

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3755
OFFERED BY MR. NEY**

[Manager's Amendment]

Strike all after the enacting clause and insert the following:

1 SEC. 1. SHORT TITLE.

2 This Act may be cited as the “Zero Downpayment
3 Act of 2004”.

**4 SEC. 2. INSURANCE FOR ZERO-DOWNPAYMENT MORT-
5 GAGES.**

6 (a) MORTGAGE INSURANCE AUTHORITY.—Section
7 203 of the National Housing Act (12 U.S.C. 1709) is
8 amended by inserting after subsection (k) the following
9 new subsection:

10 “(1) ZERO-DOWNPAYMENT MORTGAGES.—

11 “(1) INSURANCE AUTHORITY.—The Secretary
12 may insure, and commit to insure, under this sub-
13 section any mortgage that meets the requirements of
14 this subsection and, except as otherwise specifically
15 provided in this subsection, of subsection (b).

16 “(2) ELIGIBLE SINGLE FAMILY PROPERTY.—To
17 be eligible for insurance under this subsection, a



1 mortgage shall involve a property upon which there
2 is located a dwelling that is designed principally for
3 a 1- to 4-family residence and that, notwithstanding
4 subsection (g), is to be occupied by the mortgagor
5 as his or her principal residence, which shall
6 include—

7 “(A) a 1-family dwelling unit in a multi-
8 family project and an undivided interest in the
9 common areas and facilities which serve the
10 project;

11 “(B) a 1-family dwelling unit of a coopera-
12 tive housing corporation the permanent occu-
13 pancy of the dwelling units of which is re-
14 stricted to members of such corporation and in
15 which the purchase of such stock or member-
16 ship entitles the purchaser to the permanent oc-
17 cupancy of such dwelling unit; and

18 “(C) a manufactured home, and a manu-
19 factured home together with a suitably devel-
20 oped lot on which to place the manufactured
21 home.

22 “(3) MAXIMUM PRINCIPAL OBLIGATION.—

23 “(A) LIMITATION.—To be eligible for in-
24 surance under this subsection, a mortgage shall
25 involve a principal obligation in an amount not



1 in excess of 100 percent of the appraised value
2 of the property plus any initial service charges,
3 appraisal, inspection and other fees in connec-
4 tion with the mortgage as approved by the Sec-
5 retary.

6 “(B) INAPPLICABILITY OF OTHER LOAN-
7 TO-VALUE REQUIREMENTS.—A mortgage in-
8 sured under this subsection shall not be subject
9 to subparagraph (B) of paragraph (2) of sub-
10 section (b) or to the matter in such paragraph
11 that follows such subparagraph.

12 “(4) ELIGIBLE MORTGAGORS.—The mortgagor
13 under a mortgage insured under this subsection
14 shall meet the following requirements:

15 “(A) FIRST-TIME HOMEBUYER.—The
16 mortgagor shall be a first-time homebuyer. The
17 program for mortgage insurance under this
18 subsection shall be considered a Federal pro-
19 gram to assist first-time homebuyers for pur-
20 poses of section 956 of the Cranston-Gonzalez
21 National Affordable Housing Act (42 U.S.C.
22 12713).

23 “(B) COUNSELING.—

24 “(i) REQUIREMENT.—The mortgagor
25 shall have received counseling, by a third



1 party (other than the mortgagee or any
2 party related directly or indirectly to the
3 mortgagee) who is approved by the Sec-
4 retary, with respect to the responsibilities
5 and financial management involved in
6 homeownership.

7 “(ii) TOPICS.—Such counseling shall
8 include providing to, and discussing with,
9 the mortgagor—

10 “(I) information regarding home-
11 ownership options other than a mort-
12 gage insured under this subsection,
13 other zero- or low-downpayment mort-
14 gage options that are or may become
15 available to the mortgagor, the finan-
16 cial implications of entering into a
17 mortgage (including a mortgage in-
18 sured under this subsection), and any
19 other information that the Secretary
20 may require; and

21 “(II) a document that sets forth
22 the amount and the percentage by
23 which the property subject to the
24 mortgage must appreciate for the
25 mortgagor to recover the principal



1 amount of the mortgage, the costs fi-
2 nanced under the mortgage, and the
3 estimated costs involved in selling the
4 property, if the mortgagor were to sell
5 the property on each of the second,
6 fifth, and tenth anniversaries of the
7 mortgage.

8 “(iii) 2- TO 4-FAMILY RESIDENCES.—

9 In the case of a mortgage involving a 2- to
10 4-family residence, such counseling shall
11 include (in addition to the information re-
12 quired under clause (ii)) information re-
13 garding the rights and obligations of land-
14 lords and tenants.

15 “(5) OPTION FOR NOTICE OF FORECLOSURE
16 PREVENTION COUNSELING AVAILABILITY.—

17 “(A) OPTION.—To be eligible for insurance
18 under this section, the mortgagee shall provide
19 mortgagor, at the time of the execution of the
20 mortgage, an optional written agreement which,
21 if signed by the mortgagor, allows, but does not
22 require, the mortgagee to provide notice de-
23 scribed in subparagraph (B) to a housing coun-
24 seling entity that has agreed to provide the no-



1 tice and counseling required under subpara-
2 graph (C) and is approved by the Secretary.

3 “(B) NOTICE TO COUNSELING AGENCY.—

4 The notice described in this subparagraph, with
5 respect to a mortgage, is notice, provided at the
6 earliest time practicable after the mortgagor be-
7 comes 60 days delinquent with respect to any
8 payment due under the mortgage, that the
9 mortgagor is so delinquent and of how to con-
10 tact the mortgagor. Such notice may only be
11 provided once with respect to each delinquency
12 period for a mortgage.

13 “(C) NOTICE TO MORTGAGOR.—Upon no-
14 tice from a mortgagee that a mortgagor is 60
15 days delinquent with respect to payments due
16 under the mortgage, the housing counseling en-
17 tity shall immediately notify the mortgagor of
18 such delinquency, that the entity makes avail-
19 able foreclosure prevention counseling that may
20 assist the mortgagor in resolving the delin-
21 quency, and of how to contact the entity to ar-
22 range for such counseling.

23 “(D) ABILITY TO CURE.—Failure to pro-
24 vide the optional written agreement required
25 under subparagraph (A) may be corrected by



1 sending such agreement to the mortgagor at the
2 earliest time practicable after the mortgagor
3 first becomes 60 days delinquent with respect to
4 payments due under the mortgage. Insurance
5 provided under this subsection may not be ter-
6 minated and penalties for such failure may not
7 be prospectively or retroactively imposed if such
8 failure is corrected in accordance with this sub-
9 paragraph.

10 “(E) PENALTIES FOR FAILURE TO PRO-
11 VIDE AGREEMENT.—The Secretary may estab-
12 lish and impose appropriate penalties for failure
13 of a mortgagee to provide the optional written
14 agreement required under subparagraph (A).

15 “(F) LIMITATION ON LIABILITY OF MORT-
16 GAGEE.—A mortgagee shall not incur any li-
17 ability or penalties for any failure of a housing
18 counseling entity to provide notice under sub-
19 paragraph (C).

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

23 “(H) DELINQUENCY PERIOD.—For pur-
24 poses of this paragraph, the term ‘delinquency
25 period’ means, with respect to a mortgage, a



1 period that begins upon the mortgagor becom-
2 ing delinquent with respect to payments due
3 under the mortgage and ends upon the first
4 subsequent occurrence of such payments under
5 the mortgage becoming current or the property
6 subject to the mortgage being foreclosed or oth-
7 erwise disposed of.

8 “(6) INAPPLICABILITY OF DOWNPAYMENT RE-
9 QUIREMENT.—A mortgage insured under this sub-
10 section shall not be subject to paragraph (9) of sub-
11 section (b) or any other requirement to pay on ac-
12 count of the property, in cash or its equivalent, any
13 amount of the cost of acquisition.

14 “(7) PREMIUMS.—In conjunction with the cred-
15 it subsidy estimation calculated each year pursuant
16 to the Federal Credit Reform Act of 1990 (2 U.S.C.
17 661 et seq.), the Secretary shall review the program
18 performance for mortgages insured under this sub-
19 section and make any necessary adjustments, which
20 may include altering mortgage insurance premiums
21 subject to subsection (c)(2), reviewing underwriting
22 policies, and limiting the availability of mortgage in-
23 surance under this subsection, to ensure that the
24 Mutual Mortgage Insurance Fund shall continue to
25 generate a negative credit subsidy.



1 “(8) UNDERWRITING.—For a mortgage to be
2 eligible for insurance under this subsection, the
3 mortgagor’s credit and ability to pay the monthly
4 mortgage payments shall have been evaluated using
5 the Federal Housing Administration’s Technology
6 Open To Approved Lenders (TOTAL) Mortgage
7 Scorecard, or a similar standardized credit scoring
8 system approved by the Secretary, and in accordance
9 with procedures established by the Secretary.

10 “(9) APPROVAL OF MORTGAGEES.—To be eligi-
11 ble for insurance under this subsection, a mortgage
12 shall have been made to a mortgagee that meets
13 such criteria as the Secretary shall establish to en-
14 sure that mortgagees meet appropriate standards for
15 participation in the program authorized under this
16 subsection.

17 “(10) DISCLOSURE OF INCREMENTAL COSTS.—
18 For a mortgage to be eligible for insurance under
19 this subsection, the mortgagee shall provide to the
20 mortgagor, at the time of the application for the
21 loan involved in the mortgage, a written disclosure,
22 as the Secretary shall require, that specifies the ef-
23 fective cost to a mortgagor of borrowing the amount
24 by which the maximum amount that could be bor-
25 rowed under a mortgage insured under this sub-



1 section exceeds the maximum amount that could be
2 borrowed under a mortgage insured under sub-
3 section (b), based on average closing costs with re-
4 spect to such amount, as determined by the Sec-
5 retary. Such cost shall be expressed as an annual in-
6 terest rate over the first 5 years of a mortgage.

7 “(11) LOSS MITIGATION.—

8 “(A) IN GENERAL.—Upon the default of
9 any mortgage insured under this subsection, the
10 mortgagee shall engage in loss mitigation ac-
11 tions for the purpose of providing an alternative
12 to foreclosure to the same extent as is required
13 of other mortgages insured under this title pur-
14 suant to the regulations issued under section
15 230(a).

16 “(B) ANNUAL REPORTING.—Not later
17 than 90 days after the end of each fiscal year,
18 the Secretary shall submit a report to the Con-
19 gress that compares the rates of default and
20 foreclosure during such fiscal year for mort-
21 gages insured under this subsection, for single-
22 family mortgages insured under this title (other
23 than under this subsection), and for mortgages
24 for housing purchased with assistance provided
25 under the downpayment assistance initiative



1 under section 271 of the Cranston-Gonzalez
2 National Affordable Housing Act (42 U.S.C.
3 12821).

4 “(12) ADDITIONAL REQUIREMENTS.—The Sec-
5 retary may establish any additional requirements for
6 mortgage insurance under this subsection as may be
7 necessary or appropriate.

8 “(13) LIMITATION.—The aggregate number of
9 mortgages insured under this section in any fiscal
10 year may not exceed 30 percent of the aggregate
11 number of mortgages and loans insured by the Sec-
12 retary under this title during the preceding fiscal
13 year.

14 “(14) PROGRAM SUSPENSION.—

15 “(A) IN GENERAL.—Subject to subpara-
16 graph (C), the authority under paragraph (1) to
17 insure mortgages shall be suspended if at any
18 time the claim rate described in subparagraph
19 (B) exceeds 3.5 percent. A suspension under
20 this subparagraph shall remain in effect until
21 such time as such claim rate is 3.5 percent or
22 less.

23 “(B) FHA TOTAL SINGLE-FAMILY ANNUAL
24 CLAIM RATE.—The claim rate described in this
25 subparagraph, for any particular time, is the



1 ratio of the number of claims during the 12
2 months preceding such time on mortgages on 1-
3 to 4-family residences insured pursuant to this
4 title to the number of mortgages on such resi-
5 dences having such insurance in-force at that
6 time.

7 “(C) APPLICABILITY.—A suspension under
8 subparagraph (A) shall not preclude the Sec-
9 retary from endorsing or insuring any mortgage
10 that was duly executed before the date of such
11 suspension.

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

16 “(16) GAO REPORTS .—The Comptroller Gen-
17 eral of the United States shall submit a report to
18 the Congress not later than 2 years after the date
19 of the enactment of this subsection, and annually
20 thereafter, regarding the performance of mortgages
21 insured under this subsection.

22 “(17) IMPLEMENTATION.—The Secretary may
23 implement this subsection on an interim basis by
24 issuing an interim rule, except that the Secretary
25 shall solicit public comments upon publication of



1 such interim rule and shall issue a final rule imple-
2 menting this subsection after consideration of the
3 comments submitted. ”.

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

