

108TH CONGRESS  
2D SESSION

# S. 2753

To authorize the Secretary of Housing and Urban Development to insure zero-downpayment mortgages.

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IN THE SENATE OF THE UNITED STATES

JULY 22, 2004

Mr. SMITH introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To authorize the Secretary of Housing and Urban Development to insure zero-downpayment mortgages.

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

3 **SEC. 1. SHORT TITLE.**

4 This Act may be cited as the “Zero Downpayment  
5 Act of 2004”.

6 **SEC. 2. INSURANCE FOR ZERO-DOWNPAYMENT MORT-**  
7 **GAGES.**

8 (a) MORTGAGE INSURANCE AUTHORITY.—Section  
9 203 of the National Housing Act (12 U.S.C. 1709) is  
10 amended by inserting after subsection (k) the following:

1 “(1) ZERO-DOWNPAYMENT MORTGAGES.—

2 “(1) INSURANCE AUTHORITY.—The Secretary  
3 may insure, and commit to insure, under this sub-  
4 section any mortgage that meets the requirements  
5 of—

6 “(A) this subsection; and

7 “(B) except as otherwise specifically pro-  
8 vided in this subsection, subsection (b).

9 “(2) ELIGIBLE SINGLE FAMILY PROPERTY.—To  
10 be eligible for insurance under this subsection, a  
11 mortgage shall involve a property upon which there  
12 is located a dwelling that is designed principally for  
13 a 1- to 4-family residence, and that, notwithstanding  
14 subsection (g), is to be occupied by the mortgagor  
15 as his or her principal residence, which shall in-  
16 clude—

17 “(A) a 1-family dwelling unit in a multi-  
18 family project and an undivided interest in the  
19 common areas and facilities which serve the  
20 project;

21 “(B) a 1-family dwelling unit of a coopera-  
22 tive housing corporation, the permanent occu-  
23 pancy of the dwelling units of which is re-  
24 stricted to members of such corporation and in  
25 which the purchase of stock or membership en-

1 titles the purchaser to the permanent occupancy  
2 of such dwelling unit; and

3 “(C) a manufactured home, or a manufac-  
4 tured home together with a suitably developed  
5 lot on which to place the manufactured home.

6 “(3) MAXIMUM PRINCIPAL OBLIGATION.—

7 “(A) LIMITATION.—To be eligible for in-  
8 surance under this subsection, a mortgage shall  
9 involve a principal obligation in an amount not  
10 in excess of 100 percent of the appraised value  
11 of the property, plus any initial service charges,  
12 appraisal, inspection, and other fees in connec-  
13 tion with the mortgage as approved by the Sec-  
14 retary.

15 “(B) INAPPLICABILITY OF OTHER LOAN-  
16 TO-VALUE REQUIREMENTS.—A mortgage in-  
17 sured under this subsection shall not be subject  
18 to subsection (b)(2)(B), or to the undesignated  
19 matter that follows such subsection.

20 “(4) ELIGIBLE MORTGAGORS.—The mortgagor  
21 under a mortgage insured under this subsection  
22 shall meet the following requirements:

23 “(A) FIRST-TIME HOMEBUYER.—The  
24 mortgagor shall be a first-time homebuyer. The  
25 program for mortgage insurance under this

1 subsection shall be considered a Federal pro-  
2 gram to assist first-time homebuyers for pur-  
3 poses of section 956 of the Cranston-Gonzalez  
4 National Affordable Housing Act (42 U.S.C.  
5 12713).

6 “(B) COUNSELING.—

7 “(i) REQUIREMENT.—The mortgagor  
8 shall have received counseling, by a third  
9 party (other than the mortgagee or any  
10 party related directly or indirectly to the  
11 mortgagee) who is approved by the Sec-  
12 retary, with respect to the responsibilities  
13 and financial management involved in  
14 homeownership.

15 “(ii) TOPICS.—Counseling required  
16 under clause (i) shall include providing to,  
17 and discussing with, the mortgagor—

18 “(I) information regarding home-  
19 ownership options other than a mort-  
20 gage insured under this subsection,  
21 other zero- or low-downpayment mort-  
22 gage options that are or may become  
23 available to the mortgagor, the finan-  
24 cial implications of entering into a  
25 mortgage (including a mortgage in-

1           sured under this subsection), and any  
2           other information that the Secretary  
3           may require; and

4           “(II) a document that sets forth  
5           the amount and the percentage by  
6           which the property subject to the  
7           mortgage must appreciate for the  
8           mortgagor to recover the principal  
9           amount of the mortgage, the costs fi-  
10          nanced under the mortgage, and the  
11          estimated costs involved in selling the  
12          property, if the mortgagor were to sell  
13          the property on each of the second,  
14          fifth, and tenth anniversaries of the  
15          mortgage.

16          “(iii) 2- TO 4-FAMILY RESIDENCES.—

17          In the case of a mortgage involving a 2- to  
18          4-family residence, counseling required  
19          under clause (i) shall include (in addition  
20          to the information required under clause  
21          (ii)) information regarding the rights and  
22          obligations of landlords and tenants.

23          “(5) OPTION FOR NOTICE OF FORECLOSURE  
24          PREVENTION COUNSELING AVAILABILITY.—

1           “(A) OPTION.—To be eligible for insurance  
2 under this section, the mortgagee shall provide  
3 the mortgagor, at the time of the execution of  
4 the mortgage, an optional written agreement  
5 which, if signed by the mortgagor, allows, but  
6 does not require, the mortgagee to provide no-  
7 tice in accordance with subparagraph (B) to a  
8 housing counseling entity, approved by the  
9 Secretary, that has agreed to provide the notice  
10 and counseling required under subparagraph  
11 (C).

12           “(B) NOTICE TO COUNSELING AGENCY.—  
13 Notice provided under subparagraph (A)  
14 shall—

15           “(i) be provided at the earliest time  
16 practicable after the mortgagor becomes  
17 60 days delinquent with respect to any  
18 payment due under the mortgage;

19           “(ii) state that the mortgagor is delin-  
20 quent and set forth how to contact the  
21 mortgagor; and

22           “(iii) be provided once with respect to  
23 each delinquency period for a mortgage.

24           “(C) NOTICE TO MORTGAGOR.—Upon no-  
25 tice from a mortgagee that a mortgagor is 60

1 days delinquent with respect to payments due  
2 under the mortgage, the housing counseling en-  
3 tity shall immediately notify the mortgagor of  
4 such delinquency, that the entity makes avail-  
5 able foreclosure prevention counseling that may  
6 assist the mortgagor in resolving the delin-  
7 quency, and of how to contact the entity to ar-  
8 range for such counseling.

9 “(D) ABILITY TO CURE.—Failure to pro-  
10 vide the optional written agreement required  
11 under subparagraph (A) may be corrected by  
12 sending such agreement to the mortgagor at the  
13 earliest time practicable after the mortgagor  
14 first becomes 60 days delinquent with respect to  
15 payments due under the mortgage. Insurance  
16 provided under this subsection may not be ter-  
17 minated and penalties for such failure may not  
18 be prospectively or retroactively imposed if such  
19 failure is corrected in accordance with this sub-  
20 paragraph.

21 “(E) PENALTIES FOR FAILURE TO PRO-  
22 VIDE AGREEMENT.—The Secretary may estab-  
23 lish appropriate penalties for failure of a mort-  
24 gagee to provide the optional written agreement  
25 required under subparagraph (A).

1           “(F) LIMITATION ON LIABILITY OF MORT-  
2           GAGEE.—A mortgagee shall not incur any li-  
3           ability or penalties for any failure of a housing  
4           counseling entity to provide notice under sub-  
5           paragraph (C).

6           “(G) NO PRIVATE RIGHT OF ACTION.—  
7           This section shall not create any private right  
8           of action on behalf of the mortgagor.

9           “(H) DELINQUENCY PERIOD.—For pur-  
10          poses of this paragraph, the term ‘delinquency  
11          period’ means, with respect to a mortgage, a  
12          period that begins upon the mortgagor becom-  
13          ing delinquent with respect to payments due  
14          under the mortgage, and ends upon the first  
15          subsequent occurrence of such payments under  
16          the mortgage becoming current or the property  
17          subject to the mortgage being foreclosed or oth-  
18          erwise disposed of.

19          “(6) INAPPLICABILITY OF DOWNPAYMENT RE-  
20          QUIREMENT.—A mortgage insured under this sub-  
21          section shall not be subject to subsection (b)(9) or  
22          any other requirement to pay on account of the  
23          property, in cash or its equivalent, any amount of  
24          the cost of acquisition.

1           “(7) PREMIUMS.—In conjunction with the cred-  
2           it subsidy estimation calculated each year pursuant  
3           to the Federal Credit Reform Act of 1990 (2 U.S.C.  
4           661 et seq.), the Secretary shall review the program  
5           performance for mortgages insured under this sub-  
6           section and make any necessary adjustments to en-  
7           sure that the Mutual Mortgage Insurance Fund  
8           shall continue to generate a negative credit subsidy  
9           which may include—

10                   “(A) altering mortgage insurance pre-  
11                   miums subject to subsection (c)(2);

12                   “(B) reviewing underwriting policies; and

13                   “(C) limiting the availability of mortgage  
14                   insurance under this subsection.

15           “(8) UNDERWRITING.—For a mortgage to be  
16           eligible for insurance under this subsection, the  
17           mortgagor’s credit and ability to pay the monthly  
18           mortgage payments shall have been evaluated using  
19           the Federal Housing Administration’s Technology  
20           Open To Approved Lenders (TOTAL) Mortgage  
21           Scorecard, or a similar standardized credit scoring  
22           system approved by the Secretary, and in accordance  
23           with procedures established by the Secretary.

24           “(9) APPROVAL OF MORTGAGEES.—To be eligi-  
25           ble for insurance under this subsection, a mortgage

1 shall have been made to a mortgagee that meets  
2 such criteria as the Secretary shall establish to en-  
3 sure that mortgagees meet appropriate standards for  
4 participation in the program authorized under this  
5 subsection.

6 “(10) DISCLOSURE OF INCREMENTAL COSTS.—  
7 For a mortgage to be eligible for insurance under  
8 this subsection, the mortgagee shall provide to the  
9 mortgagor, at the time of the application for the  
10 loan involved in the mortgage, a written disclosure,  
11 as the Secretary shall require, that specifies the ef-  
12 fective cost to a mortgagor of borrowing the amount  
13 by which the maximum amount that could be bor-  
14 rowed under a mortgage insured under this sub-  
15 section exceeds the maximum amount that could be  
16 borrowed under a mortgage insured under sub-  
17 section (b), based on average closing costs with re-  
18 spect to such amount, as determined by the Sec-  
19 retary. Such cost shall be expressed as an annual in-  
20 terest rate over the first 5 years of a mortgage.

21 “(11) LOSS MITIGATION.—

22 “(A) IN GENERAL.—Upon the default of  
23 any mortgage insured under this subsection, the  
24 mortgagee shall engage in loss mitigation ac-  
25 tions for the purpose of providing an alternative

1 to foreclosure to the same extent as is required  
2 of other mortgages insured under this title pur-  
3 suant to the regulations issued under section  
4 230(a).

5 “(B) ANNUAL REPORTING.—Not later  
6 than 90 days after the end of each fiscal year,  
7 the Secretary shall submit a report to Congress  
8 that compares the rates of default and fore-  
9 closure during such fiscal year for mortgages  
10 insured under this subsection, for single-family  
11 mortgages insured under this title (other than  
12 under this subsection), and for mortgages for  
13 housing purchased with assistance provided  
14 under the downpayment assistance initiative  
15 under section 271 of the Cranston-Gonzalez  
16 National Affordable Housing Act (42 U.S.C.  
17 12821).

18 “(12) ADDITIONAL REQUIREMENTS.—The Sec-  
19 retary may establish any additional requirements for  
20 mortgage insurance under this subsection as may be  
21 necessary or appropriate.

22 “(13) LIMITATION.—The aggregate number of  
23 mortgages insured under this section in any fiscal  
24 year may not exceed 30 percent of the aggregate  
25 number of mortgages and loans insured by the Sec-

1       retary under this title during the preceding fiscal  
2       year.

3               “(14) PROGRAM SUSPENSION.—

4                       “(A) IN GENERAL.—Subject to subpara-  
5                       graph (C), the authority under paragraph (1) to  
6                       insure mortgages shall be suspended if at any  
7                       time the claim rate described in subparagraph  
8                       (B) exceeds 3.5 percent. A suspension under  
9                       this subparagraph shall remain in effect until  
10                      such time as such claim rate is 3.5 percent or  
11                      less.

12                      “(B) FHA TOTAL SINGLE-FAMILY ANNUAL  
13                      CLAIM RATE.—The claim rate under subpara-  
14                      graph (A), for any particular time, shall be the  
15                      ratio of the number of claims during the 12  
16                      months preceding such time on mortgages on 1-  
17                      to 4-family residences insured pursuant to this  
18                      title, to the number of mortgages on such resi-  
19                      dences having such insurance in-force at that  
20                      time.

21                      “(C) APPLICABILITY.—A suspension under  
22                      subparagraph (A) shall not preclude the Sec-  
23                      retary from endorsing or insuring any mortgage  
24                      that was duly executed before the date of such  
25                      suspension.

1           “(15) SUNSET.—No mortgage may be insured  
2           under this section after September 30, 2011, except  
3           that the Secretary may endorse or insure any mort-  
4           gage that was duly executed before such date.

5           “(16) GAO REPORTS.—Not later than 2 years  
6           after the date of enactment of the Zero Downpay-  
7           ment Act of 2004, and annually thereafter, the  
8           Comptroller General of the United States shall sub-  
9           mit a report to Congress regarding the performance  
10          of mortgages insured under this subsection.

11          “(17) IMPLEMENTATION.—The Secretary may  
12          implement this subsection on an interim basis by  
13          issuing interim rules, except that the Secretary shall  
14          solicit public comments upon publication of such in-  
15          terim rules and shall issue final rules implementing  
16          this subsection after consideration of the comments  
17          submitted.”.

18          (b) MORTGAGE INSURANCE PREMIUMS.—The second  
19          sentence of subparagraph (A) of section 203(c)(2)(A) of  
20          the National Housing Act (12 U.S.C. 1709(c)(2)(A)) is  
21          amended by striking “In” and inserting “Except with re-  
22          spect to a mortgage insured under subsection (l), in”.

○