



**Legislative Bulletin.....October 10, 2007**

**Contents:**

**H.R. 2895**—National Affordable Housing Trust Fund Act

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**Summary of the Bills Under Consideration Today:**

**Total Number of New Government Programs:** 1

**Total Cost of Discretionary Authorizations:** \$192 million over five years (if enacted prior to the enactment of H.R. 1852; if not, then zero)

**Effect on Revenue:** \$0

**Total Change in Mandatory Spending:** \$0

**Total New State & Local Government Mandates:** 0

**Total New Private Sector Mandates:** 0

**Number of Bills Without Committee Reports:** 0

**Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority:** 0

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**H.R. 2895—National Affordable Housing Trust Fund Act (*Frank, D-MA*)**

**Order of Business:** The bill is scheduled to be considered on Wednesday, October 10<sup>th</sup>, likely subject to a structured rule. Any amendments made in order under the rule will be summarized in a separate RSC document.

**Summary:** H.R. 2895 would establish a National Affordable Housing Trust Fund in the U.S. Treasury to distribute funds to private-sector entities that engage in housing-related and other activities. The details of the legislation are as follows:

- States that one of the purposes of this legislation is to “address the national shortage of housing that is affordable to low-income families by creating a permanently appropriated

fund, with dedicated sources of funding, to finance additional housing activities, without supplanting existing housing appropriations or existing State and local funding for affordable housing.”

- Establishes a National Affordable Housing Trust Fund in the U.S. Treasury and funds it with any amounts:
  - diverted from the government-sponsored enterprises (GSEs) Fannie Mae and Freddie Mac, pursuant to [H.R. 1427](#), should it become law;
  - diverted from the Federal Housing Administration (FHA), pursuant to [H.R. 1852](#), should it become law; or
  - that are or may be appropriated, transferred, or credited to such fund under any other provisions of law.
- Authorizes the Department of Housing and Urban Development (HUD) to make expenditures from the Fund.
- Sets certain conditions, identical to those in H.R. 1852 (including the required use of excess FHA revenues for housing counseling and a prohibition on premium increases), that must be satisfied before FHA funds could be diverted to the Fund.
- Requires that, for FY2008 and each fiscal year thereafter, HUD determine the total amount available in the Fund for assistance and allocate 40% to states, Indian tribes, and insular areas, and 60% to participating local jurisdictions (PLJs, which are local governments or consortiums of local governments).
- Directs HUD to establish a formula to allocate funds to states and Indian tribes based on specified factors, including population, housing affordability, percentage of extremely low- and very low-income families, the cost of construction, and the extent of substandard housing. The formula would have to be reported to Congress.
- Provides that, if for any fiscal year the total Fund amount available nationwide is less than \$2 billion, any PLJ that would otherwise be entitled to a formula amount less than \$750,000 would not receive any funds directly. Such PLJs’ shares would be allocated to their respective states.
- Requires each grantee to contribute as a match:
  - at least 25% of funds from other federal sources;
  - at least 12.5% of funds from state, local, or private resources; or
  - a combination of the two.
- Allows HUD to reduce or waive the matching requirement for grantees in “fiscal distress” ( as defined in current law and then determined by HUD).
- Requires HUD to reduce or waive the matching requirement for grantees when a zoning variance or other waiver of regulatory barriers was required to site Trust Fund-assisted housing and in presidentially-declared disaster areas under the Stafford Act.

- Requires HUD to make grants to Indian tribes on a competitive basis, based on HUD-determined criteria.
- Provides that any funds awarded to a PLJ that notifies HUD that it does not intend to use such funds be transferred to the state in which the PLJ is located.
- Directs HUD to create a competitive bidding process to reallocate funds given to states, PLJs, or insular areas that go unused because the original grantee did not submit an allocation plan within 12 months of fund availability, the grantee did not comply with the required match, or funds were not used within 24 months of fund availability.
- Requires each grantee (except Indian tribes) to submit an allocation plan for each fiscal year, subject to approval by HUD and to public comment. The plan would have to detail the use of funds from the Fund, with an emphasis on priority housing needs. The plan would have to set out the process for the grantee to select eligible activities and include performance goals, benchmarks, and timetables (as determined by HUD).
- Details the criteria by which grantees are to select applicants to which to further distribute funds, such as: the merits of the project, the experience and abilities of the applicant, the ability to secure non-federal funds, local housing affordability, age of the average local dwelling, local vacancy rates, ability to comply with environmental regulations, and accessibility to public transportation and child care.
- Grantees could further distribute funds to any organization, agency, or other entity (including a for-profit entity, a nonprofit entity, a faith-based organization, a community development financial institution, a community development corporation, and a state or local housing trust fund) that demonstrates the experience, ability, and capacity to undertake eligible activities for affordable housing for low-and-middle-income families (up to 80% of local median income), demonstrates a familiarity with the relevant housing program requirements, and makes assurances of complying with this legislation. [Note: The 80% figure would be reduced to 60% in years where nationwide funding is less than \$2 billion.]
- Sets the following funding requirements:
  - At least 75% of funds would have to be used for the benefit of families with incomes that do not exceed 30% of the local median income or of the national poverty line;
  - At least 30% of funds would have to be used for families with incomes below the Supplemental Security Income limit;
  - At least 10% of funds would have to be used for families making more than 50% of the local median income.
- Instructs HUD to establish limits on the amount of grant amounts that could be used per unit for eligible housing activities.

- Allows assistance to be distributed in the form of capital grants, non-interest-bearing or low-interest loans or advances, deferred payment loans, guarantees, loan loss reserves, and downpayments, closing costs, interest rate buy-downs for owner-occupied housing, as well as any other assistance approved by HUD.
- Prohibits funds from being used for:
  - political activities;
  - advocacy;
  - lobbying, whether directly or through other parties;
  - counseling services;
  - travel expenses;
  - preparing or providing advice on tax returns;
  - administrative, outreach, or other costs of the grantee or any recipient of such grant amounts; or
  - any other activity deemed ineligible by HUD (including administrative expenses, up to 10% of funds).
- Sets thresholds for what is deemed “affordable” rental housing.
- Prohibits discrimination against prospective tenants who are Section 8 voucher holders.
- Prohibits more than 50% of the rental units in a project that receives assistance from the Fund from being rented initially to extremely low-income families (as defined in the bill), subject to certain exceptions.
- Provides that eligible owner-occupied housing would have to be the principal residence of first-time homebuyers, have an initial purchase price that meets HOME program requirements, and be subject to HOME program resale restrictions. Such homebuyers would also have to complete a HUD-approved homeownership counseling program before the home purchase (subject to waiver under certain circumstances). Priority would have to be given to families who have been on voucher or public housing waiting lists for more than a year.
- Provides that assistance from the Affordable Housing Fund would not reduce the amount of assistance from other housing programs, as long as no cost ceilings are breached.
- Instructs HUD to ensure that each grantee develop and maintain systems to track the use of Trust Fund monies, including financial and project reporting, record retention, and audit requirements.
- Provides for the reimbursement of misused funds and the prohibition of such recipient or grantee from receiving Affordable Housing Fund monies in the future, subject to reapplication to and reconsideration by HUD.
- Requires grantees to annually report to HUD and to the public on Fund activities and grantee compliance.

- Defines eligible housing activities to include activities relating to the construction, preservation, or rehabilitation of affordable rental or owner-occupied housing, including:
  - construction of new housing;
  - acquisition of real property;
  - site preparation and improvement;
  - demolition;
  - rehabilitation of existing housing;
  - rental assistance for extremely low-income households;
  - project operating accounts;
  - providing incentives to maintain existing housing (including manufactured housing) as affordable housing and to establish or extend any low-income affordability restrictions for such housing;
  - downpayment assistance;
  - closing cost assistance; and
  - interest rate buy-downs.

**Additional Background:** The House passed H.R. 1427, which would provide for the diversion of funds from Fannie Mae and Freddie Mac into a housing trust fund, by a vote of [313-104](#) on May 22, 2007. To read the RSC Legislative Bulletin on H.R. 1427, visit this webpage: [http://www.house.gov/hensarling/rsc/doc/LB\\_051707\\_GSE.doc](http://www.house.gov/hensarling/rsc/doc/LB_051707_GSE.doc).

The House passed H.R. 1852, which would provide for the diversion of certain excess revenues (i.e. savings) from the Federal Housing Administration into a housing trust fund, by a vote of [348-72](#) on September 18, 2007. To read the RSC legislative Bulletin on H.R. 1852, visit this webpage: [http://www.house.gov/hensarling/rsc/doc/lb\\_091807\\_fha.doc](http://www.house.gov/hensarling/rsc/doc/lb_091807_fha.doc).

Additionally, RSC Members sent the following letter opposing the Affordable Housing Fund: <http://www.house.gov/hensarling/rsc/doc/GSE%20slush%20fund.pdf>.

**Committee Action:** On June 28, 2007, the bill was referred to the Financial Services Committee, which held hearings on it on July 19<sup>th</sup>. On July 31<sup>st</sup>, the committee marked up the bill and ordered it reported to the full House by voice vote.

**Possible Conservative Concerns:** Many conservatives have regarded the required GSE contributions to the Fund as a tax on publicly-traded corporations. Arguably, since the GSEs constitute a duopoly, they have a heightened ability to pass this “contribution” on to consumers – thus making housing less affordable rather than more.

Furthermore, some conservatives have expressed concerns with the diversion of excess FHA revenues to the Fund, since FHA savings currently get returned to the Treasury as a benefit to taxpayers.

Some conservatives may also be concerned with the funding of this Fund with any amounts “appropriated, transferred, or credited to such fund under any other provisions of law,” thereby making the funding sources virtually limitless. (NOTE: RSC Chairman Jeb Hensarling will

likely offer an amendment to the Rules Committee that would strike the “transferred” and “credited” words from this phrase.)

Additionally, despite the provisions of the legislation that restrict the use of grants, many conservatives in the past have expressed concerns that the Fund could still be used by liberal entities to displace other funds. Money is fungible, so that if a group cannot use Fund grants for political activities, it could certainly have more money freed up for political activities because of the injection of Fund grants.

For example, if a generous relative gives you \$200 as a birthday gift and says you can't use it to pay your gas bill, yet you deposit the money in your bank and then write a \$200 check to your gas company, have you used the gift money to pay your gas bill? Maybe, or maybe not. More importantly, does it matter? The gift money unquestionably offset your other expenditures. Perhaps you didn't use the gifted \$200 to pay your bill, but you now have \$200 extra to buy other things.

The largest organizations (and thus the most able to commit resources to apply for federal grants) who work on affordable housing issues include, for example, ACORN (led voter registration efforts against Republicans, with allegations of voter fraud in Florida, Ohio, and North Carolina), National Council of La Raza (allegations of voter fraud in the Bob Dornan-Loretta Sanchez election of 1996), and Housing Works (led a demonstration against Senator Rick Santorum for his anti-needle exchange and pro-abstinence voting record). These entities unquestionably, and sometimes unabashedly, engage in partisan, leftist political activities.

For example, ACORN, the Association of Community Organizations for Reform Now, is actually an umbrella organization for more than 75 entities, most of which are run out of a single office in New Orleans. Among these entities are unions, schools, radio stations, home mortgage counseling centers, tax advising centers, voter-mobilization organizations, lobbying firms, and even a furniture company. For example, the Service Employees International Union Local 880 once listed its contact email as [seiu880@acorn.org](mailto:seiu880@acorn.org) (it changed its email address when the Employment Policies Institute highlighted this address in a report).

Estimates of ACORN's annual operation budget range from \$30-40 million. The Employment Policies Institute reports that large amounts of money move back and forth from various elements of the ACORN network all the time.

For more information on ACORN, including a map of where ACORN has been accused of election fraud, go here: <http://www.rottenacorn.com/>.

**RSC Bonus Fact:** The Wal-Mart Workers Association and the Wal-Mart Association for Reform Now are entities within the ACORN umbrella. *Source: Employment Policies Institute*

**Administration Position:** Although a Statement of Administration Policy (SAP) for H.R. 2895 was not available at press time, an Administration official testified against this legislation before the Financial Services Committee in July. Brian Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner, cited serious concerns about diverting GSE and FHA

revenues to a fund that is not only duplicative of existing housing programs, but would also compete for scarce resources with such programs. Read Mr. Montgomery's complete statement here: [http://www.house.gov/apps/list/hearing/financialsvcs\\_dem/montgomery\\_hud.pdf](http://www.house.gov/apps/list/hearing/financialsvcs_dem/montgomery_hud.pdf).

Additionally, to read the SAPs for H.R. 1427 and H.R. 1852, both of which expressed serious concerns about the Affordable Housing Fund, see these two webpages: <http://www.whitehouse.gov/omb/legislative/sap/110-1/hr1427sap-h.pdf>; and <http://www.whitehouse.gov/omb/legislative/sap/110-1/hr1852sap-r.pdf>.

**Cost to Taxpayers:** CBO notes that, if H.R. 2895 were to be enacted into law before H.R. 1852—which contains an identical provision prohibiting the raising of FHA fees to divert money to the Affordable Housing Fund—then H.R. 2895 would authorize \$20 million in FY2008 and \$192 million over the FY2008-FY2012 period. However, if H.R. 1852 were enacted first, then technically H.R. 2895 would score at zero, since its only provision affecting authorizations would already be law.

**Does the Bill Expand the Size and Scope of the Federal Government?:** Yes, the bill would create an Affordable Housing Fund in the Treasury and authorize HUD to distribute the funds nationwide.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** The Financial Services Committee, in [House Report 110-362](#), asserts that, “H.R. 2895 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.”

**Constitutional Authority:** The Financial Services Committee, in [House Report 110-362](#), cites constitutional authority in Article I, Section 8, Clauses 1 and 3 (Congress' power to promote the general welfare and regulate interstate commerce, respectively). Some conservatives may question the applicability of these constitutional clauses for providing individual homes to individual people.

**Note:** Article VI, Clause 3 of the U.S. Constitution states that, “The Senators and Representatives...and all executive and judicial Officers...shall be bound by Oath or Affirmation, to support this Constitution.”

**Outside Organizations:** As of press time, FreedomWorks expressed public opposition to this legislation, while the Mortgage Bankers Association expressed public support for this legislation. As more outside organizations take public positions, the RSC will notify its member-offices.

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