

16 **SEC. 14. FHA EMERGENCY CAPITAL PLAN.**

17 (a) ESTABLISHMENT.—Not later than the expiration  
18 of the 30-day period beginning on the date of the enact-  
19 ment of this Act, the Secretary of Housing and Urban  
20 Development shall develop, submit to the Congress, and  
21 commence implementation of an emergency capital plan  
22 for the restoration of the fiscal solvency of the Mutual  
23 Mortgage Insurance Fund (in this section referred to as  
24 the “Fund”).

1 (b) CONTENTS.—The emergency capital plan devel-  
2 oped pursuant to this section shall—

3 (1) provide a detailed explanation of the proc-  
4 esses and controls by which amounts of capital that  
5 are assets of the Fund are monitored and tracked;

6 (2) establish a plan to ensure the financial safe-  
7 ty and soundness of the Fund that avoids the need  
8 for borrowing amounts from the Treasury of the  
9 United States to meet obligations of the Fund; and

10 (3) describe the procedure by which, if nec-  
11 essary, any amounts from the Treasury needed to  
12 meet obligations of the Fund will be obtained from  
13 the Treasury.

14 (c) MONTHLY REPORTS.—

15 (1) REPORTS.—Subject to paragraph (3), upon  
16 the conclusion of each calendar month ending after  
17 the 14-day period that begins on the date of the en-  
18 actment of this Act, the Secretary of Housing and  
19 Urban Development shall submit to the Congress a  
20 report assessing the financial status of the Fund at  
21 the conclusion of such month and setting forth the  
22 information described in paragraph (2).

23 (2) CONTENTS.—Each report required under  
24 paragraph (1) for a month shall contain the fol-



1       lowing information regarding the Fund as of the  
2       conclusion of such month:

3               (A) The number of mortgages that are ob-  
4               ligations of the Fund that are 60 or more days  
5               delinquent, the expected losses to the Fund as-  
6               sociated with such delinquent mortgages, and  
7               the methodology used to make such calculation.

8               (B) The number of mortgages that are ob-  
9               ligations of the Fund that have a loan-to-value  
10              ratio at the time of origination that is less than  
11              80 percent and the percentage of all mortgages  
12              that are obligations of the Fund having such a  
13              ratio.

14             (C) The number of mortgages that are ob-  
15             ligations of the Fund that had an original prin-  
16             cipal obligation exceeding 125 percent of the  
17             median house price, for a home of the size of  
18             the residence subject to the mortgage, for the  
19             area in which such residence is located, and the  
20             percentage of all mortgages that are obligations  
21             of the Fund having such an original principal  
22             obligation.

23             (D) The number of mortgages that are ob-  
24             ligations of the Fund for which the mortgagor's  
25             income at the time of origination of the mort-

1           gage is greater than the median income for the  
 2           area in which the residence subject to the mort-  
 3           gage is located, and the percentage of all mort-  
 4           gages that are obligations of the Fund for  
 5           which the mortgagor has such an income.

6           (E) The balances for the financing and  
 7           capital reserve accounts of the Fund.

8           (F) Any actions taken during such month  
 9           to help ensure the financial soundness of the  
 10          Fund and compliance with section 205(f) of the  
 11          National Housing Act (12 U.S.C. 1711(f); re-  
 12          lating to a capital ratio requirement).

13          (3) **TERMINATION OF REPORTING REQUIRE-**  
 14          **MENT.**—The requirement to submit reports under  
 15          paragraph (1) shall terminate on the first date after  
 16          the date of the enactment of this Act that the Fund  
 17          attains a capital ratio (as such term is defined in  
 18          section 205(f)(3) of the National Housing Act) of  
 19          2.0 percent.

20 **SEC. 15. FHA SAFETY AND SOUNDNESS REVIEW.**

21          (a) **REVIEW.**—The Comptroller General of the United  
 22          States shall provide for an independent third party to—

23                  (1) conduct a one-time review of the mortgage  
 24          insurance programs and funds of the Secretary of

1       Housing and Urban Development that shall deter-  
2       mine, as of the time of such review—

3               (A) the financial safety and soundness of  
4               such programs and funds; and

5               (B) the extent of loan loss reserves and  
6               capital adequacy of such programs and funds;  
7               and

8               (2) to submit a report under subsection (b).

9       Such review shall be conducted in accordance with gen-  
10      erally accepted accounting principles applicable to the pri-  
11      vate sector and Federal entities.

12       (b) REPORT.—The report under this subsection shall  
13      describe the methodology and standards used to conduct  
14      the review under subsection (a)(1), set forth the results  
15      and findings of the review, including the extent of loan  
16      loss reserves and capital adequacy of the mortgage insur-  
17      ance programs and funds of the Secretary of Housing and  
18      Urban Development, and include recommendations re-  
19      garding restoring such reserves and capital to maintain  
20      such programs and funds in a safe and sound condition.

21       (c) TIMING.—The review required under subsection  
22      (a) shall be completed, and the report required under sub-  
23      section (b) shall be submitted, not later than the expira-  
24      tion of the 60-day period beginning on the date of the en-  
25      actment of this Act.

1 (d) RULE OF CONSTRUCTION.—Nothing in this sec-  
2 tion may be construed to alter or affect, or exempt the  
3 Secretary of Housing and Urban Development from com-  
4 plying with, any laws, regulations, or guidance relating to  
5 preparation or submission of budgets or audits or financial  
6 or management statements or reports.

7 **SEC. 16. FHA DISCLOSURE STANDARDS.**

8 Not later than the expiration of the 90-day period  
9 beginning on the date of the enactment of this Act, the  
10 Secretary of Housing and Urban Development shall review  
11 and revise all standards and requirements relating to dis-  
12 closure of information regarding the mortgage insurance  
13 programs and funds, including actuarial studies conducted  
14 under section 202(a)(4) of the National Housing Act (12  
15 U.S.C. 1708(a)(4)), quarterly reports under section  
16 202(a)(5) of such Act, and annual audited financial state-  
17 ments under section 538 of such Act (12 U.S.C. 1735f-  
18 16), to ensure that, after the date of the enactment of  
19 this Act, such disclosures—

- 20 (1) provide meaningful financial and other in-  
21 formation that is timely, comprehensive, and accu-  
22 rate;
- 23 (2) do not contain any material misstatements  
24 or misrepresentations;
- 25 (3) make available all relevant information; and

1           (4) prohibit material omissions that make the  
2 contents of the disclosure misleading.

3 **SEC. 17. REPORT ON STREAMLINING FHA PROGRAMS.**

4           (a) EXAMINATION.—The Secretary of Housing and  
5 Urban Development shall conduct an examination of the  
6 mortgage insurance and any other programs of the Fed-  
7 eral Housing Administration to identify—

8           (1) the level of use and need for such programs;

9           (2) any such programs that are unused or  
10 underused; and

11           (3) methods for streamlining, consolidating,  
12 simplifying, increasing the efficiency of, and reduc-  
13 ing the number of such programs.

14           (b) REPORT.—Not later than the expiration of the  
15 12-month period that begins upon the date of the enact-  
16 ment of this Act, the Secretary shall submit a report to  
17 the Congress on the results of the examination conducted  
18 pursuant to subsection (a), including recommendations for  
19 any administrative and legislative actions to streamline,  
20 consolidate, simplify, increase the efficiency of, and reduce  
21 the number of such programs.

22 **SEC. 18. BUDGET COMPLIANCE.**

23           The Secretary of Housing and Urban Development  
24 shall allocate \$2,500,000 from the account for Adminis-  
25 trative Contract Expenses each fiscal year through Sep-

1 tember 30, 2017, which amounts shall be available only  
2 for the purposes of this Act and the amendments made  
3 by this Act, including such additional actuarial reviews as  
4 may be required by section 5 of this Act and the amend-  
5 ments made by such section.

○