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2D SESSION

H. R. 4264

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 12, 2012

Received; read twice and referred to the Committee on Banking, Housing, and
Urban Affairs

AN ACT

To help ensure the fiscal solvency of the FHA mortgage insurance programs of the Secretary of Housing and Urban Development, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 “FHA Emergency Fiscal Solvency Act of 2012”.

4 (b) TABLE OF CONTENTS.—The table of contents for
5 this Act is as follows:

- Sec. 1. Short title and table of contents.
- Sec. 2. FHA annual mortgage insurance premiums.
- Sec. 3. Indemnification by FHA mortgagees.
- Sec. 4. Early period delinquencies.
- Sec. 5. Semiannual actuarial studies of MMIF during periods of capital depletion.
- Sec. 6. Delegation of FHA insuring authority.
- Sec. 7. Authority to terminate FHA mortgagee origination and underwriting approval.
- Sec. 8. Authorization to participate in the origination of FHA-insured loans.
- Sec. 9. Reporting of mortgagee actions taken against other mortgagees.
- Sec. 10. Default and origination information by loan servicer and originating direct endorsement lender.
- Sec. 11. Deputy Assistant Secretary of FHA for Risk Management and Regulatory Affairs.
- Sec. 12. Establishment of Chief Risk Officer for GNMA.
- Sec. 13. Report on mortgage servicers.
- Sec. 14. FHA emergency capital plan.
- Sec. 15. FHA safety and soundness review.
- Sec. 16. FHA disclosure standards.
- Sec. 17. Report on streamlining FHA programs.
- Sec. 18. Budget compliance.

6 **SEC. 2. FHA ANNUAL MORTGAGE INSURANCE PREMIUMS.**

7 (a) IN GENERAL.—Subparagraph (B) of section
8 203(c)(2) of the National Housing Act (12 U.S.C.
9 1709(c)(2)(B)) is amended—

10 (1) in the matter preceding clause (i)—

11 (A) by striking “may” and inserting
12 “shall”;

13 (B) by striking “not exceeding 1.5 per-
14 cent” and inserting “not less than 0.55 per-
15 cent”; and

1 (C) by inserting “and not exceeding 2.0
2 percent of such remaining insured principal bal-
3 ance” before “for the following periods:”; and
4 (2) in clause (ii), by striking “1.55 percent”
5 and inserting “2.05 percent”.

6 (b) EFFECTIVE DATE.—The amendments made by
7 subsection (a) take effect upon the expiration of the 6-
8 month period beginning on the date of the enactment of
9 this Act.

10 **SEC. 3. INDEMNIFICATION BY FHA MORTGAGEES.**

11 Section 202 of the National Housing Act (12 U.S.C.
12 1708) is amended by adding at the end the following new
13 subsection:

14 “(i) INDEMNIFICATION BY MORTGAGEES.—

15 “(1) IN GENERAL.—If the Secretary determines
16 that the mortgagee knew, or should have known, of
17 a serious or material violation of the requirements
18 established by the Secretary with respect to a mort-
19 gage executed by a mortgagee approved by the Sec-
20 retary under the direct endorsement program or in-
21 sured by a mortgagee pursuant to the delegation of
22 authority under section 256 such that the mortgage
23 loan should not have been approved and endorsed
24 for insurance, and the Secretary pays an insurance
25 claim with respect to the mortgage within a reason-

1 able period specified by the Secretary, the Secretary
2 may require the mortgagee approved by the Sec-
3 retary under the direct endorsement program or the
4 mortgagee delegated authority under section 256 to
5 indemnify the Secretary for the loss, irrespective of
6 whether the violation caused the mortgage default.

7 “(2) FRAUD OR MISREPRESENTATION.—If
8 fraud or misrepresentation was involved in connec-
9 tion with the origination or underwriting and the
10 Secretary determines that the mortgagee knew or
11 should have known of the fraud or misrepresenta-
12 tion, the Secretary shall require the mortgagee ap-
13 proved by the Secretary under the direct endorse-
14 ment program or the mortgagee delegated authority
15 under section 256 to indemnify the Secretary for the
16 loss regardless of when an insurance claim is paid.

17 “(3) APPEALS PROCESS.—The Secretary shall,
18 by regulation, establish an appeals process for mort-
19 gagees to appeal indemnification determinations
20 made pursuant to paragraph (1) or (2).

21 “(4) REQUIREMENTS AND PROCEDURES.—The
22 Secretary shall issue regulations establishing appro-
23 priate requirements and procedures governing the
24 indemnification of the Secretary by the mortgagee,
25 including public reporting on—

1 “(A) the number of loans that—

2 “(i) were not originated or under-
3 written in accordance with the require-
4 ments established by the Secretary; and

5 “(ii) involved fraud or misrepresenta-
6 tion in connection with the origination or
7 underwriting; and

8 “(B) the financial impact on the Mutual
9 Mortgage Insurance Fund when indemnification
10 is required.”.

11 **SEC. 4. EARLY PERIOD DELINQUENCIES.**

12 Subsection (a) of section 202 of the National Hous-
13 ing Act (12 U.S.C. 1708(a)) is amended by adding at the
14 end the following new paragraphs:

15 “(8) PROGRAMMATIC REVIEW OF EARLY PE-
16 RIOD DELINQUENCIES.—The Secretary shall estab-
17 lish and maintain a program—

18 “(A) to review the cause of each early pe-
19 riod delinquency on a mortgage that is an obli-
20 gation of the Mutual Mortgage Insurance Fund;

21 “(B) to require indemnification of the Sec-
22 retary for a loss associated with any such early
23 period delinquency that is the result of a mate-
24 rial violation, as determined by the Secretary,
25 of any provision, regulation, or other guideline

1 established or promulgated pursuant to this
2 title; and

3 “(C) to publicly report—

4 “(i) a summary of the results of all
5 early period delinquencies reviewed under
6 subparagraph (A);

7 “(ii) any indemnifications required
8 under subparagraph (B); and

9 “(iii) the financial impact on the Mu-
10 tual Mortgage Insurance Fund of any such
11 indemnifications.

12 “(9) DEFINITION OF EARLY PERIOD DELIN-
13 QUENCY.—For purposes of this section, the term
14 ‘early period delinquency’ means, with respect to a
15 mortgage, that the mortgage becomes 90 or more
16 days delinquent within 24 months of the origination
17 of such mortgage.”.

18 **SEC. 5. SEMIANNUAL ACTUARIAL STUDIES OF MMIF DUR-**
19 **ING PERIODS OF CAPITAL DEPLETION.**

20 (a) IN GENERAL.—Paragraph (4) of section 202(a)
21 of the National Housing Act (12 U.S.C. 1708(a)(4)) is
22 amended—

23 (1) in the first sentence, by inserting “except as
24 provided in subparagraph (B),” after “to be con-
25 ducted annually,”;

1 (2) in the second sentence, by inserting “, ex-
2 cept as provided in subparagraph (B),” after “annu-
3 ally”;

4 (3) by striking the paragraph designation and
5 heading and all that follows through “The Secretary
6 shall provide” and inserting the following:

7 “(4) INDEPENDENT ACTUARIAL STUDY.—

8 “(A) ANNUAL STUDY.—The Secretary
9 shall provide”; and

10 (4) by adding at the end the following new sub-
11 paragraph:

12 “(B) SEMIANNUAL STUDIES DURING PERI-
13 ODS OF CAPITAL DEPLETION.—During any pe-
14 riod that the Fund fails to maintain sufficient
15 capital to comply with the capital ratio require-
16 ment under section 205(f)(2)—

17 “(i) the independent study required by
18 subparagraph (A) shall be conducted semi-
19 annually and shall analyze the financial po-
20 sition of the Fund as of September 30 and
21 March 31 of each fiscal year during such
22 period; and

23 “(ii) the Secretary shall submit a re-
24 port meeting the requirements of subpara-

1 graph (A) for each such semiannual
2 study.”.

3 (b) ANALYSIS OF QUARTERLY ACTUARIAL STUD-
4 IES.—The Secretary of Housing and Urban Development
5 shall conduct an analysis of the cost and feasibility of pro-
6 viding for an independent actuarial study of the Mutual
7 Mortgage Insurance Fund on a calendar quarterly basis,
8 which shall compare the cost and feasibility of conducting
9 such a study on a quarterly basis as compared to a semi-
10 annual basis and shall determine whether such an actu-
11 arial study can be conducted on a quarterly basis without
12 substantial additional costs to the taxpayers. Not later
13 than the expiration of the 90-day period beginning on the
14 date of the enactment of this Act, the Secretary shall sub-
15 mit a report to the Congress setting forth the findings and
16 conclusion of the analysis conducted pursuant to this sub-
17 section.

18 **SEC. 6. DELEGATION OF FHA INSURING AUTHORITY.**

19 Section 256 of the National Housing Act (12 U.S.C.
20 1715z–21) is amended—

21 (1) by striking subsection (c);

22 (2) in subsection (e), by striking “, including”

23 and all that follows through “by the mortgagee”;

24 and

1 (3) by redesignating subsections (d) and (e) as
2 subsections (c) and (d), respectively.

3 **SEC. 7. AUTHORITY TO TERMINATE FHA MORTGAGEE**
4 **ORIGINATION AND UNDERWRITING AP-**
5 **PROVAL.**

6 Section 533 of the National Housing Act (12 U.S.C.
7 1735f–11) is amended—

8 (1) in the first sentence of subsection (b), by in-
9 serting “or areas or on a nationwide basis” after
10 “area” each place such term appears; and

11 (2) in subsection (c), by striking “(c)” and all
12 that follows through “The Secretary” in the first
13 sentence of paragraph (2) and inserting the fol-
14 lowing:

15 “(c) **TERMINATION OF MORTGAGEE ORIGINATION**
16 **AND UNDERWRITING APPROVAL.**—

17 “(1) **TERMINATION AUTHORITY.**—If the Sec-
18 retary determines, under the comparison provided in
19 subsection (b), that a mortgagee has a rate of early
20 defaults and claims that is excessive, the Secretary
21 may terminate the approval of the mortgagee to
22 originate or underwrite single family mortgages for
23 any area, or areas, or on a nationwide basis, not-
24 withstanding section 202(c) of this Act.

25 “(2) **PROCEDURE.**—The Secretary”.

1 **SEC. 8. AUTHORIZATION TO PARTICIPATE IN THE ORIGINA-**
2 **TION OF FHA-INSURED LOANS.**

3 (a) SINGLE FAMILY MORTGAGES.—Section 203(b) of
4 the National Housing Act (12 U.S.C. 1709(b)) is amended
5 by striking paragraph (1) and inserting the following new
6 paragraph:

7 “(1) Have been made to a mortgagee approved
8 by the Secretary or to a person or entity authorized
9 by the Secretary under section 202(d)(1) to partici-
10 pate in the origination of the mortgage, and be held
11 by a mortgagee approved by the Secretary as re-
12 sponsible and able to service the mortgage prop-
13 erly.”.

14 (b) HOME EQUITY CONVERSION MORTGAGES.—Sec-
15 tion 255(d) of the National Housing Act (12 U.S.C.
16 1715z–20(d)) is amended by striking paragraph (1) and
17 inserting the following new paragraph:

18 “(1) have been originated by a mortgagee ap-
19 proved by, or by a person or entity authorized under
20 section 202(d)(1) to participate in the origination
21 by, the Secretary;”.

22 **SEC. 9. REPORTING OF MORTGAGEE ACTIONS TAKEN**
23 **AGAINST OTHER MORTGAGEES.**

24 Section 202 of the National Housing Act (12 U.S.C.
25 1708), as amended by the preceding provisions of this Act,

1 is further amended by adding at the end the following new
2 subsection:

3 “(j) NOTIFICATION OF MORTGAGEE ACTIONS.—The
4 Secretary shall require each mortgagee, as a condition for
5 approval by the Secretary to originate or underwrite mort-
6 gages on single family or multifamily housing that are in-
7 sured by the Secretary, if such mortgagee engages in the
8 purchase of mortgages insured by the Secretary and origi-
9 nated by other mortgagees or in the purchase of the serv-
10 icing rights to such mortgages, and such mortgagee at any
11 time takes action to terminate or discontinue such pur-
12 chases from another mortgagee based on any determina-
13 tion or evidence of fraud or material misrepresentation in
14 connection with the origination of such mortgages, to no-
15 tify the Secretary of the action taken and the reasons for
16 such action not later than 15 days after taking such ac-
17 tion.”.

18 **SEC. 10. DEFAULT AND ORIGINATION INFORMATION BY**
19 **LOAN SERVICER AND ORIGINATING DIRECT**
20 **ENDORSEMENT LENDER.**

21 (a) COLLECTION OF INFORMATION.—Paragraph (2)
22 of section 540(b) of the National Housing Act (12 U.S.C.
23 1712 U.S.C. 1735f–18(b)(2)) is amended by adding at the
24 end the following new subparagraph:

1 “(C) For each entity that services insured
2 mortgages, data on the number of claims paid
3 to each servicing mortgagee during each cal-
4 endar quarter occurring during the applicable
5 collection period.”.

6 (b) APPLICABILITY.—Information described in sub-
7 paragraph (C) of section 540(b)(2) of the National Hous-
8 ing Act, as added by subsection (a) of this section, shall
9 first be made available under such section 540 for the ap-
10 plicable collection period (as such term is defined in such
11 section) relating to the first calendar quarter ending after
12 the expiration of the 12-month period that begins on the
13 date of the enactment of this Act.

14 **SEC. 11. DEPUTY ASSISTANT SECRETARY OF FHA FOR RISK**
15 **MANAGEMENT AND REGULATORY AFFAIRS.**

16 (a) ESTABLISHMENT OF POSITION.—Subsection (b)
17 of section 4 of the Department of Housing and Urban De-
18 velopment Act (42 U.S.C. 3533(b)) is amended—

19 (1) by inserting “(1)” after “(b)”; and

20 (2) by adding at the end the following new
21 paragraph:

22 “(2) There shall be in the Department, within the
23 Federal Housing Administration, a Deputy Assistant Sec-
24 retary for Risk Management and Regulatory Affairs, who
25 shall be appointed by the Secretary and shall be respon-

1 sible to the Federal Housing Commissioner for all matters
 2 relating to managing and mitigating risk to the mortgage
 3 insurance funds of the Department and ensuring the per-
 4 formance of mortgages insured by the Department.”.

5 (b) TERMINATION.—Upon the appointment of the
 6 initial Deputy Assistant Secretary for Risk Management
 7 and Regulatory Affairs pursuant to section 4(b)(2) of the
 8 Department of Housing and Urban Development Act, as
 9 amended by subsection (a) of this section, the position of
 10 chief risk officer within the Federal Housing Administra-
 11 tion, filled by appointment by the Federal Housing Com-
 12 missioner, is abolished.

13 **SEC. 12. ESTABLISHMENT OF CHIEF RISK OFFICER FOR**
 14 **GNMA.**

15 Section 4 of the Department of Housing and Urban
 16 Development Act (42 U.S.C. 3533) is amended by adding
 17 after subsection (g), as added by section 1442 of the
 18 Dodd-Frank Wall Street Reform and Consumer Protec-
 19 tion Act (Public Law 111–203; 124 Stat. 2163), the fol-
 20 lowing new subsection:

21 “(h) There shall be in the Department a Chief Risk
 22 Officer for the Government National Mortgage Associa-
 23 tion, who shall—

24 “(1) be designated by the Secretary;

1 “(2) be responsible to the President of the As-
2 sociation for all matters related to evaluating, man-
3 aging, and mitigating risk to the programs of the
4 Association;

5 “(3) be in the competitive service or the senior
6 executive service;

7 “(4) be a career appointee;

8 “(5) be designated from among individuals who
9 possess demonstrated ability in general management
10 of, and knowledge of and extensive practical experi-
11 ence in risk evaluation practices in large govern-
12 mental or business entities; and

13 “(6) shall not be required to obtain the prior
14 approval, comment, or review of any officer or agen-
15 cy of the United States before submitting to the
16 Congress, or any committee or subcommittee there-
17 of, any reports, recommendations, testimony, or
18 comments if such submission include a statement in-
19 dicating that the views expressed therein are those
20 of the Chief Risk Officer of the Association and do
21 not necessarily represent the views of the Sec-
22 retary.”.

23 **SEC. 13. REPORT ON MORTGAGE SERVICERS.**

24 (a) EXAMINATION.—The Secretary of Housing and
25 Urban Development shall conduct an examination into

1 mortgage servicer compliance with the loan servicing, loss
2 mitigation, and insurance claim submission guidelines of
3 the FHA mortgage insurance programs under the Na-
4 tional Housing Act (12 U.S.C. 1701 et seq.), and an esti-
5 mate of the annual costs to the Mutual Mortgage Insur-
6 ance Fund, since 2008, resulting from any failures by
7 mortgage servicers to comply with such guidelines.

8 (b) REPORT.—Not later than the expiration of the
9 120-day period that begins upon the date of the enactment
10 of this Act, the Secretary shall submit a report to the Con-
11 gress on the results of the examination conducted pursu-
12 ant to subsection (a), including recommendations for any
13 administrative and legislative actions to improve mortgage
14 servicer compliance with the guidelines referred to in sub-
15 section (a).

16 **SEC. 14. FHA EMERGENCY CAPITAL PLAN.**

17 (a) ESTABLISHMENT.—Not later than the expiration
18 of the 30-day period beginning on the date of the enact-
19 ment of this Act, the Secretary of Housing and Urban
20 Development shall develop, submit to the Congress, and
21 commence implementation of an emergency capital plan
22 for the restoration of the fiscal solvency of the Mutual
23 Mortgage Insurance Fund (in this section referred to as
24 the “Fund”).

1 (b) CONTENTS.—The emergency capital plan devel-
2 oped pursuant to this section shall—

3 (1) provide a detailed explanation of the proc-
4 esses and controls by which amounts of capital that
5 are assets of the Fund are monitored and tracked;

6 (2) establish a plan to ensure the financial safe-
7 ty and soundness of the Fund that avoids the need
8 for borrowing amounts from the Treasury of the
9 United States to meet obligations of the Fund; and

10 (3) describe the procedure by which, if nec-
11 essary, any amounts from the Treasury needed to
12 meet obligations of the Fund will be obtained from
13 the Treasury.

14 (c) MONTHLY REPORTS.—

15 (1) REPORTS.—Subject to paragraph (3), upon
16 the conclusion of each calendar month ending after
17 the 14-day period that begins on the date of the en-
18 actment of this Act, the Secretary of Housing and
19 Urban Development shall submit to the Congress a
20 report assessing the financial status of the Fund at
21 the conclusion of such month and setting forth the
22 information described in paragraph (2).

23 (2) CONTENTS.—Each report required under
24 paragraph (1) for a month shall contain the fol-

1 lowing information regarding the Fund as of the
2 conclusion of such month:

3 (A) The number of mortgages that are ob-
4 ligations of the Fund that are 60 or more days
5 delinquent, the expected losses to the Fund as-
6 sociated with such delinquent mortgages, and
7 the methodology used to make such calculation.

8 (B) The number of mortgages that are ob-
9 ligations of the Fund that have a loan-to-value
10 ratio at the time of origination that is less than
11 80 percent and the percentage of all mortgages
12 that are obligations of the Fund having such a
13 ratio.

14 (C) The number of mortgages that are ob-
15 ligations of the Fund that had an original prin-
16 cipal obligation exceeding 125 percent of the
17 median house price, for a home of the size of
18 the residence subject to the mortgage, for the
19 area in which such residence is located, and the
20 percentage of all mortgages that are obligations
21 of the Fund having such an original principal
22 obligation.

23 (D) The number of mortgages that are ob-
24 ligations of the Fund for which the mortgagor's
25 income at the time of origination of the mort-

1 gage is greater than the median income for the
 2 area in which the residence subject to the mort-
 3 gage is located, and the percentage of all mort-
 4 gages that are obligations of the Fund for
 5 which the mortgagor has such an income.

6 (E) The balances for the financing and
 7 capital reserve accounts of the Fund.

8 (F) Any actions taken during such month
 9 to help ensure the financial soundness of the
 10 Fund and compliance with section 205(f) of the
 11 National Housing Act (12 U.S.C. 1711(f); re-
 12 lating to a capital ratio requirement).

13 (3) TERMINATION OF REPORTING REQUIRE-
 14 MENT.—The requirement to submit reports under
 15 paragraph (1) shall terminate on the first date after
 16 the date of the enactment of this Act that the Fund
 17 attains a capital ratio (as such term is defined in
 18 section 205(f)(3) of the National Housing Act) of
 19 2.0 percent.

20 **SEC. 15. FHA SAFETY AND SOUNDNESS REVIEW.**

21 (a) REVIEW.—The Comptroller General of the United
 22 States shall provide for an independent third party to—

23 (1) conduct a one-time review of the mortgage
 24 insurance programs and funds of the Secretary of

1 Housing and Urban Development that shall deter-
2 mine, as of the time of such review—

3 (A) the financial safety and soundness of
4 such programs and funds; and

5 (B) the extent of loan loss reserves and
6 capital adequacy of such programs and funds;
7 and

8 (2) to submit a report under subsection (b).

9 Such review shall be conducted in accordance with gen-
10 erally accepted accounting principles applicable to the pri-
11 vate sector and Federal entities.

12 (b) REPORT.—The report under this subsection shall
13 describe the methodology and standards used to conduct
14 the review under subsection (a)(1), set forth the results
15 and findings of the review, including the extent of loan
16 loss reserves and capital adequacy of the mortgage insur-
17 ance programs and funds of the Secretary of Housing and
18 Urban Development, and include recommendations re-
19 garding restoring such reserves and capital to maintain
20 such programs and funds in a safe and sound condition.

21 (c) TIMING.—The review required under subsection
22 (a) shall be completed, and the report required under sub-
23 section (b) shall be submitted, not later than the expira-
24 tion of the 60-day period beginning on the date of the en-
25 actment of this Act.

1 (d) RULE OF CONSTRUCTION.—Nothing in this sec-
2 tion may be construed to alter or affect, or exempt the
3 Secretary of Housing and Urban Development from com-
4 plying with, any laws, regulations, or guidance relating to
5 preparation or submission of budgets or audits or financial
6 or management statements or reports.

7 **SEC. 16. FHA DISCLOSURE STANDARDS.**

8 Not later than the expiration of the 90-day period
9 beginning on the date of the enactment of this Act, the
10 Secretary of Housing and Urban Development shall review
11 and revise all standards and requirements relating to dis-
12 closure of information regarding the mortgage insurance
13 programs and funds, including actuarial studies conducted
14 under section 202(a)(4) of the National Housing Act (12
15 U.S.C. 1708(a)(4)), quarterly reports under section
16 202(a)(5) of such Act, and annual audited financial state-
17 ments under section 538 of such Act (12 U.S.C. 1735f–
18 16), to ensure that, after the date of the enactment of
19 this Act, such disclosures—

- 20 (1) provide meaningful financial and other in-
21 formation that is timely, comprehensive, and accu-
22 rate;
- 23 (2) do not contain any material misstatements
24 or misrepresentations;
- 25 (3) make available all relevant information; and

1 (4) prohibit material omissions that make the
2 contents of the disclosure misleading.

3 **SEC. 17. REPORT ON STREAMLINING FHA PROGRAMS.**

4 (a) EXAMINATION.—The Secretary of Housing and
5 Urban Development shall conduct an examination of the
6 mortgage insurance and any other programs of the Fed-
7 eral Housing Administration to identify—

8 (1) the level of use and need for such programs;

9 (2) any such programs that are unused or
10 underused; and

11 (3) methods for streamlining, consolidating,
12 simplifying, increasing the efficiency of, and reduc-
13 ing the number of such programs.

14 (b) REPORT.—Not later than the expiration of the
15 12-month period that begins upon the date of the enact-
16 ment of this Act, the Secretary shall submit a report to
17 the Congress on the results of the examination conducted
18 pursuant to subsection (a), including recommendations for
19 any administrative and legislative actions to streamline,
20 consolidate, simplify, increase the efficiency of, and reduce
21 the number of such programs.

22 **SEC. 18. BUDGET COMPLIANCE.**

23 The Secretary of Housing and Urban Development
24 shall allocate \$2,500,000 from the account for Adminis-
25 trative Contract Expenses each fiscal year through

1 September 30, 2017, which amounts shall be available
2 only for the purposes of this Act and the amendments
3 made by this Act, including such additional actuarial re-
4 views as may be required by section 5 of this Act and the
5 amendments made by such section.

Passed the House of Representatives September 11,
2012.

Attest:

KAREN L. HAAS,
Clerk.