

## **New Law Extends Temporary Increase in Deposit Insurance Coverage, Reduces Amount of Special Assessment**

On May 20, 2009, President Obama signed into law the Helping Families Save Their Homes Act (the “Act”). Under the Act, the FDIC will retain its current \$250,000 deposit insurance coverage through 2013. The legislation will also provide the FDIC eight years to recapitalize the Deposit Insurance Fund (an increase from its current five-year schedule). The Act will increase the FDIC’s borrowing authority with the Treasury from \$30 billion to \$100 billion. This will allow the agency to reduce significantly the proposed 20-basis-point special assessment that has been met with widespread criticism from banking industry officials. The Act also eases restrictions on mortgage servicers with respect to modifying loan agreements.

Under the new law, deposits at FDIC-insured institutions will now be insured up to at least \$250,000 per depositor through December 31, 2013. The FDIC has indicated that on January 1, 2014, the standard insurance amount will return to \$100,000 per depositor for all account categories except for IRAs and other certain retirement accounts which will remain at \$250,000 per depositor. Similarly, NCUA-insured institutions will also receive an extension of the temporary increase in share insurance coverage; the Act provides that deposits at NCUA-insured institutions will be insured up to at least \$250,000 per depositor through December 31, 2013.

The Act also increases permanent borrowing authority for the FDIC and NCUA with the Treasury (\$100 billion and \$6 billion, respectively), and establishes temporary additional borrowing authority (\$500 billion and \$30 billion, respectively), to which the regulators may gain access only with a two-thirds vote of the FDIC or NCUA, a two-thirds vote of the Federal Reserve Board, and the agreement of the Secretary of the Treasury, in consultation with the President.

FDIC Chairman Sheila Bair has said that the increased borrowing authority will allow the FDIC to reduce the amount of the one-time special assessment proposed by the FDIC in February 2009. The American Bankers Association (ABA) has indicated that the special assessment, which was originally proposed at 20 basis points, could be reduced to as little as 5 basis points as a result of the increased borrowing authority under the Act.

The Act also eases restrictions on mortgage servicers by providing a “safe harbor” for mortgage servicers who, with respect to modifying certain loan agreements, act in accordance with certain fiduciary duties outlined in the Truth in Lending Act (TILA). The new law limits a servicer’s liability to investors for loan modifications, workouts, and other loss mitigation plans initiated before January 1, 2012 so long as the servicer acts in accordance with the fiduciary

duties outlined in TILA Section 129A(a) (15 USC 1639a). The “safe harbor” only applies to modifications of mortgages on owner-occupied properties, where the default on the payment of such mortgage has “occurred or is reasonably foreseeable,” and the servicer “reasonably and in good faith” believes that the expected recovery on the principal outstanding obligation of the mortgage under the modification will exceed the anticipated recovery on the principal outstanding obligation of the mortgage to be realized through foreclosure.

Senator Christopher Dodd, who co-authored the Act, characterized the new law as a “critical component of our efforts to protect American homeownership and improve the health of our banking system.” A copy of the Act may be accessed at: **<http://thomas.loc.gov/cgi-bin/query/D?c111:4:./temp/~c1117KakFQ>**.