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Housing Opportunity Through Modernization Act (H.R. 3700)

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The Housing Opportunity Through Modernization Act (H.R. 3700), which was signed into law on July 29, 2016 (P.L. 114-201), includes modifications to a number of federal housing programs, mostly administered by the Department of Housing and Urban Development (HUD). Many of the changes included in the bill were considered by prior Congresses in some version as a part of broader assisted housing reform legislation.¹ Some provisions in the bill were introduced in the 114th Congress in other bills, some were requested in the President’s budget, and others were new.

Title I, the largest title in the bill, makes changes to HUD’s direct rental housing assistance programs: the Section 8 Housing Choice Voucher program, public housing program, and Section 8 project-based rental assistance program. The direct rental housing assistance provisions in H.R. 3700 are somewhat narrower in scope than those included in assisted housing reform bills from prior Congresses. Another important difference between H.R. 3700 and past assisted housing reform bills is that some of the more contentious policy issues that were addressed in prior legislation—such as the future of the Moving to Work demonstration and changes to the so-called “Brooke Rule”² (which caps tenant rents at 30% of family income)—were not included in this bill.

Beyond Title I, the bill makes a variety of largely technical amendments to programs and activities beyond direct rental assistance programs, including mortgage insurance through the Federal Housing Administration (FHA) and the Rural Housing Service, and homelessness assistance.

This report provides a brief overview of the bill, organized by title and section. Please note that although the provisions of the bill have become law, many of the policy changes will require regulatory action in order to be fully implemented, and thus will not immediately take effect.

Summary of Legislative Action

H.R. 3700 was introduced on October 7, 2015, by the Chairman of the Housing and Insurance Subcommittee of the House Financial Services Committee, Representative Luetkemeyer. The bill was discussed as part of a subcommittee hearing titled “The Future of Housing in America: Federal Housing Reforms that Create Housing Opportunity” on October 21, 2015. It was marked-up, amended, and ordered reported by the House Financial Services Committee over December 8-9, 2015. H.R. 3700 was considered by the House under a structured rule,³ and, following the adoption of several amendments, the bill was approved via a unanimous roll call vote on February 2, 2016.

On July 14, 2016, the bill was discharged from the Senate Committee on Banking, Housing and Urban Affairs and was agreed to without amendment via Unanimous Consent the same day. It was signed into law by President Obama on July 29, 2016, becoming P.L. 114-201.

¹ Most recently, the Affordable Housing and Self Sufficiency Improvement Act of 2012, a draft bill that was approved by the Insurance, Housing and Community Opportunity subcommittee of the House Financial Services committee in 2012. A copy of the draft bill is available at <http://financialservices.house.gov/uploadedfiles/bills-112hr-pih-ahadd.pdf>.

² See CRS Insight IN10210, *Former Senator Edward W. Brooke’s Low-Income Housing Policy Legacy*, by (name redacted) (available upon request).

³ H.Res. 594, H.Rept. 114-411.

Summary of H.R. 3700

Title I: Section 8 Rental Assistance and Public Housing

Title I of H.R. 3700 contains reforms to the primary federal rental assistance programs for low-income individuals and families: the public housing program,⁴ the Section 8 Housing Choice Voucher (HCV) program,⁵ and the Section 8 project-based rental assistance program.⁶ All three programs offer housing assistance to low-income families of all types: families made up of persons who are elderly and persons who have disabilities, families with and without children, and single adults. That assistance allows families access to housing that costs, in general, no more than 30% of family income. However, the form the assistance takes varies across the three programs. These programs together serve more than 5 million families—more than 10 million individuals—and their combined funding generally accounts for more than three-quarters of HUD’s annual discretionary budget.⁷ The last major legislative reform of these programs was enacted in 1998.⁸

Versions of many of the provisions contained in this title have been included in assisted housing reform legislation from the past several Congresses, and, for the most part, they may be considered relatively non-controversial administrative reforms. Taken together, these provisions are designed to streamline the administration of assisted rental housing programs, something that program administrators—both the local public housing authorities (PHAs) that administer the HCV and public housing programs and owners of project-based Section 8 properties—have been requesting, particularly in light of constrained federal funding.

Section 101. Inspection of Dwelling Units

Private market rental units selected to be rented by tenants with HCVs are required to be inspected to ensure that they meet federal and local quality standards—initially, annually thereafter, and in the interim if a complaint is lodged. Both advocates for low-income tenants and the PHAs that administer the program have called for changes to the inspection process. There has been a desire to increase PHA flexibility to set inspection policies that will be easier to administer and palatable to landlords such that they are willing to participate in the program while at the same time ensuring that the units are maintained to safe and decent standards with protections for tenants when units are not so maintained.

Section 101 of H.R. 3700 codifies the inspection process—which is currently primarily detailed in regulation rather than statute—and make a number of changes to the initial inspection process and the enforcement process, many of which are identical to those in prior assisted housing reform bills. Specifically, the bill includes provisions to do the following:

⁴ The program is codified at 42 U.S.C. §1437d. For more information about the public housing program, see CRS Report R41654, *Introduction to Public Housing*, by (name redacted) .

⁵ The program is codified at 42 U.S.C. §1437f(o). For more information, see CRS Report RL32284, *An Overview of the Section 8 Housing Programs: Housing Choice Vouchers and Project-Based Rental Assistance*, by (name redacted) .

⁶ The program is codified at 42 U.S.C. §1437f. For more information about the project-based Section 8 program, see CRS Report RL32284, *An Overview of the Section 8 Housing Programs: Housing Choice Vouchers and Project-Based Rental Assistance*, by (name redacted) .

⁷ For more information about these and other housing programs, see CRS Report RL34591, *Overview of Federal Housing Assistance Programs and Policy*.

⁸ The Quality Housing and Work Responsibility Act of 1998, Title V of P.L. 105-276.

- Permit PHAs to allow families to occupy—and owners to receive assistance payments for—units that fail initial inspections for non-life-threatening conditions so long as the defects are corrected within 30 days. After 30 days, permit PHAs to withhold assistance if defects are not corrected and remit withheld payments to the owner once the defect has been corrected.
- Permit PHAs to use inspections conducted under other programs or authorities within the prior 24 months to authorize a family’s initial occupancy (for example, properties that have been constructed using other federal housing subsidies, such as the Low-Income Housing Tax Credit). PHAs are to make retroactive payments to the beginning of the lease term once the unit passes the PHA inspection.
- Largely codify existing regulatory enforcement standards pertaining to ongoing inspections, which require any defects be cured within 24 hours in the case of a life-threatening violation and within 30 days (or longer, if set by the PHA) in the case of a non-life-threatening violation. Give PHAs discretion regarding whether to withhold assistance during the cure period and whether to remit withheld payments to the owner once the unit is brought into compliance.
- Require that owners be given written notification of their non-compliance (failure to correct defects within the relevant cure period) and require PHAs to abate assistance payments to non-compliant owners. If, after 60 days (or longer, if set by the PHA), the unit is still not in compliance, then the assistance payment contract must be terminated.
- Create a number of tenant notification and protection requirements. Upon abatement of assistance, require PHAs to notify tenants of the abatement, and that assistance will be terminated if the unit is not brought into compliance, in which case the tenant will have to move. During the abatement period, permit tenants to terminate their tenancy and move with their subsidies by notifying the owner, but prohibit the owner from terminating a family’s tenancy as a result of the abatement or withholding of assistance. Require the PHA to give families all necessary forms to relocate and transfer assistance, at least a 90-day period to search for new housing, and, if the family is unable to lease a new unit, preference for occupancy in an available public housing unit. Authorize the PHA to use abated or withheld assistance amounts to provide relocation assistance to families.
- Allow the enforcement and tenant protection provisions to be waived if the non-compliance was the result of tenant-caused damages.

Section 102. Income Reviews

Since federal housing assistance eligibility and benefit determination (or rent) is based on family income, how income is defined and calculated has important ramifications for who is served and how much assistance they receive. Eligibility for rental housing assistance is based on a family’s annual income. The amount of subsidy a family receives (or the amount of rent a family must pay) is based on a family’s annual *adjusted* income. The current system for reviewing and calculating income and adjusted income attempts to provide a complete assessment of the income available to a family. However, it has been criticized, including by HUD, as too complicated and

prone to errors.⁹ H.R. 3700, like prior assisted housing reform legislation, includes a number of changes to the way that income is to be reviewed and calculated.

Frequency of Reviews

Current law requires that family income be reviewed upon the initial provision of assistance, and annually thereafter, except in the case of fixed-income families, whose income is reviewed every three years. PHAs and owners are permitted to determine their own policies with regard to interim income reviews (to address changes in income that happen between annual reviews), although federal law permits tenants to request and receive an interim review after a decline in income. H.R. 3700 establishes new standards which require interim reviews

- upon the request of the family any time the family experiences a decrease of 10% or more in adjusted income (or lower standard, if set by the HUD Secretary); and
- upon an increase of 10% or more in adjusted income, excluding increases in earned income (or lower standard, if set by the HUD Secretary), unless the increase in earned income corresponds to a previous decrease in income. (This provision effectively means that increases in earned income will not trigger interim income recertification.) Owners or PHAs may elect not to conduct a review for an increase in income during the last quarter before the family's next recertification.

Source of Information

Current law defines annual income as all amounts that are anticipated to be received by all members of a family, with some exclusions, during the subsequent 12-month period. Program administrators have requested changes to this policy, as anticipating low-income families' future incomes can be difficult, given that their employment is often unstable. Further, PHAs and owners are expected to verify families' incomes using third-party sources, which can be an administratively difficult process.

H.R. 3700 amends the law to require PHAs and owners to use prior year income when setting annual rents for tenants, allowing for adjustments to reflect current year income. It also permits PHAs and owners to determine a family's gross income based on the determination made by other means-tested federal assistance programs (such as the Supplemental Nutrition Assistance Program [SNAP]), to the extent such data are available.

Definition of Income and Adjustments

H.R. 3700 amends the current definition of income to exclude several sources of income that are currently included: imputed returns on assets except to the extent family assets exceed \$50,000, adjusted in the future for inflation (current law excludes the imputed returns on assets except to the extent the assets exceed \$5,000); certain educational savings accounts; aid and attendance expenses incurred by veterans; the earned income of students (subject to limits set by the Secretary); and certain financial aid received by students. It clarifies that HUD may not require PHAs and owners to keep records of excluded income.

⁹ For example, see U.S. Government Accountability Office, *Housing Choice Vouchers: Options Exist to Increase Program Efficiencies*, GAO-12-300, March 2012.

H.R. 3700 also makes a number of changes to the existing deductions used to calculate adjusted income for the purposes of setting tenant rents.¹⁰

- It increases the allowance for families headed by a person who is elderly or has disabilities from \$400 to \$525, and it increases the allowance for families with dependents from \$480 per dependent to \$525 per dependent. Further, it requires the Secretary to adjust the deductions for inflation.
- It reduces the health and medical expense allowance for elderly and disabled families from amounts that exceed 3% of annual income to amounts that exceed 10% of income.
- It eliminates the earned income disregard for certain public housing residents and Section 8 HCV residents with disabilities.

The bill, as ordered reported by the House Financial Services Committee, also included a provision that would have limited the current child care expense allowance, which allows families to deduct all reasonable unreimbursed expenses, to only those expenses that exceed 5% of a family's annual income. The Congressional Budget Office (CBO) estimated that the effect of the changes in these deductions, including the child care deduction, would be that tenants, in aggregate, would have paid higher rents than under current law.¹¹ This was the cause of some debate during committee markup, where some members raised concerns about how the rent increases would affect the lowest-income families.¹² The committee adopted an amendment during markup reflecting those concerns, requiring the Secretary to establish hardship exemptions for families that show an inability to pay rent increases resulting from the changes in medical and child care expense allowances. During floor consideration, the House adopted an amendment offered by the ranking Member of the House Financial Services Committee, Representative Waters, which removed the limitation on the child care expense allowance.¹³ An additional floor amendment requires that HUD conduct a study of the impact of the expense allowance changes on elderly and disabled families.¹⁴

Payment Standards

The bill also makes a change to payment standards in the HCV program. Currently, PHAs may set their payment standards (or maximum subsidy payments) no higher than 110% of local Fair Market Rent (FMR), except with prior approval of the Secretary. The bill allows PHAs to set their payment standards up to 120% of FMR as a reasonable accommodation for a person with a disability *without* approval of the Secretary.

¹⁰ For greater detail on the income calculation policies contained in current law, see CRS Report R42734, *Income Eligibility and Rent in HUD Rental Assistance Programs: Responses to Frequently Asked Questions*, by (name redacted) and (name redacted) .

¹¹ As shown in the CBO score of the reported bill (available at <https://www.cbo.gov/publication/51174/>), the savings from these provisions were estimated to be greater than the costs. CBO estimated changes in child care and medical expense allowances to result in outlay savings of approximately \$1 billion (i.e., lower subsidies due to increased rent paid by assisted families) over five years. It estimated the changes in elderly, disabled, and dependent allowances to result in outlay savings of approximately \$600 million (i.e., higher subsidies due to reduced rent paid by assisted families) over five years.

¹² For example, during committee markup, Ranking Member Maxine Waters offered an amendment to strike the changes to deductions, which was rejected. For a markup summary, including the amendment, see <http://financialservices.house.gov/calendar/eventsingle.aspx?EventID=400034>.

¹³ H.Amdt. 910 to H.R. 3700.

¹⁴ *Ibid.*

Implementation

Even though CBO estimated rents in aggregate will increase as a result of the provisions in the bill, a given PHA administering public housing may see a net reduction in rent collected from tenants—and thus a reduction in its agency budget—as a result of the changes in H.R. 3700.¹⁵ In light of this, the bill authorizes the Secretary to adjust PHA operating funding in the first year after enactment to account for income losses attributable to changes made by the bill. Further, it requires the Secretary to report to Congress in each of the first two years after enactment on how certain income changes made by the bill have affected program costs and PHA income, including recommendations for legislative changes.

Section 103. Limitation on Public Housing Tenancy for Over-Income Families

Current law establishes a maximum income threshold for initial eligibility for federally assisted housing (generally between 50% or 80% of local area median income, depending on the program), but it is silent with regard to ongoing eligibility. Thus, PHAs and owners that administer federal housing assistance are permitted to establish their own local standards for the treatment of “over-income” tenants (i.e., tenants whose incomes increase above the initial eligibility level after they are receiving housing assistance). Following a HUD inspector general report and subsequent press coverage of the fact that over-income tenants are permitted to reside in public and assisted housing, there have been a number of calls for a change to this policy.¹⁶

H.R. 3700 establishes a new policy on over-income tenants that is applicable to public housing tenants. It defines those with incomes above 120% of local area median income (or other standard, set by the Secretary) as over-income. It requires PHAs to either terminate assistance to families that have been over-income for two consecutive years or charge them the greater of the local HUD-established FMR or an amount equivalent to the federal public housing subsidy being paid for their units. It also requires PHAs to report annually on the number of over-income families they are serving and the number of families on their waiting lists.

Section 104. Limitation on Eligibility for Assistance Based on Assets

Current law establishes no maximum asset limit for eligibility for housing assistance. Instead, actual income from assets and imputed income from assets above a certain threshold (\$5,000) is included in tenant income. As noted previously, Section 102 of the bill changes the way that income is imputed from assets (only imputing income from assets above \$50,000). Section 104 of the bill establishes a maximum asset limit of \$100,000 (to be adjusted in the future for inflation). It also prohibits assistance for families that own homes they have a right to reside in, with certain exceptions. The bill defines what sources are to be included and excluded when determining assets and allows PHAs to permit families to self-certify (1) assets at or below \$50,000 (adjusted in the future for inflation) and (2) that they have no ownership stake in a home. PHAs and owners are given the authority not to enforce the asset limit, establish exceptions, and delay evictions or terminations for up to six months.

¹⁵ While, theoretically, the operating fund formula should adjust a PHA’s federal funding level to make up for a decline in tenant incomes, federal appropriations have not been sufficient in recent years to fully fund the operating fund, resulting in PHAs receiving funding levels less than 100% of their formula eligibility. Thus, a \$1 reduction in rent collected from tenants will be replaced with less than \$1 in federal funding.

¹⁶ For more information on the issue of over-income tenants, see CRS Insight IN10381, *Why Are Over-Income Tenants Living in Public Housing?*, by (name redacted) .

Section 105. Units Owned by Public Housing Agencies

Under current law, if a PHA wishes to lease a PHA-owned unit to a family with a voucher, the PHA must contract with an independent entity to undertake certain PHA functions (such as inspecting the unit). The bill excludes certain properties not directly owned by a PHA but for which the PHA has certain interests (such as being a ground lessor) from these requirements.

Section 106. PHA Project-Based Assistance

PHAs are permitted to “project-base” a portion of their tenant-based vouchers, meaning that PHAs may attach a voucher that would otherwise be tenant-based (meaning the tenant chooses a unit in the private market) to specific housing units selected by the PHA. The ability of PHAs to project-base their vouchers is subject to certain limitations and requirements designed to prevent the concentration of poverty and to ensure families have housing choice. H.R. 3700 makes a number of changes to the current policies governing the project-basing of vouchers, including the following:

- Changing the current limitation on the amount of assistance that may be project-based from 20% of a PHA’s budget to 20% of the PHA’s authorized vouchers (which is a higher standard, thus allowing additional project-basing). PHAs could project-base another 10% of their vouchers in housing for families with veterans, housing that provides supportive services to persons with disabilities or elderly persons, or housing located in areas where vouchers are hard to use.
- Changing the current limit on the percentage of units that may be project-based from 25% of units in a project to the greatest of 25 units or 25% of the units in a project. This limit may be waived for units exclusively available for the elderly or households eligible for supportive services, and it may be increased to up to 40% of units in a project for properties located in areas where vouchers are hard to use or in low-poverty census tracts. The Secretary is authorized to establish additional monitoring and oversight of projects at the 40% limit.
- Increasing the maximum length of a project-based voucher contract from 15 years to up to 20 years, subject to the availability of appropriations and compliance with inspection requirements.
- Allowing PHAs to add project-based units to existing contracts without a competitive selection process and to enter into contracts with properties under construction or recently constructed. PHAs are also given additional flexibility in determining rent adjustments and allowing for owners to use site-based waiting lists and site-specific preferences. Further, project-based vouchers are permitted for certain PHA-owned properties without a competitive process.
- Family Unification Program (FUP) vouchers and Veterans Affairs Supportive Housing (VASH) vouchers will be eligible to be project-based, not subject to additional requirements from the Secretary.

Note that these provisions had also been included in the Project-Based Voucher Improvement Act of 2015 (H.R. 3827) and had been advocated by PHA industry groups and affordable housing developers.¹⁷

¹⁷ For example, see the testimony of Hilary Swab Gawrilow of the Corporation for Supportive Housing, Laura Burns of the Eagle Point Companies on behalf of the National Leased Housing Association, and Stephen W. Merritt of the (continued...)

Section 107. Establishment of Fair Market Rent

HUD publishes FMRs for all metropolitan areas and counties in the country, and those FMRs are used for a variety of purposes, including establishing payment standards (or maximum subsidies) in the HCV program. Currently, HUD publishes proposed FMRs in the *Federal Register* in advance of final FMRs. The bill permits HUD to publish FMRs instead on HUD's website so long as notice of their publication is included in the *Federal Register*, along with other requirements. A similar provision was requested in the President's FY2016 budget.

The bill further clarifies that PHAs are not required to reduce the payment standard for a currently assisted family as a result of a decline in FMR.

Section 108. Collection of Utility Data

PHAs and owners are required to establish utility allowance schedules to determine appropriate subsidies for assisted families, since utilities are considered part of the housing costs that are subsidized by federal assisted housing programs. The bill requires the Secretary, to the extent data can be collected cost-effectively, to publish data regarding utility consumption and costs in local areas that would be useful for the establishment of utility schedules.

Section 109. Public Housing Capital and Operating Funds

PHAs that administer the public housing program receive two primary sources of federal funding: capital funds that may be used for capital needs (replacing heating and cooling systems, windows, roofs, etc.) and operating funds that may be used for operating purposes (staffing, utilities, day-to-day operations, etc.).

Under the bill, PHAs are permitted to establish a capital replacement reserve in which funds will be able to accumulate outside of the current obligation and expenditure deadlines that otherwise apply to capital funding, subject to certain limitations established by the Secretary. This authority was requested in the President's FY2016 budget.

The bill also provides PHAs with the authority to use up to 20% of their operating funds for capital purposes. (Under current law, PHAs may use up to 20% of their capital funding for operating purposes.) This authority was requested in the President's FY2016 budget.

Section 110. Family Unification Program for Children Aging Out of Foster Care

FUP provides HCVs for families involved in the child welfare system and time-limited vouchers for youth who were formerly in foster care. The bill makes a number of changes to the program as it applies to youth. It raises the maximum age of eligibility to 24 years from 21 years, it changes the time limit on the vouchers from 18 months to 36 months, and it expands eligibility to youth who are leaving foster care and are homeless or at risk of being homeless. It further requires HUD to coordinate with other federal agencies to issue guidance to improve coordination between PHAs and public child welfare agencies in carrying out the program.

(...continued)

Norwood Housing Authority before the House Financial Services Committee, Subcommittee on Housing and Insurance, hearing on "The Future of Housing in America: Federal Housing Reforms that Create Housing Opportunities," October 21, 2015, <http://financialservices.house.gov/calendar/eventsingle.aspx?EventID=399751>.

Section 111. Public Housing Heating Guidelines

This section, added by amendment during House floor consideration of the bill, requires HUD to adopt model guidelines for minimum heating requirements for public housing units. HUD’s current regulations specify that heating and cooling systems be “functionally adequate, operable, and in good repair.”¹⁸

Section 112. Use of Voucher for Manufactured Housing

This section, added by amendment during House floor consideration of the bill, changes the subsidy calculation for vouchers used in manufactured housing. Under current law, Housing Choice Voucher subsidy payments can only be used toward the cost of renting a manufactured home. The amendment allows subsidy payments to also cover the costs of mortgage payments, taxes, and insurance when a family owns the unit but leases the land on which it is sited. This policy change was included in assisted housing reform legislation from prior Congresses.

Section 113. Preference for United States Citizens or Nationals

This section, added by amendment during House floor consideration of the bill, allows the Guam Housing Authority to give preference to U.S. citizens and nationals over all other eligible noncitizens for purposes of federal housing assistance. This policy change has been advocated by the Delegate from Guam out of concern that migrants from the Federated States of Micronesia, Palau, and the Marshall Islands are competing with Guam residents for limited housing assistance.¹⁹

Section 114. Exception to Public Housing Agency Resident Board Member Requirement

This section, added by amendment during House floor consideration of the bill, codifies a provision that has been contained in annual appropriations laws for many years. It exempts several named PHAs from the requirement to include a housing assistance recipient from the PHA’s governing board and establishes an alternative requirement the entities must meet. The requirement that an assisted housing recipient be a member of the PHA governing board is meant “to promote a better understanding of resident concerns and to foster better relations and communication between residents and PHAs.”²⁰ However, for the named PHAs, the requirement is in conflict with state or local laws governing conflict of interest.

¹⁸ 24 C.F.R. 5.703.

¹⁹ See United States Congresswoman Madeleine Z. Bordallo, “Bordallo Housing Amendment Passes House,” press release, February 2, 2016, <https://bordallo.house.gov/media-center/press-releases/bordallo-housing-amendment-passes-house>.

²⁰ For background, see Department of Housing and Urban Development, “Public Housing Agency Organization; Required Resident Membership on Board of Directors or Similar Governing Body; Final Rule,” 64 *Federal Register* 56827, October 21, 1999.

Title II: Rural Housing

Section 201. Delegation of Guaranteed Rural Housing Loan Approval

Under the Section 502 Single Family Housing Guaranteed Loan Program, the Rural Housing Service (RHS) of the U.S. Department of Agriculture (USDA) provides guarantees on certain home mortgage loans that are made by private lenders. Section 502 guaranteed loans are available to low- and moderate-income residents of rural areas. Currently, RHS must approve each loan guarantee, which can increase the amount of time it takes to obtain a Section 502 loan. The bill allows the Secretary of Agriculture to delegate authority to approve Section 502 loan guarantees to certain approved lenders that originate Section 502 mortgages, subject to standards to be set by the Secretary. This is similar to authority granted to certain lenders that originate mortgages insured by the Federal Housing Administration (FHA), who have the authority to endorse mortgages for FHA insurance, subject to certain conditions. The Department of Veterans Affairs (VA) similarly has a process to allow certain lenders to close VA-guaranteed loans without prior VA approval. This authority was requested in the President's FY2016 budget.

Section 202. Guaranteed Underwriting User Fee

This section, added by amendment during House floor consideration of the bill, authorizes USDA to collect a fee of up to \$50 per loan for lenders accessing the automated underwriting system for single family loans. The proceeds from this fee are to be used for technology needs associated with the automated underwriting system. Congress provided USDA with similar authority to charge this fee—authority the department had requested—in the FY2016 appropriations law. The President's FY2017 budget requested that the authority be made permanent.

Title III: FHA Mortgage Insurance for Condominiums

This title makes several changes to FHA condominium approval requirements intended to make it easier for some condominium buildings to qualify for FHA approval. These changes address the recertification process for a building to maintain FHA approval, the process for requesting exceptions to the maximum amount of commercial space allowed in a building, the extent to which certain types of transfer fees that may be required to be paid when a condominium is sold are allowed, and the share of units that are required to be owner-occupied.

Section 301. Modification of FHA Requirements for Mortgage Insurance for Condominiums

FHA provides mortgage insurance on certain mortgages that are made by private lenders. In order for FHA to insure a mortgage on a condominium unit, the entire condominium building must have FHA approval. The requirements for a building to obtain FHA approval are in FHA's Condominium Project Approval and Processing Guide.²¹ FHA's requirements are intended to ensure that FHA insures mortgages on condominiums only in buildings that are well-managed

²¹ The Condominium Project Approval and Processing Guide is available at <http://portal.hud.gov/hudportal/documents/huddoc?id=11-22mlguide.pdf>. Certain temporary changes to condominium approval requirements were made in FHA Mortgagee Letter 2012-18 and extended through August 31, 2016, by Mortgagee Letter 2014-17. Additional temporary changes to the condominium approval process, including changes related to project recertification and owner-occupancy ratios, were included in Mortgagee Letter 2015-27. Mortgagee letters can be found at http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips/letters/mortgagee.

and financially viable, since broader problems in a condominium building could lead to individual homeowners in the building defaulting on their mortgages. However, some have argued that the requirements for a condominium building to obtain FHA approval are too strict, leading to fewer buildings with FHA approval.²² Fewer condominium buildings with FHA approval, in turn, leads to fewer condominiums being eligible for FHA-insured mortgages (including FHA-insured reverse mortgages).

The bill amends Section 203 of the National Housing Act to make the following changes to FHA condominium requirements:

- In order for a condominium building to receive FHA approval, either FHA or an FHA-approved lender must perform a review and certify that the building meets FHA's eligibility requirements. The approval lasts for two years. After that time, the building must be recertified to ensure that it continues to meet FHA's requirements. Section 301 directs the HUD Secretary to streamline its requirements in order to make the recertification process "substantially" less burdensome than the initial certification process. It directs the Secretary to consider options such as increasing the amount of time before a building must be recertified or allowing information to be updated rather than being resubmitted in its entirety.
- In order for a condominium to receive FHA approval, no more than 25% of the building can consist of non-residential or commercial space. FHA considers exceptions on a case-by-case basis that must be granted by the FHA Homeownership Center with jurisdiction in the area and cannot be granted by the FHA-approved lender. Section 301 provides that exceptions to the 25% limit on commercial space could be made by either the applicable FHA Homeownership Center or the FHA-approved lender. It also specifies that factors related to the local economy or the building itself should be considered in the decision to grant an exception. The Secretary is directed to issue implementing regulations within 90 days.
- HUD regulations at 24 C.F.R. 203.41 specify that a property with an FHA-insured mortgage must not be subject to any restrictions that would prevent the borrower from freely transferring the property. Sometimes, condominiums include deed-based transfer fees—that is, fees that must be paid to a developer or the condominium association when the condominium unit is sold. These fees could be interpreted as a restriction that violates 24 C.F.R. 203.41, and therefore condominiums that are subject to these fees may not be eligible for FHA mortgage insurance.

In 2012, the Federal Housing Finance Agency (FHFA) promulgated a final rule that prohibited Fannie Mae and Freddie Mac from purchasing mortgages that have a private transfer fee covenant (for example, a fee that is required to be paid to a private developer).²³ However, it provides an exception that allows transfer fees that are paid to a condominium association so long as the fee is used only to directly benefit the condominium project. Section 301 applies the FHFA

²² For example, see the National Association of Realtors, *Condominium Resource Book*, May 13, 2015, <http://www.realtor.org/topics/condominiums/condominium-resource-book>.

²³ Federal Housing Finance Agency, "Private Transfer Fees," 77 *Federal Register* 52, March 16, 2012, <https://www.gpo.gov/fdsys/pkg/FR-2012-03-16/pdf/2012-6414.pdf>.

- regulations regarding transfer fees to FHA-insured condominium mortgages, thereby allowing certain types of transfer fees that have a community benefit.
- In order to receive FHA approval, at least 50% of the condominium units in the building must be owner-occupied or sold to households that will be owner-occupants. (The requirement is 30% for buildings that are under construction or less than one year old.) Section 301 directs the Secretary to issue guidance on the required percentage of owner-occupied units, and a justification for the percentage, within 90 days of the bill being passed. If the Secretary does not issue such guidance, the bill requires that at least 35% of the units in a building must be owner-occupied. It allows the Secretary of HUD to increase the owner-occupancy percentage requirement on a case-by-case basis and directs the Secretary to consider factors related to the local economy and factors specific to the building in determining the owner-occupancy percentage.

Title IV: Housing Reforms for the Homeless and for Veterans

Section 401. Definition of Geographic Area for Continuum of Care Program

The Continuum of Care (CoC) program is one of the three Homeless Assistance Grants administered by HUD.²⁴ Funds are awarded to homeless services organizations to provide permanent housing, transitional housing, and supportive services to people experiencing homelessness or who are at risk of homelessness. Grantees apply for funds as part of “collaborative applicants” that are geographically based—typically cities, counties, and combinations of both. The statute provides that collaborative applicants “shall be established for a geographic area by the relevant parties in that geographic area,” and the term “geographic area” is used multiple times throughout the statute governing the Homeless Assistance Grants.²⁵

The statute governing the Homeless Assistance Grants defines the term “geographic area” as “a State, metropolitan city, urban county, town, village, or other nonentitlement area, or a combination or consortia of such, in the United States, as described in section 5306 of this title.”²⁶ Section 401 of H.R. 3700 gives the HUD Secretary the authority to define, via notice, the term “geographic area” for purposes of the CoC program. This provision is also contained in the Housing Assistance Efficiency Act (H.R. 1047).

Section 402. Inclusion of Public Housing Agencies and Local Redevelopment Authorities in Emergency Solutions Grants

The Emergency Solutions Grant (ESG) program is one of the three Homeless Assistance Grants administered by HUD. ESG funds are distributed to local communities and states via formula. Those grantees can, in turn, either operate programs for homeless individuals themselves through one of their governmental departments or subgrant funds to private nonprofit organizations.

²⁴ For more information, see CRS Report RL33764, *The HUD Homeless Assistance Grants: Programs Authorized by the HEARTH Act*, by (name redacted)

²⁵ See 42 U.S.C. §11360a.

²⁶ 42 U.S.C. §11360(8).

Section 402 of H.R. 3700 makes PHAs and local redevelopment authorities eligible subgrantees of ESG funds. Currently, unless PHAs or local redevelopment authorities are operating as departments of government or as private nonprofits, they are not eligible grantees of ESG funds.

Section 403. Special Assistant for Veterans Affairs in the Department of Housing and Urban Development

Section 403 of H.R. 3700 creates in the Office of the HUD Secretary a special assistant for veterans affairs. This position will report directly to the Secretary and, among his or her duties, will ensure that veterans have fair access to HUD housing programs; coordinate programs related to veterans; serve as liaison with the VA; establish and maintain relationships with the U.S. Interagency Council on Homelessness (USICH), state and local governments, and other organizations that serve veterans; and provide information and advice regarding housing for veterans. This provision was also contained in the Homes for Heroes Act of 2015 (H.R. 251), which passed the House in July 2015.

Section 404. Annual Supplemental Report on Veteran Homelessness

Section 404 of H.R. 3700 requires HUD and VA, in collaboration with the USICH, to issue a report to Congress that (1) includes data on homeless veterans from the Annual Homeless Assessment Report to Congress; (2) reports on the number of veterans served by the HUD-VA Supportive Housing Program, which provides Housing Choice Vouchers for homeless veterans (HUD-VASH), their socioeconomic characteristics, and information about entities administering the vouchers; (3) summarizes provisions for veterans in PHA plans and consolidated plans; (4) describes the activities of the special assistant for veterans affairs; (5) describes the efforts of HUD and other members of the USICH to coordinate delivery of housing and services to veterans; and (6) includes HUD costs related to programs and activities for veterans. This provision was also contained in the Homes for Heroes Act of 2015 (H.R. 251), which passed the House in July 2015.

Section 405. Reopening the Public Comment Period for Continuum of Care Program Regulations

This section, added by amendment during House floor consideration of the bill, requires HUD to reopen the comment period on the interim rule implementing changes to HUD's Continuum of Care (CoC) program, one of the homeless assistance grants. The original comment period for the interim rule closed November 16, 2012. HUD has stated its intention to reopen the comment period for the CoC program but has not yet done so.²⁷

²⁷ See U.S. Department of Housing and Urban Development, letter from Ann Oliva to Grant Recipients, CoC Leaders and Stakeholders, July 2014, p. 2, <https://www.hudexchange.info/resources/documents/LetterfromAnnOlivatoGrantRecipients.pdf>.

Title V: Miscellaneous

Section 501. Inclusion of Disaster Housing Assistance Program in Certain Fraud and Abuse Prevention Measures

The Disaster Housing Assistance program provides rental vouchers to families displaced by disasters. It is administered by HUD and PHAs but funded through a mission assignment from the Federal Emergency Management Agency. The bill clarifies that the Disaster Housing Assistance program is a program of HUD, which subjects the program to certain income verification procedures. Similar language has been enacted as a part of recent appropriations laws.²⁸ This provision makes it permanent law.

Section 502. Energy Efficiency Requirements Under Self-Help Homeownership Opportunity Program

The Self-Help Homeownership Opportunity Program (SHOP) provides grants to nonprofits to purchase home sites or develop infrastructure to support sweat equity homeownership programs, such as Habitat for Humanity. HUD includes requirements for housing assisted through the program in each year's Notice of Funding Availability that solicits applications for SHOP funding. In the past, HUD has required housing assisted with SHOP funds to meet certain energy efficiency requirements, namely Energy Star requirements.²⁹ The bill prohibits HUD from applying a higher energy efficiency standard (such as Energy Star) than the standards that are required by law for new construction under certain HUD and USDA housing programs.³⁰

Section 503. Data Exchange Standardization for Improved Interoperability

This provision requires HUD, in conjunction with a working group convened by the Office of Management and Budget, to establish certain standards to promote data exchanges across various programs. Similar language has been added to various social assistance program laws (i.e., child welfare, Temporary Assistance for Needy Families, SNAP, and unemployment insurance) in recent years.

Title VI: Reports

Section 601. Report on Interagency Family Economic Empowerment Strategies

This section, added by amendment during House floor consideration of the bill, requires HUD to consult with the Department of Labor and report annually to Congress on interagency strategies to promote and improve “family economic empowerment” among assisted housing residents through the provision of supportive services.

²⁸ For example, see Section 224 of Division L of P.L. 114-113, the FY2016 omnibus appropriations law.

²⁹ For example, see HUD's FY2014 SHOP NOFA at <http://portal.hud.gov/hudportal/documents/huddoc?id=2014SHOPnofa.pdf>.

³⁰ These energy efficiency standards are at 42 U.S.C. §12709.

Title VII: Housing Opportunities for Persons with AIDS

Section 701. Formula and Terms for Allocations to Prevent Homelessness for Individuals Living with HIV or AIDS

This section, added by amendment during House floor consideration of the bill, makes modifications to the allocation formula for the Housing Opportunities for Persons with AIDS (HOPWA) grant program.³¹ The changes adjust the formula factors to account for the number of people living with HIV/AIDS, as opposed to cumulative AIDS cases (a number that includes those who have died), as well as housing costs and poverty rates, factors that are not currently included in the formula. Both the Obama and George W. Bush Administrations have requested updates to the HOPWA formula in their budget requests, including, most recently, in the President's FY2017 budget.

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³¹ For more information about HOPWA and the formula, see CRS Report RL34318, *Housing for Persons Living with HIV/AIDS*, by (name redacted)

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