

PROTECT AFFORDABLE MORTGAGES FOR VETERANS ACT
OF 2018

SEPTEMBER 26, 2018.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. HENSARLING, from the Committee on Financial Services,
submitted the following

R E P O R T

[To accompany H.R. 6737]

The Committee on Financial Services, to whom was referred the bill (H.R. 6737) to amend the Economic Growth, Regulatory Relief, and Consumer Protection Act to clarify seasoning requirements for certain refinanced mortgage loans, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

On September 7, 2018, Rep. Lee Zeldin introduced H.R. 6737, the “Protect Affordable Mortgages for Veterans Act of 2018.” H.R. 6737 would amend section 306(g) of the National Housing Act (12 U.S.C. 1721(g)(1)), as amended to provide a technical fix so that recently executed loans refinanced by the U.S. Department of Veterans Affairs (VA) Home Loans can remain eligible for pooling in the Government National Mortgage Association (Ginnie Mae) securities.

BACKGROUND AND NEED FOR LEGISLATION

The goal of H.R. 6737 is to provide a technical correction that will allow previously executed loans refinanced by VA Home Loans to remain eligible for pooling into securities issued by the Government National Mortgage Association (“GNMA” or “Ginnie Mae”).

In recent years, the proportion of VA guaranteed loans in Ginnie Mae pools has grown, and in 2017, Ginnie Mae noted unusually fast prepayment speeds in its securities. Ginnie Mae’s internal research and work with the VA shows a market for VA loans that is somewhat saturated with lenders and brokers making dozens of calls and sending dozens of letters to veterans in an attempt to get

these homeowners to refinance their mortgages. Some lenders in the VA Home Loan space engaged in the practice of “churning”—the refinancing of a home loan over and over again to generate fees and profits for lenders at the expense of the consumer and taxpayers. During these instances, the borrower may be left no better off and, in some cases, worse off in the long term.

In response to these market dynamics, Ginnie Mae, in consultation with VA, decided in late 2016, that the most expeditious approach to curbing abuse in the short-term was to change its program standards for pooling streamline refinanced loans. Additionally, in December 2017, Ginnie Mae published APM 17–06, which instituted seasoning requirements on streamlined and cash-out refinances (encompassing loans from the Federal Housing Administration, VA, and U.S. Department of Agriculture).

On May 24, 2018, President Trump signed into law S. 2155, the “Economic Growth, Regulatory Relief, and Consumer Protection Act” (Pub. Law 115–174). Section 309 of EGRRCPA added new requirements that were specific to VA refinances. Section 309 was effective upon enactment. Section 309(a) provides new requirements that must be met for refinanced Veterans Affairs loans to obtain a guarantee and be eligible for guaranteed timely principal and interest payments by Ginnie Mae. Those requirements include:

1. Fee recoupment within 36 months
2. Net tangible benefits to the borrower, measured as a decrease of at least 50 basis points in the interest rate in the case of a fixed-to-fixed refinance, and at least 200 basis points in the interest rate in the case of a fixed-to-floating refinance; and
3. Seasoning of the initial loan for at least 210 days, calculated from the date of the first payment made by the borrower to the note date of the refinanced loan (at least six monthly payments must also be made by the borrower).

To implement Section 309, Ginnie Mae revised its Mortgage Backed Securities (MBS) pooling eligibility requirements and amended its MBS Guide to specify how Ginnie MBS are affected by the EGRRCPA. Ginnie Mae delineated that securities with an issuance date of May 1, 2018 or earlier were unaffected even if they do not meet the condition of the EGRRCPA, and Ginnie Mae securities with an issuance dated June 1, 2018 or later would comply with the new pooling requirements and conditions of the Act. As a result, there are a small number of loans that do not conform with the Act’s requirements that were either originated or in the process of being originated before the May 31, 2018 date of Ginnie’s notice regarding the new seasoning requirements.

Some VA loans that had been closed, but not yet securitized by May 24, 2018, the day that S. 2155 became law, were prevented from being eligible for GNMA securitization. Approximately 2,500 loans are designated as “orphan” loans when they were eligible for GNMA securitization at the time of closing but lost such eligibility after S. 2155 was enacted.

As a result of the changes, some lenders now hold VA-guaranteed refinances that are not eligible for Ginnie Mae pooling, despite the fact that the loans were eligible at the time of closing. For some lenders, this situation has the potential to create liquidity strains. H.R. 6737 appropriately strikes the Ginnie Mae seasoning provi-

sion to address the orphaning of existing loans and prevent future problems regarding re-performing loans, loss mitigation activities, and cash-out refinances, while doing nothing to weaken important anti-churning requirements.

Nothing in this bill eliminates the VA loan seasoning and anti-churning protections. While the language in H.R. 6737 removes Ginnie Mae's seasoning provision for its MBS, this was a duplicative and unnecessary requirement for Ginnie Mae. Section 309 of S. 2155 also contained similar loan seasoning requirements for loans originated through the VA, which Ginnie pools into its MBS. This provision of law will still be in effect and veterans will continue to have protection against loan churning.

H.R. 6737 addresses concerns raised by Senators Thom Tillis (R-NC) and Elizabeth Warren (D-MA). Senators Tillis and Warren sent a letter to the Department of Housing and Urban Development on June 11, 2018 that stated, "We recognize that there are a small number of loans that do not conform with the Act's requirements that were either originated or in the process of being originated before the May 31st date of Ginnie Mae's APM regarding new seasoning requirements. It was not our intention to "orphan" those loans, and we urge Ginnie and the VA to work with lenders and other federal agencies to attempt to ensure that those loans are not adversely affected by the enactment of the Act." The legislation ensures that certain loans, currently ineligible for GNMA securitization at closing, will continue to be eligible.

HEARINGS

No hearings were held on H.R. 6737.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on September 13, 2018, and ordered H.R. 6737 to be reported favorably to the House, without amendment, by a recorded vote of 49 yeas to 0 nays (Record vote no. FC-202), a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The sole recorded vote was on a motion by Chairman Hensarling to report the bill favorably to the House without amendment. The motion was agreed to by a recorded vote of 49 yeas to 0 nays (Record vote no. FC-202), a quorum being present.

Record vote no. FC-202

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Maxine Waters (CA)	X		
Mr. McHenry				Mrs. Carolyn B. Maloney (NY)	X		
Mr. King	X			Ms. Velázquez	X		
Mr. Royce (CA)				Mr. Sherman	X		
Mr. Lucas	X			Mr. Meeks			
Mr. Pearce				Mr. Capuano			
Mr. Posey	X			Mr. Clay			
Mr. Luetkemeyer	X			Mr. Lynch	X		
Mr. Huizenga	X			Mr. David Scott (GA)	X		
Mr. Duffy	X			Mr. Al Green (TX)	X		
Mr. Stivers	X			Mr. Cleaver			
Mr. Hultgren	X			Ms. Moore	X		
Mr. Ross	X			Mr. Ellison			
Mr. Pittenger				Mr. Perlmutter	X		
Mrs. Wagner	X			Mr. Himes	X		
Mr. Barr	X			Mr. Foster	X		
Mr. Rothfus	X			Mr. Kildee	X		
Mr. Messer				Mr. Delaney	X		
Mr. Tipton	X			Ms. Sinema	X		
Mr. Williams	X			Mrs. Beatty	X		
Mr. Poliquin	X			Mr. Heck	X		
Mrs. Love	X			Mr. Vargas	X		
Mr. Hill	X			Mr. Gottheimer			
Mr. Emmer	X			Mr. Gonzalez (TX)	X		
Mr. Zeldin	X			Mr. Crist	X		
Mr. Trott	X			Mr. Kihuen	X		
Mr. Loudermilk	X						
Mr. Mooney (WV)	X						
Mr. MacArthur	X						
Mr. Davidson	X						
Mr. Budd	X						
Mr. Kustoff (TN)	X						
Ms. Tenney	X						
Mr. Hollingsworth	X						

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the bill contains no measure that authorizes funding, so no statement of general performance goals and objectives for which any measure authorizes funding is required.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

The Committee has not received an estimate of new budget authority contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to Sec. 402 of the Congressional Budget Act of 1974. In compliance with clause 3(c)(2) of rule XIII of the Rules of the House, the Committee opines that H.R. 6737 will not establish any new budget or entitlement authority or create any tax expenditures.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

The cost estimate prepared by the Director of the Congressional Budget Office pursuant to Sec. 402 of the Congressional Budget Act of 1974 was not submitted timely to the Committee.

FEDERAL MANDATES STATEMENT

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995.

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not

contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

DUPLICATION OF FEDERAL PROGRAMS

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Pub. L. No. 95–220, as amended by Pub. L. No. 98–169).

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, (115th Congress), the following statement is made concerning directed rule makings: The Committee estimates that the bill requires no directed rule makings within the meaning of such section.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section titles the bill as the “Protect Affordable Mortgages for Veterans Act of 2018.”

Section 2. Requirements for Ginnie Mae guarantee of securities

Section 2 amends paragraph (1) of section 306(g) of the National Housing Act (12 U.S.C. 1721(g)(1)) by striking the second sentence (as added by section 309(b) of Public Law 115–174).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets and existing law in which no change is proposed is shown in roman):

NATIONAL HOUSING ACT

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TITLE III—NATIONAL MORTGAGE ASSOCIATIONS

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MANAGEMENT AND LIQUIDATION FUNCTIONS—GOVERNMENT
NATIONAL MORTGAGE ASSOCIATION

SEC. 306. (a) To carry out the purposes set forth in paragraph (c) of section 301, the Association is authorized and directed, as of the close of the cutoff date determined by the Association pursuant to section 303(d) of this title, to establish separate accountability for all of its assets and liabilities (exclusive of capital, surplus, surplus reserves, and undistributed earnings to be evidenced by preferred stock as provided in section 303(d) hereof, but inclusive of all rights and obligations under any outstanding contracts), and to maintain such separate accountability for the management and orderly liquidation of such assets and liabilities as provided in this section.

(b) For the purposes of this section and to assure that, to the maximum extent, and as rapidly as possible, private financing will be substituted for Treasury borrowings otherwise required to carry mortgages held under the aforesaid separate accountability, the Association is authorized to issue, upon the approval of the Secretary of the Treasury, and have outstanding at any one time obligations having such maturities and bearing such rate or rates of interest as may be determined by the Association with the approval of the Secretary of the Treasury, to be redeemable at the option, of the Association before maturity in such manner as may be stipulated in such obligations; but in no event shall any such obligations be issued if, at the time of such proposed issuance, and as a consequence thereof, the resulting aggregate amount of its outstanding obligations under this subsection would exceed the amount of the Association's ownership under the aforesaid separate accountability, free from any liens or encumbrances, of cash, mortgages, and obligations of the United States or guaranteed thereby, or obligations, participations, or other instruments which are lawful investments for fiduciary, trust, or public funds. The proceeds of any private financing effected under this subsection shall be paid to the Secretary of the Treasury in reduction of the indebtedness of the Association to the Secretary of the Treasury under the aforesaid separate accountability. The Association shall insert appropriate language in all of its obligations issued under this subsection clearly indicating that such obligations, together with the interest thereon, are not guaranteed by the United States and do not constitute a debt or obligation of the United States or of any agency or instrumentality thereof other than the Association. The Association is authorized to purchase in the open market any of its obligations outstanding under this subsection at any time and at any price.

(c) No mortgage shall be purchased by the Association in its operations under this section except pursuant to and in accordance with the terms of a contract or commitment to purchase the same made prior to the cutoff date provided for in section 303(d), which contract or commitment became a part of the aforesaid separate accountability, and the total amount of mortgages and commitments held by the Association under this section shall not, in any event, exceed \$3,350,000,000: *Provided*, That such maximum amount shall be progressively reduced by the amount of cash realizations on account of principal of mortgages held under the aforesaid separate accountability and by cancellation of any commitments to purchase mortgages thereunder, as reflected by the books of the Asso-

ciation, with the objective that the entire aforesaid maximum amount shall be eliminated with the orderly liquidation of all mortgages held under the aforesaid separate accountability: *And provided further*, That nothing in this subsection shall preclude the Association from granting such usual and customary increases in the amounts of outstanding commitments (resulting from increased costs or otherwise) as have theretofore been covered by like increases in commitments granted by the agencies of the Federal Government insuring or guaranteeing the mortgages. There shall be excluded from the total amounts set forth in this subsection the amounts of any mortgages which, subsequent to May 31, 1954, are transferred by law to the Association and held under the aforesaid separate accountability.

(d) The Association may issue to the Secretary of the Treasury its obligations in an amount outstanding at any one time sufficient to enable the Association to carry out its functions under this section, such obligations to mature not more than five years from their respective dates of issue, to be redeemable at the option of the Association before maturity in such manner as may be stipulated in such obligations. Each such obligation shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average rate on outstanding marketable obligations of the United States as of the last day of the month preceding the issuance of the obligation of the Association. The Secretary of the Treasury is authorized to purchase any obligations of the Association to be issued under this section, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under chapter 31 of title 31, United States Code, are extended to include any purchases of the Association's obligations hereunder.

(e) Notwithstanding any other provision of law, the Association is authorized, under the aforesaid separate accountability, to make commitments to purchase, and to purchase, service, or sell any obligations offered to it by the Secretary of Housing and Urban Development, or any mortgages covering residential property offered to it by any Federal instrumentality, or the head thereof. There shall be excluded from the total amounts set forth in subsection (c) the amounts of any obligations or mortgages purchased by the Association pursuant to this subsection.

(f) Notwithstanding any of the provisions of this Act or of any other law, an amount equal to the net decrease for the preceding fiscal year in the aggregate principal amount of all mortgages owned by the Association under this section shall, as of July 1 of each of the years 1961 through 1964, be transferred to and merged with the authority provided under section 305(a), and the amount of such authority as specified in section 305(c) shall be increased by an amount so transferred.

(g)(1) The Association is authorized, upon such terms and conditions as it may deem appropriate, to guarantee the timely payment of principal of and interest on such trust certificates or other securities as shall (i) be issued by the corporation under section 304(d), or by any other issuer approved for the purposes of this subsection by the Association, and (ii) be based on and backed by a trust or

pool composed of mortgages which are insured under the National Housing Act, or which are insured or guaranteed under the Servicemen's Readjustment Act of 1944, title V of the Housing Act of 1949, or chapter 37 of title 38, United States Code; or guaranteed under section 184 of the Housing and Community Development Act of 1992. [The Association may not guarantee the timely payment of principal and interest on a security that is backed by a mortgage insured or guaranteed under chapter 37 of title 38, United States Code, and that was refinanced until the later of the date that is 210 days after the date on which the first monthly payment is made on the mortgage being refinanced and the date on which 6 full monthly payments have been made on the mortgage being refinanced.] The Association shall collect from the issuer a reasonable fee for any guaranty under this subsection and shall make such charges as it may determine to be reasonable for the analysis of any trust or other security arrangement proposed by the issuer. In the event the issuer is unable to make any payment of principal or of interest on any security guaranteed under this subsection, the Association shall make such payment as and when due in cash, and thereupon shall be subrogated fully to the rights satisfied by such payment. In any case in which (I) Federal law requires the reduction of the interest rate on any mortgage backing a security guaranteed under this subsection, (II) the mortgagor under the mortgage is a person in the military service, and (III) the issuer of such security fails to receive from the mortgagor the full amount of interest payment due, the Association may make payments of interest on the security in amounts not exceeding the difference between the amount payable under the interest rate on the mortgage and the amount of interest actually paid by the mortgagor. The Association is hereby empowered, in connection with any guaranty under this subsection, whether before or after any default, to provide by contract with the issuer for the extinguishment, upon default by the issuer, of any redemption, equitable, legal, or other right, title, or interest of the issuer in any mortgage or mortgages constituting the trust or pool against which the guaranteed securities are issued; and with respect to any issue of guaranteed securities, in the event of default and pursuant otherwise to the terms of the contract, the mortgages that constitute such trust or pool shall become the absolute property of the Association subject only to the unsatisfied rights of the holders of the securities based on and backed by such trust or pool. No State or local law, and no Federal law (except Federal law enacted expressly in limitation of this subsection after the effective date of this sentence), shall preclude or limit the exercise by the Association of (A) its power to contract with the issuer on the terms stated in the preceding sentence, (B) its rights to enforce any such contract with the issuer, or (C) its ownership rights, as provided in the preceding sentence, in the mortgages constituting the trust or pool against which the guaranteed securities are issued. The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guaranty under this subsection. There shall be excluded from the total amounts set forth in subsection (c) the amounts of any mortgages acquired by the Association as a result of its operations under this subsection.

(2) Notwithstanding any other provision of law and subject only to the absence of qualified requests for guarantees, to the authority provided in this subsection, and to the extent of or in such amounts as any funding limitation approved in appropriation Acts, the Association shall enter into commitments to issue guarantees under this subsection in an aggregate amount of \$110,000,000,000 during fiscal year 1996. There are authorized to be appropriated to cover the costs (as such term is defined in section 502 of the Congressional Budget Act of 1974) of guarantees issued under this Act by the Association such sums as may be necessary for fiscal year 1996.

(3)(A) No fee or charge in excess of 6 basis points may be assessed or collected by the United States (including any executive department, agency, or independent establishment of the United States) on or with regard to any guaranty of the timely payment of principal or interest on securities or notes based on or backed by mortgages that are secured by 1- to 4-family dwellings and (i) insured by the Federal Housing Administration under title II of the National Housing Act; or (ii) insured or guaranteed under the Serviceman's Readjustment Act of 1944, chapter 37 of title 38, United States Code, or title V of the Housing Act of 1949.

(B) The fees charged for the guaranty of securities or on notes based on or backed by mortgages not referred to in subparagraph (A), as authorized by other provisions of law, shall be set by the Association at a level not more than necessary to create reserves sufficient to meet anticipated claims based upon actuarial analysis, and for no other purpose.

(C) Fees or charges for the issuance of commitments or miscellaneous administrative fees of the Association shall not be on a competitive auction basis and shall remain at the level set for such fees or charges as of September 1, 1985, except that such fees or charges may be increased if reasonably related to the cost of administering the program, and for no other purpose.

(D) Not less than 90 days before increasing any fee or charge under subparagraph (B) or (C), the Secretary shall submit to the Congress a certification that such increase is solely for the purpose specified in such subparagraph.

(E)(i) Notwithstanding subparagraphs (A) through (D), fees charged for the guarantee of, or commitment to guarantee, multiclass securities backed by a trust or pool of securities or notes guaranteed by the Association under this subsection, and other related fees shall be charged by the Association in an amount the Association deems appropriate. The Association shall take such action as may be necessary to reasonably assure that such portion of the benefit, resulting from the Association's multiclass securities program, as the Association determines is appropriate accrues to mortgagors who execute eligible mortgages after the date of the enactment of this subparagraph.

(ii) The Association shall provide for the initial implementation of the program for which fees are charged under the first sentence of clause (i) by notice published in the Federal Register. The notice shall be effective upon publication and shall provide an opportunity for public comment. Not later than 12 months after publication of the notice, the Association shall issue regulations for such program based on the notice, comments received, and the experience of the Association in carrying out the program during such period.

(iii) The Association shall consult with persons or entities in such manner as the Association deems appropriate to ensure the efficient commencement and operation of the multiclass securities program.

(iv) No State or local law, and no Federal law (except Federal law enacted expressly in limitation of this clause after the effective date of this subparagraph) shall preclude or limit the exercise by the Association of its power to contract with persons or entities, and its rights to enforce such contracts, for the purpose of ensuring the efficient commencement and continued operation of the multiclass securities program.

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