Research

What’s the Difference: A Look at the Leading Housing Finance Reform Bills in Congress

ANDY WINKLER | APRIL 10, 2014

Senate Banking Committee Chairman Tim Johnson (D-SD) and Ranking Member Mike Crapo (R-ID) released their highly anticipated housing finance reform draft. Built on the previous legislative framework introduced by Senators Bob Corker (R-TN) and Mark Warner(D-VA), their plan would wind down and eliminate the government-sponsored enterprises (GSEs), Fannie Mae and Freddie Mac, and establish the Federal Mortgage Insurance Corporation (FMIC) to provide an explicit government backstop for mortgage-backed securities (MBS) and regulate the new market. While Johnson-Crapo incorporates much of the framework laid down previously in Corker-Warner, their draft provides a greater level of detail and a few notable changes. This paper will highlight some of those changes and compare Johnson-Crapo with the leading housing finance legislation in the House, H.R. 2667 (the “PATH Act”).

MAJOR DIFFERENCES BETWEEN JOHNSON-CRAPO AND CORKER-WARNER

Altered Requirements for Eligible Single Family Mortgages

In its definition of an eligible single family loan, Johnson-Crapo requires a downpayment of 3.5 percent for first-time homebuyers and 5 percent for all other homebuyers (to be phased in over time). This marks a departure from the Corker-Warner framework, which required all loans to have a 5 percent downpayment. A number of other small wording changes have also been made.

Greater Detail Provided on Affordability and Equal Access

In §208, Johnson-Crapo outlines the functions and powers of the Office of Consumer and Market Access (OCMA) within the FMIC. Not included in Corker-Warner, the OCMA would be charged with administering the 10 percent allocation of revenues from the affordability fee charged on FMIC-backed securities funding the new Market Access Fund (which the remainder of the fee funding the Housing Trust and Capital Magnet Funds). While the affordability fee was included in both pieces of legislation, details on the contributions to and the functioning of the Market Access Fund were vague in Corker-Warner. The OCMA would also be tasked with identifying and defining underserved markets, working with private and public entities to assist those markets, conducting studies on incentives to encourage lending in those markets, and reporting their findings. Along with the introduction of the OCMA, Johnson-Crapo requires more specific reporting and regulation of lending to underserved populations and coordination with other federal agencies (§210).

Needed Clarification on the Future of the GSEs' Multifamily Businesses

In §209, Johnson-Crapo would establish an Office of Multifamily Housing in the FMIC that was not prescribed in Corker-Warner. The Office of Multifamily Housing would oversee activities related to multifamily housing including developing criteria to ensure eligible mortgages collateralize multifamily covered securities. Furthermore, Johnson-Crapo provides needed clarification on the future of the GSEs' multifamily housing businesses in a new Title VII. While Corker-Warner includes the continuation of the multifamily business of the GSEs, it was far less specific on how it would function in the FMIC. In contrast, Title VII of Johnson-Crapo requires the initial establishment of multifamily subsidiaries within the GSEs, the sale or transfer of those businesses, approval by the FMIC of multifamily guarantors, and further study and regulation of multifamily housing finance in the new framework, including the possibility of a securitization platform solely for multifamily mortgages.

Changes to the FMIC Securitization Mutual Company

In Corker-Warner, the common securitization platform being developed by the FHFA and GSEs would be sold to an FMIC-established utility called the FMIC Mutual Securitization Company, which would operate as an approved issuer (§215). Comparatively, Johnson-Crapo would establish a similar entity called the "Platform," which would also operate initially on transferred funds and utilize the common securitization platform being developed for the GSEs. However, Johnson-Crapo gives greater flexibility and detail on the organization and functioning of the Platform than is given in Corker-Warner. Additionally, while standard uniform securitization agreements under Corker-Warner were to be developed, adopted, and published by the FMIC (§233), in §326 of Johnson-Crapo the Platform's Board of Directors are tasked with the development of standard securitization agreements for all FMIC-backed securities to be issued by or through the Platform.

The Regulatory Powers of the FMIC and Its Coordination with Other Regulators

While the FMIC under Corker-Warner also approved and regulated market participants, Johnson-Crapo further details the regulatory powers of the FMIC and its coordination responsibilities. In particular, §308 of Johnson-Crapo outlines the need for consultation and coordination between the FMIC and existing regulatory agencies like the Consumer Financial Protection Bureau (CFPB). The FMIC is given broad regulatory power to carry out the provisions of the bill, though is also tasked with avoiding duplicitous regulation to the fullest extent possible. The FMIC would approve and supervise guarantors, aggregators, private mortgage insurers, servicers, small lender mutuals (which it would also create) and collateral risk managers. Additionally, it would set and enforce capital and solvency standards for approved guarantors, approved multifamily guarantors, and approved aggregators not affiliated with an insured depository institution (IDI) (§309). It is also charged with establishing market-share limitations for approved guarantors and aggregators, conducting stress tests on approved guarantors and aggregators with $10 billion in assets, and putting critically undercapitalized approved guarantors, multifamily guarantors, and aggregators not affiliated with an IDI into receivership. (§311-317)

These are just a few of many changes made to Corker-Warner in the Johnson-Crapo draft. While the FMIC structure and its operation in the secondary market remain largely the same, terminology, definitions, and structural changes to the bill make Johnson-Crapo a very different document than its predecessor, and one that will need to be further assessed beyond the scope of this paper.

DIVIDE BETWEEN HOUSE AND SENATE: JOHNSON-CRAPO AND THE PATH ACT

H.R. 2667, the "Protecting American Taxpayers and Homeowners Act" (PATH Act), passed the House Financial Services Committee in July 2013 and is awaiting a vote by the House of Representatives. Similar to Johnson-Crapo, the PATH Act would wind down the GSEs and setup a new utility to securitize mortgages. However, it would also repeal or reform a number of mortgage-related regulations promulgated under the Dodd-Frank Act. It would limit government mortgage guarantees to those stemming from the Federal Housing Administration (FHA), Veterans' Administration (VA), Rural Housing Programs of the Department of Agriculture (USDA), and Ginnie Mae. Finally, it would make significant changes to the operation of the FHA, turning it into an independent agency outside of the Department of Housing and Urban Development (HUD), and setup the framework for a covered bond market in the United States.

While both bills intend to protect taxpayers, bring back private capital, and end the GSEs by transitioning to a more stable housing finance system, their approaches do differ. Most notably, the PATH Act lacks a catastrophic government guarantee for mortgage backed securities (MBS), is generally more comprehensive in its approach to reforming the housing finance system (e.g. including FHA reform, regulatory reform, and covered bond legislation), and makes clear that affordability should be addressed primarily through HUD and funded through a transparent budget process.

Table 1 details the major provisions found in the PATH Act and Johnson-Crapo.

TABLE 1. COMPARISON OF MAJOR PROVISIONS OF H.R. 2667 & S. 1217

	H.R. 2667, THE PATH ACT	S. 1217, JOHNSON-CRAPO GSE REFORM DRAFT
WIND DOWN OF FANNIE MAE & FREDDIE MAC	The Federal Housing Finance Agency (FHFA) is directed to place the GSEs into receivership 5 years after enactment and repeal their charters. The PATH Act also grants FHFA the authority to establish a receivership entity. (§103, 109 & 110) The GSEs would continue to reduce their portfolios at a rate of 15 percent per year. (§104)	Johnson-Crapo would establish the FMIC 6 months after enactment and direct it to eliminate, dissolve, and repeal the charters of the GSEs. (§101). FHFA, including all functions, powers, and duties, would be transferred to the FMIC 6 months following enactment, including the authority to wind down the operations of the GSEs and sell off business segments. (§402, 604) A Transition Committee would be formed with the FHFA Director as Chairperson to develop a comprehensive plan for the transition to the new system. (§404) The GSEs would continue to reduce their portfolios at a rate of 15 percent per year. (§605)

	H.R. 2667, THE PATH ACT	S. 1217, JOHNSON-CRAPO GSE REFORM DRAFT
Mortgage Purchases	GSEs would conduct no new business 5 years after enactment. (§110) Purchases would be limited to “qualified mortgages” under the Dodd-Frank Act. (§107) The GSEs would also be required to undertake a risk-sharing program equaling 10 percent of their annual business in which private market assumes credit risk. (§106)	GSE purchases would continue until a number of requirements to establish the new housing finance system are met, which must be within 5 years of enactment. (§601)
Guarantee Fees (g-fees) & Dividends During Transition	All dividends and g-fees would continue to go to the Treasury Department (§110) 5 years after enactment, guarantee fees would be deposited into the U.S. Treasury for the purpose of debt reduction. (§110)	The FMIC will use funds from the GSEs to capitalize the Mortgage Insurance Fund (MIF) and later to cover administrative costs and establish the Securitization Platform, Small Lender Mutual, and multifamily guarantor. (§406)
Conforming Loan Limits	Maximum limit drops each year by $20,000 for five years unless the spread between conforming and non-conforming mortgages exceeds 80 basis points. The PATH Act would prevent limits in high cost areas from increasing but allow for annual adjustments dependent on house prices. (§105)	No similar provisions exist.
Outstanding GSE Debt & MBS	Previously issued debt and mortgage-backed securities would be fully guaranteed by the federal government. (§110)	Previously issued debt and mortgage-backed securities would be fully guaranteed by the federal government. (§604)
NEW ENTITIES	The PATH Act establishes the National Mortgage Market Utility (the Utility) to set standards for securitization and operate a securitization platform. (§311)	**Federal Mortgage Insurance Corporation.** The FMIC would be created, modeled partly after the FDIC, to issue a new MBS with an explicit government backstop, backed by a reinsurance fund, and to regulate the new housing finance market. (§201) **Small Lender Mutual.** The FMIC would be authorized to establish a mutually-owned company to facilitate the sale of individual loans or pools of loans by small lenders, and approve other small lender mutuals as necessary to facilitate its purposes. (§315) **Securitization Platform.** Finally, the FMIC would be charged with establishing a securitization platform (the Platform) as a utility owned and operated for the benefit of its members to issue standardized covered securities insured by the FMIC. (§321, 325)

	H.R. 2667, THE PATH ACT	S. 1217, JOHNSON-CRAPO GSE REFORM DRAFT
Structure	The Utility would function as a non-profit, non-governmental, and privately managed entity with a board of 10 members with mortgage and banking expertise. (§311) Within 2 years of enactment, the FHFA Director would issue a charter to the most qualified applicant to operate the Utility. (§311)	The FMIC would be run by a bipartisan 5-member board of directors, nominated by the President and confirmed by the Senate, with one as Chairperson and one as Vice Chairperson. (§202) A 9-member Advisory Committee of housing experts would assist and advise the FMIC board and Office of Consumer & Market Access (OCMA). (§203) The Small Lender Mutual would be owned and operated by its members and run by a board of 14 directors chosen by its membership. (§315) Following a transition period with the FMIC largely in control, a 9-member Platform Board representative of the Platform's members would take over. However, the Platform could be reorganized if the Board and FMIC determine a different structure would better suit its purposes. (§322)
Funding	Funding for the Utility would be initially provided by an appropriation of $150 million that must be repaid in 10 years. Funding for operations would come from a fee charged by the Utility that cannot fluctuate based on size or loan volume but can on other factors. (§314)	The FMIC would initially be funded by the GSEs but eventually be supported by fees collected on FMIC-backed securities. (§303) The Small Lender Mutual would be funded initially through the GSEs followed by funding through member fees. The Mutual would have 7 years following certification to repay (with the possibility of a 3-year extension). (§315) Establishment and operation of the Platform would be initially funded by the GSEs through the FMIC, but it could collect fees from members to operate the Platform. (§321, 324)
SINGLE FAMILY MORTGAGE SECURITIES	MBS that meet the Utility's guidelines would be qualified securities and not subject to SEC registration or the Ability to Repay (ATR) standard under the Dodd Frank Act, but would also not have any government guarantee. (§321)	FMIC-approved aggregators would buy and pool mortgages that meet specific underwriting and downpayment criteria. Those aggregators must secure 10 percent first-loss coverage on the pools from FMIC-approved guarantors or capital markets to move to the Securitization Platform where the FMIC guarantee on the remaining principal balance is attached to create a common-form security. The securities would be exempt from SEC registration, credit risk retention requirements, and the definition of a commodity pool. (§301-302, 307)

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Government Guarantee	No government guarantee would exist on MBS apart from guarantees provided through FHA, Ginnie Mae, VA, and USDA.	The federal guarantee would be attached through the Securitization Platform behind private capital to create a fully guaranteed common-form security. Any insurance claims would be paid by a Mortgage Insurance Fund capitalized from the GSEs and fees collected on FMIC-backed securities. (§302-303)
Eligibility	Qualified securities would be issued by a qualified issuer as defined by §322(g), through the Utility's securitization platform, and in accordance with standard form securitization agreements. (§321) The underlying mortgages of qualified securities would be classified based on their credit risk. (§322)	The maximum limit for eligible single family mortgages loans collateralizing FMIC-backed securities cannot exceed $417,000 generally, though that amount can change depending on the number of units, region, and house prices. (§304) Eligible single family mortgages have a number of requirements including origination in compliance with FMIC-issued standards, originated in compliance as closely as possible to CFPB mortgage-rules, outstanding principal balance of 80 percent or less unless covered by PMI, downpayment of 5 percent (3.5 percent for first-time homebuyers), and more. (§2 (29))
MARKET REGULATOR	The FHFA would act as the regulator of the Utility. (§311)	The FMIC would approve and supervise guarantors, aggregators, private mortgage insurers, servicers, small lender mutuals (which it would also create) and collateral risk managers. Additionally, it would set and enforce capital and solvency standards for approved guarantors, approved multifamily guarantors, and approved aggregators not affiliated with an insured depository institution (IDI) (§309). It is also charged with establishing market-share limitations for approved guarantors and aggregators, conducting stress tests on approved guarantors and aggregators with $10 billion in assets, and putting critically undercapitalized approved guarantors, multifamily guarantors, and aggregators not affiliated with an IDI into receivership. (§311-317) FHFA would be transitioned into the FMIC, where it would maintain current functions, powers, and duties as an independent office within the FMIC. The FHFA Director will serve as chair of the Transition Committee. (§402)
DATA & STANDARDIZATION	The Utility would be required to establish standardization agreements among private market participants on pooling, servicing, purchases, sales, representations and warranties, indemnification, etc. (§322) The Utility would develop standards for the disclosure of loan origination, appraisal and servicing data on mortgage that collateralize qualified securities. (§322)	One of the primary duties of the FMIC is to promote the standardization of the secondary mortgage market through the use of uniform securitization agreements, servicing agreements, and the Securitization Platform. (§301)

	H.R. 2667, THE PATH ACT	S. 1217, JOHNSON-CRAPO GSE REFORM DRAFT
Securitization Platform	No later than six months after enactment, the FHFA Director would determine the method for recovering the cost of developing the platform and transferring it to the Utility. A year after the Utility is established, the FHFA must have transferred ownership of the platform to the Utility. (§313) The Utility could not discriminate eligible private market participants on the basis of size, composition, business line, or loan volume. (§312)	The FMIC would be required to establish a securitization platform as a utility owned and operated for the benefits of approved members or as a nonprofit corporation or cooperative entity. (§321) FMIC has the ability to transfer initial funds for the Platform to operate and FHFA is allowed to transfer or sell property and technology developed by the GSEs to the Platform provided the transfers are consistent with the Treasury Purchase Agreement. (§321) The Platform would be responsible for the standardization of certain documents and uniform securitization agreements. (§325)
Mortgage Registry	The Utility would setup and operate a National Mortgage Data Depository. (§331) The PATH Act authorizes the appropriation of $50 million for grants to States to help them participate in the registry. (§333)	The existing national mortgage database created by FHFA and the CFPB would be transferred to the FMIC, while FMIC is required to work with the CFPB to minimize conflicts and duplication. (§333) The FMIC would be required to form a working group within 6 months of creation to study the possibility of a national electronic mortgage registry and alternatives and be granted authority to establish one. (§334)
AFFORDABLE HOUSING	The mandatory housing goals of the GSEs and the Housing Trust Fund would be repealed. (§104)	FMIC, empowered to issue regulations, would be required to help ensure all eligible borrowers have access to mortgage loan credit (§210). FMIC would monitor the performance of approved guarantors and aggregators at providing credit in identified underserved markets and allow for a variable fee dependent on that performance. (§501) The FMIC would charge a fee averaging 10 basis points, depending on the performance of approved private market participants serving underserved markets, which would be allocated to the Housing Trust Fund in HUD (75%), the Capital Magnet Fund in Treasury (15%), and the new Market Access Fund run by the OCMA (10%). (§501-505) The mandatory housing goals of the GSEs would be repealed. (§408) The Office of Consumer and Market Access, part of the FMIC, would administer the Market Access Fund, identify underserved markets, and conduct studies on incentives to serve those markets. (§208)

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MULTIFAMILY HOUSING	No similar provisions exist.	Johnson-Crapo would require the establishment of multifamily subsidiaries within the GSEs that would later be spun off, preserving their current multifamily products and businesses. The FMIC would approve and regulate multifamily guarantors, who could then issue securities insured by the FMIC as long as 60 percent of units financed are affordable to low-income families. (§701-704) The Office of Multifamily Housing in the FMIC would be charged with testing and assessing pilot methods or products to increase secondary market access for properties with 50 units or fewer, funded through the Market Access Fund. (§705) Additionally, the FMIC must study the possibility of expanded programs though the Federal Home Loan Banks to eligible multifamily loans and the capacity or need for a common securitization platform dedicated to multifamily housing finance. (§706-707)
FHA REFORM	FHA would become an independent agency (§211) with a number of significant changes to its mortgage insurance programs: 1. Insurance limited to first-time or low- and moderate-income (borrower with an income less than 115 percent Area Median Income or 150 percent in a high-cost area) homebuyers. (§232) 2. Downpayments increased to 5 percent except for first-time homebuyers or times of market stress or in areas affected by disasters. (§232) 3. For single family mortgages, the mortgage amount cannot exceed the appraised value and must be the lesser of 115 percent of Area Median Home Price or 150 percent of the GSE conforming loan limit for the area. (§232) 4. FHA would have a minimum annual premium of 0.55 percent and premiums would have to cover administrative costs, personnel, cost of insurance, and to maintain the required capital. (§235) 5. The FHA's capital ratio would be increased to 4 percent of outstanding insurance-in-force. (§256-260) 6. The HECM program providing reverse mortgages would be repealed. (§293) 7. 10 percent of FHA's new business would have to be insured with risk-sharing agreements after 2 years. (§233)	No similar provisions exist though Senators Johnson and Crapo released the FHA Solvency Act of 2013.

	H.R. 2667, THE PATH ACT	S. 1217, JOHNSON-CRAPO GSE REFORM DRAFT
MORTGAGE-RELATED REGULATION REFORMS	The PATH Act would make a number of changes to mortgage-related regulations (especially regulations promulgated under the Dodd Frank Act) including: 1. Require a study of the impact of Basel III and delay implementation for community banks. (§403) 2. One year delay in implementation of Dodd Frank rules for community banks. (§406) 3. Repeal credit risk retention regulations of Dodd Frank. (§407) 4. Amends the Truth in Lending Act (TILA). (§411)	Johnson-Crapo outlines the need for consultation and coordination between the FMIC and existing regulatory agencies like the CFPB. (§308) FMIC is mandated to coordinate with the CFPB to ensure minimum standards governing eligible single-family loans are similar to established CFPB rules on the ability to repay. (§336) Notification under the Truth in Lending Act (TILA) would be altered slightly. (§803)

IMPLICATIONS OF THE HOUSING OPPORTUNITIES MOVE THE ECONOMY (HOME) FORWARD ACT

Rep. Maxine Waters (D-CA), the Ranking Member on the House Financial Services Committee, recently unveiled alternative legislation to the PATH Act. Titled the "Housing Opportunities Move the Economy (HOME) Forward Act," the bill has little prospect of passage through the Republican-controlled House of Representatives, but could give progressive members of both houses of Congress ideas on ways to amend existing reform proposals. While the HOME Forward Act builds on the existing framework of Corker-Warner and Johnson-Crapo, two key provisions have attracted attention. While Corker-Warner and Johnson-Crapo require private market entities to secure 10 percent first-loss coverage on FMIC-backed securities, the HOME Forward Act would require a minimum of 5 percent ahead of the government backstop (though the 5 percent requirement does not appear absolute in §202). Secondly, while Johnson-Crapo dictates the establishment of a small lender mutual(s) for the aggregation of loans and a securitization platform where the government backstop attaches, the HOME Forward Act would create a cooperative issuer called the Mortgage Securities Cooperative that would solely issue government-insured securities. Member institutions would govern the Mortgage Securities Cooperative on the basis of one-member, one-vote, which would likely empower small institutions with a, not unsurprisingly, smaller footprint in the market (§211). Comparatively, a board of directors would govern the Platform in Johnson-Crapo, with one director required to represent the interests of small mortgage lenders (§322), along with general provisions to ensure the needs of underserved markets are being met.

CONCLUSION

Both the House Financial Services Committee and Senate Banking Committee have put considerable time into drafting solid pieces of legislation for the overhaul of housing finance. With a majority of Americans in support of phasing out the GSEs, it seems appropriate that both efforts recognize that the GSEs can no longer exist in their current form. In fact, they are still a very real risk to taxpayers and the very definition of too-big-to-fail. Reforming the housing finance system remains the largest piece of unfinished business from the financial crisis. And with the federal government so deeply involved in housing finance, it is long past time for reforms to move forward.