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An Analysis of the Corker-Warner GSE Reform Bill and Its Implications for Affordable Housing Finance

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On June 25, 2013, Senators Bob Corker (R-TN) and Mark Warner (D-VA) introduced "The GSE Reform Act of 2013." A bipartisan group of five senators co-sponsored the bill, including Senators Heidi Heitkamp (D-ND), Dean Heller (R-NV), Mike Johanns (R-NB), Jerry Moran (R-KS), and Jon Tester (D-MT).

Unfortunately, the Corker-Warner legislation is problematic and raises significant red flags about Congress' view of the future of the secondary market's obligation to extend affordable housing opportunities—in the form of homeownership and rental units—to low-income, minority and traditionally underserved individuals. As a result, it could seriously jeopardize the government's previously successful efforts to have the private market make more meaningful commitments to low-income homeownership as a means of building intergenerational wealth. It could also produce an environment where affordable single-family mortgages are almost exclusively limited to Community Reinvestment Act mortgage products or direct government loan programs. That result would be unacceptable.

The Corker-Warner legislation comes at a time when the topic of reforming the Government-Sponsored Enterprises (GSEs) and the secondary mortgage market dominates discussions about the future of housing finance and policy. It's been nearly five years since the nation's GSEs, Fannie Mae and Freddie Mac, entered conservatorship. The need to consider what happens next is critical to ensuring a healthy, active, and sustainable secondary mortgage market.

In this issue brief, NCRC presents a charted analysis of some major issues addressed in the Corker-Warner legislation:

- The Role of the Federal Government
- Affordable Housing Requirements
- Underwriting Criteria
- Regulatory Oversight
- Government Guarantees and Taxpayer Risk

Each chart includes a brief overview of the status quo, the changes created by the bill, and NCRC's initial analysis of the change.

ISSUE:

The Role of the Government

THE STATUS QUO:

The federally chartered, but privately owned, Freddie Mac and Fannie Mae, are responsible for purchasing single and multifamily mortgages, holding the loans in their personal portfolios or securitizing them, and selling the resulting mortgage-backed securities to investors. The securities are presumed to be backed by an implicit government guarantee.

In addition, both Fannie Mae and Freddie Mac, as corporations, benefit from an implicit government guarantee. That guarantee has been made explicit by each entity being placed under conservatorship with the Federal Housing Finance Agency.

WHAT CORKER-WARNER CHANGES:

GOVERNMENT ROLE CHANGE:

Over the course of five years, the bill would merge the Federal Housing Finance Agency, Freddie Mac, and Fannie Mae into a new independent federal agency: the Federal Mortgage Insurance Corporation (FMIC). The FMIC will offer an explicit government guarantee, purchase and securitize single and multifamily mortgage portfolios, and provide regulatory oversight of the Federal Home Loan Banks.

ANALYSIS OF THE CHANGE:

THE BILL GETS THIS RIGHT WITH ONE SIGNIFICANT EXCEPTION:

NCRC believes that Corker-Warner correctly recognizes that preserving a federal government guarantee is critical to ensuring access to mortgage capital for homebuyers and multifamily developers and that the guarantee is best administered by an independent federal agency. Yet, the legislation still falls short on this issue in one important respect:

> Mortgage lending backed by the full faith and credit of the United States must be accompanied by an affirmative obligation to serve all communities equitably and responsibly.

Strong affordable housing commitments must be tied to any government guarantee.

ISSUE:

Affordable Housing Requirements

THE STATUS QUO:

Currently, Fannie Mae and Freddie Mac are required to meet affordable housing goals: an annually regulated amount of their mortgage transactions must involve low-income borrowers and renters.

WHAT CORKER-WARNER CHANGES:

AFFORDABLE HOUSING CHANGE 1:

Under Corker-Warner, the federal government's new secondary market utility, the Federal Mortgage Insurance Corporation, will not have any affordable housing goals.

ANALYSIS OF THE CHANGE:

THE BILL GETS THIS WRONG:

When the federal government offers a guarantee for home mortgages, the government must insist that the entities receiving the guarantee provide affordable and accessible housing for all communities. Mortgage lending backed by the full faith and credit of the United States must be accompanied by an affirmative obligation to serve all communities equitably and responsibly.

WHAT CORKER-WARNER CHANGES:

AFFORDABLE HOUSING CHANGE 2:

Corker-Warner replaces affordable housing goals with a requirement that each guaranteed loan be assessed a fee of 5 to 10 basis points (approximately a hundredth of one percent or one penny out of every dollar). The fees would be allocated to two existing federal funds:

- 80 percent of the fees would pass to the National Housing Trust Fund administered by HUD;
- 20 percent of the fees would go to the Capital Magnet Fund, which provides funding for Community Development Financial Institutions (CDFIs) and is administered by the Treasury Department.

ANALYSIS OF THE CHANGE:

THIS CHANGE RAISES A RED FLAG:

NCRC believes that expanding housing opportunities through the National Housing Trust Fund and providing capital to CDFI's through the Capital Magnet Fund are both very important goals that must be funded **in addition to** the equally important goal of expanding homeownership opportunities for individuals at all income levels.

Based on the fees proposed, it is unclear that the assessment could deliver similar numbers of affordable rental housing units and homeownership opportunities for low-income and minority families as currently exist with the affordable housing goals in place at Fannie and Freddie.

Also, as currently written, the Capital Magnet funds are unrestricted in their use, meaning they can be used for goals other than housing (i.e. small business loans, etc.).

ISSUE:

Underwriting Criteria

THE STATUS QUO:

Currently, there are no statutory underwriting requirements in place for the secondary mortgage market as a whole. But the qualified mortgage (QM) definition that is expected to go into effect in January of 2014 and the qualified residential mortgage (QRM) definition will essentially create federal underwriting standards for mortgages in both the primary and secondary markets.

WHAT CORKER-WARNER CHANGES:

UNDERWRITING CRITERIA CHANGE:

Under Corker-Warner, the underwriting criteria for secondary market access through the Federal Mortgage Insurance Corporation would be the same underwriting criteria as that established for Qualified Mortgages with one exception: mortgage recipients will be required to make a five percent down payment.

ANALYSIS OF THE CHANGE:

THE BILL GETS THIS RIGHT WITH ONE SIGNIFICANT EXCEPTION:

NCRC has consistently argued that underwriting standards for the secondary market (i.e. QRM) should be the same as the underwriting criteria established for qualified mortgages; the Corker-Warner bill does this and, in doing so, helps to ensure broader access to mortgage capital.

THE EXCEPTION:

However, Corker-Warner's five percent down payment requirement is not a part of the qualified mortgage definition and will be problematic for millions of working-class families seeking to become homeowners. NCRC continues to believe that other underwriting criteria, such as those adopted in the final qualified mortgage rule, are much more effective predictors of successful loan performance and do not unnecessarily restrict access to mortgage capital.

ISSUE:

Regulatory Oversight

THE STATUS QUO:

The Federal Housing Finance Agency currently oversees the federally chartered, but privately owned, Freddie Mac and Fannie Mae; both entities are operating under conservatorship.

WHAT CORKER-WARNER CHANGES:

REGULATORY OVERSIGHT CHANGE:

The newly created Federal Mortgage Insurance Corporation would be overseen by a five-person board of directors, a Chairman and four members of the Board. Each board member would be appointed by the President of the United States and confirmed by the Senate.

Other than the chair, Corker-Warner requires the President to appoint an experienced individual from each of the following four fields:

(1) asset management;

(2) mortgage insurance markets;

(3) working with lenders with less than $10,000,000,000 in assets; and

(4) multifamily housing development.

ANALYSIS OF THE CHANGE:

THIS CHANGE RAISES A RED FLAG:

By creating a board that could primarily be comprised of industry professionals, the bill ignores what should be a central goal of the secondary market: *promoting access to capital for a diverse range of credit worthy consumers.* Professionals with backgrounds and experience in expanding access should play a primary role in the agency's leadership.

In addition, NCRC has concerns about the wisdom of establishing an oversight structure where five separate individuals must go through a senate confirmation process as opposed to an agency led by a single director.

ISSUE:

Government Guarantee and Taxpayer Risk

THE STATUS QUO:

Currently, there is an implicit guarantee that the federal government will reimburse investors in Fannie or Freddie mortgage-backed securities for losses. There is also an implicit guarantee, currently made explicit by FHFA's conservatorship, that the federal government will indemnify Fannie and Freddie from financial loss.

WHAT CORKER-WARNER CHANGES:

GOVERNMENT GUARANTEE AND TAXPAYER RISK CHANGE:

Corker-Warner provides originators with access to an explicit government guarantee in exchange for an assessed fee.

This guarantee is accessible only after the investor assumes 10 percent of the loss risk; the remaining 90 percent of risk would be payable in catastrophic situations from a mortgage insurance fund made up of assessed fees held by Federal Mortgage Insurance Corporation.

ANALYSIS OF THE CHANGE:

THIS CHANGE RAISES A RED FLAG:

Despite claims to the contrary, it is not clear that Corker-Warner prevents an implicit government guarantee of any losses that amounted to more than the dollars contained in the Federal Mortgage Insurance Corporation's mortgage insurance fund.

Because one cannot assess for the full amount of risk, American taxpayers are still on the hook for any difference between the 90 percent catastrophic risk guarantee and the assessments in the fund in the event of another catastrophic incident (i.e. another housing crisis).