

# Union Calendar No. 84

110TH CONGRESS  
1ST SESSION

# H. R. 1427

[Report No. 110-142]

To reform the regulation of certain housing-related Government-sponsored enterprises, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 9, 2007

Mr. FRANK of Massachusetts (for himself, Mr. WATT, Mr. BAKER, and Mr. GARY G. MILLER of California) introduced the following bill; which was referred to the Committee on Financial Services

MAY 9, 2007

Additional sponsors: Mrs. MALONEY of New York and Mr. TERRY

MAY 9, 2007

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on March 9, 2007]

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## A BILL

To reform the regulation of certain housing-related Government-sponsored enterprises, 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 *“Federal Housing Finance Reform Act of 2007”.*

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. Definitions.*

**TITLE I—REFORM OF REGULATION OF ENTERPRISES AND  
 FEDERAL HOME LOAN BANKS**

*Subtitle A—Improvement of Safety and Soundness*

*Sec. 101. Establishment of the Federal Housing Finance Agency.*

*Sec. 102. Duties and authorities of Director.*

*Sec. 103. Federal Housing Enterprise Board.*

*Sec. 104. Authority to require reports by regulated entities.*

*Sec. 105. Disclosure of income and charitable contributions by enterprises.*

*Sec. 106. Assessments.*

*Sec. 107. Examiners and accountants.*

*Sec. 108. Prohibition and withholding of executive compensation.*

*Sec. 109. Reviews of regulated entities.*

*Sec. 110. Inclusion of minorities and women; diversity in Agency workforce.*

*Sec. 111. Regulations and orders.*

*Sec. 112. Non-waiver of privileges.*

*Sec. 113. Risk-Based capital requirements.*

*Sec. 114. Minimum and critical capital levels.*

*Sec. 115. Review of and authority over enterprise assets and liabilities.*

*Sec. 116. Corporate governance of enterprises.*

*Sec. 117. Required registration under Securities Exchange Act of 1934.*

*Sec. 118. Liaison with Financial Institutions Examination Council.*

*Sec. 119. Guarantee fee study.*

*Sec. 120. Conforming amendments.*

*Subtitle B—Improvement of Mission Supervision*

*Sec. 131. Transfer of product approval and housing goal oversight.*

*Sec. 132. Review of enterprise products.*

*Sec. 133. Conforming loan limits.*

*Sec. 134. Annual housing report regarding regulated entities.*

*Sec. 135. Annual reports by regulated entities on affordable housing stock.*

*Sec. 136. Revision of housing goals.*

*Sec. 137. Duty to serve underserved markets.*

*Sec. 138. Monitoring and enforcing compliance with housing goals.*

*Sec. 139. Affordable Housing Fund.*

*Sec. 140. Consistency with mission.*

*Sec. 141. Enforcement.*

*Sec. 142. Conforming amendments.*

*Subtitle C—Prompt Corrective Action*

- Sec. 151. Capital classifications.*  
*Sec. 152. Supervisory actions applicable to undercapitalized regulated entities.*  
*Sec. 153. Supervisory actions applicable to significantly undercapitalized regulated entities.*  
*Sec. 154. Authority over critically undercapitalized regulated entities.*  
*Sec. 155. Conforming amendments.*

*Subtitle D—Enforcement Actions*

- Sec. 161. Cease-and-desist proceedings.*  
*Sec. 162. Temporary cease-and-desist proceedings.*  
*Sec. 163. Prejudgment attachment.*  
*Sec. 164. Enforcement and jurisdiction.*  
*Sec. 165. Civil money penalties.*  
*Sec. 166. Removal and prohibition authority.*  
*Sec. 167. Criminal penalty.*  
*Sec. 168. Subpoena authority.*  
*Sec. 169. Conforming amendments.*

*Subtitle E—General Provisions*

- Sec. 181. Boards of enterprises.*  
*Sec. 182. Report on portfolio operations, safety and soundness, and mission of enterprises.*  
*Sec. 183. Conforming and technical amendments.*  
*Sec. 184. Study of alternative secondary market systems.*

*TITLE II—FEDERAL HOME LOAN BANKS*

- Sec. 201. Definitions.*  
*Sec. 202. Directors.*  
*Sec. 203. Federal Housing Finance Agency oversight of Federal Home Loan Banks.*  
*Sec. 204. Joint activities of Banks.*  
*Sec. 205. Sharing of information between Federal Home Loan Banks.*  
*Sec. 206. Reorganization of Banks and voluntary merger.*  
*Sec. 207. Securities and Exchange Commission disclosure.*  
*Sec. 208. Community financial institution members.*  
*Sec. 209. Technical and conforming amendments.*  
*Sec. 210. Study of affordable housing program use for long-term care facilities.*  
*Sec. 211. Effective date.*

*TITLE III—TRANSFER OF FUNCTIONS, PERSONNEL, AND PROPERTY OF OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT, FEDERAL HOUSING FINANCE BOARD, AND DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**Subtitle A—Office of Federal Housing Enterprise Oversight*

- Sec. 301. Abolishment of OFHEO.*  
*Sec. 302. Continuation and coordination of certain regulations.*  
*Sec. 303. Transfer and rights of employees of OFHEO.*  
*Sec. 304. Transfer of property and facilities.*

*Subtitle B—Federal Housing Finance Board**Sec. 321. Abolishment of the Federal Housing Finance Board.**Sec. 322. Continuation and coordination of certain regulations.**Sec. 323. Transfer and rights of employees of the Federal Housing Finance Board.**Sec. 324. Transfer of property and facilities.**Subtitle C—Department of Housing and Urban Development**Sec. 341. Termination of enterprise-related functions.**Sec. 342. Continuation and coordination of certain regulations.**Sec. 343. Transfer and rights of employees of Department of Housing and Urban Development.**Sec. 344. Transfer of appropriations, property, and facilities.***1 SEC. 2. DEFINITIONS.**

2       *Section 1303 of the Housing and Community Develop-*  
 3 *ment Act of 1992 (12 U.S.C. 4502) is amended—*

4           (1) *in paragraph (7), by striking “an enter-*  
 5 *prise” and inserting “a regulated entity”;*

6           (2) *by striking “the enterprise” each place such*  
 7 *term appears (except in paragraphs (4) and (18))*  
 8 *and inserting “the regulated entity”;*

9           (3) *in paragraph (5), by striking “Office of Fed-*  
 10 *eral Housing Enterprise Oversight of the Department*  
 11 *of Housing and Urban Development” and inserting*  
 12 *“Federal Housing Finance Agency”;*

13           (4) *in each of paragraphs (8), (9), (10), and*  
 14 *(19), by striking “Secretary” each place that term ap-*  
 15 *pears and inserting “Director”;*

16           (5) *in paragraph (13), by inserting “, with re-*  
 17 *spect to an enterprise,” after “means”;*

18           (6) *by redesignating paragraphs (16) through*  
 19 *(19) as paragraphs (20) through (23), respectively;*

1           (7) *by striking paragraphs (14) and (15) and*  
2 *inserting the following new paragraphs:*

3           “(18) *REGULATED ENTITY.—The term ‘regulated*  
4 *entity’ means—*

5                   “(A) *the Federal National Mortgage Asso-*  
6 *ciation and any affiliate thereof;*

7                   “(B) *the Federal Home Loan Mortgage Cor-*  
8 *poration and any affiliate thereof; and*

9                   “(C) *each Federal home loan bank.*

10           “(19) *REGULATED ENTITY-AFFILIATED PARTY.—*  
11 *The term ‘regulated entity-affiliated party’ means—*

12                   “(A) *any director, officer, employee, or*  
13 *agent for, a regulated entity, or controlling*  
14 *shareholder of an enterprise;*

15                   “(B) *any shareholder, affiliate, consultant,*  
16 *or joint venture partner of a regulated entity,*  
17 *and any other person, as determined by the Di-*  
18 *rector (by regulation or on a case-by-case basis)*  
19 *that participates in the conduct of the affairs of*  
20 *a regulated entity, except that a shareholder of a*  
21 *regulated entity shall not be considered to have*  
22 *participated in the affairs of that regulated enti-*  
23 *ty solely by reason of being a member or cus-*  
24 *tomers of the regulated entity;*

1           “(C) any independent contractor for a regu-  
2           lated entity (including any attorney, appraiser,  
3           or accountant), if—

4                   “(i) the independent contractor know-  
5                   ingly or recklessly participates in—

6                           “(I) any violation of any law or  
7                           regulation;

8                           “(II) any breach of fiduciary  
9                           duty; or

10                           “(III) any unsafe or unsound  
11                           practice; and

12                           “(ii) such violation, breach, or practice  
13                           caused, or is likely to cause, more than a  
14                           minimal financial loss to, or a significant  
15                           adverse effect on, the regulated entity; and

16                           “(D) any not-for-profit corporation that re-  
17                           ceives its principal funding, on an ongoing  
18                           basis, from any regulated entity.”.

19           (8) by redesignating paragraphs (8) through (13)  
20           as paragraphs (12) through (17), respectively; and

21           (9) by inserting after paragraph (7) the fol-  
22           lowing new paragraph:

23                   “(11) FEDERAL HOME LOAN BANK.—The term  
24                   ‘Federal home loan bank’ means a bank established

1       *under the authority of the Federal Home Loan Bank*  
2       *Act.”;*

3               *(10) by redesignating paragraphs (2) through (7)*  
4       *as paragraphs (5) through (10), respectively; and*

5               *(11) by inserting after paragraph (1) the fol-*  
6       *lowing new paragraphs:*

7               “(2) *AGENCY.—The term ‘Agency’ means the*  
8       *Federal Housing Finance Agency.*

9               “(3) *AUTHORIZING STATUTES.—The term ‘au-*  
10       *thorizing statutes’ means—*

11               “(A) *the Federal National Mortgage Asso-*  
12       *ciation Charter Act;*

13               “(B) *the Federal Home Loan Mortgage Cor-*  
14       *poration Act; and*

15               “(C) *the Federal Home Loan Bank Act.*

16               “(4) *BOARD.—The term ‘Board’ means the Fed-*  
17       *eral Housing Enterprise Board established under sec-*  
18       *tion 1313B.”.*

1 **TITLE I—REFORM OF REGULA-**  
2 **TION OF ENTERPRISES AND**  
3 **FEDERAL HOME LOAN BANKS**  
4 **Subtitle A—Improvement of Safety**  
5 **and Soundness**

6 **SEC. 101. ESTABLISHMENT OF THE FEDERAL HOUSING FI-**  
7 **NANCE AGENCY.**

8 (a) *IN GENERAL.*—*The Housing and Community De-*  
9 *velopment Act of 1992 (12 U.S.C. 4501 et seq.) is amended*  
10 *by striking sections 1311 and 1312 and inserting the fol-*  
11 *lowing:*

12 **“SEC. 1311. ESTABLISHMENT OF THE FEDERAL HOUSING FI-**  
13 **NANCE AGENCY.**

14 *“(a) ESTABLISHMENT.*—*There is established the Fed-*  
15 *eral Housing Finance Agency, which shall be an inde-*  
16 *pendent agency of the Federal Government.*

17 *“(b) GENERAL SUPERVISORY AND REGULATORY AU-*  
18 *THORITY.*—

19 *“(1) IN GENERAL.*—*Each regulated entity shall,*  
20 *to the extent provided in this title, be subject to the*  
21 *supervision and regulation of the Agency.*

22 *“(2) AUTHORITY OVER FANNIE MAE, FREDDIE*  
23 *MAC, AND FEDERAL HOME LOAN BANKS.*—*The Direc-*  
24 *tor of the Federal Housing Finance Agency shall have*  
25 *general supervisory and regulatory authority over*



1        *each regulated entity and shall exercise such general*  
2        *regulatory and supervisory authority, including such*  
3        *duties and authorities set forth under section 1313 of*  
4        *this Act, to ensure that the purposes of this Act, the*  
5        *authorizing statutes, and any other applicable law*  
6        *are carried out. The Director shall have the same su-*  
7        *pervisory and regulatory authority over any joint of-*  
8        *fice of the Federal home loan banks, including the Of-*  
9        *fice of Finance of the Federal Home Loan Banks, as*  
10       *the Director has over the individual Federal home*  
11       *loan banks.*

12       “(c) *SAVINGS PROVISION.*—*The authority of the Direc-*  
13       *tor to take actions under subtitles B and C shall not in*  
14       *any way limit the general supervisory and regulatory au-*  
15       *thority granted to the Director.*

16       **“SEC. 1312. DIRECTOR.**

17       “(a) *ESTABLISHMENT OF POSITION.*—*There is estab-*  
18       *lished the position of the Director of the Federal Housing*  
19       *Finance Agency, who shall be the head of the Agency.*

20       “(b) *APPOINTMENT; TERM.*—

21                “(1) *APPOINTMENT.*—*The Director shall be ap-*  
22       *pointed by the President, by and with the advice and*  
23       *consent of the Senate, from among individuals who*  
24       *are citizens of the United States, have a demonstrated*  
25       *understanding of financial management or oversight,*

1       *and have a demonstrated understanding of capital*  
2       *markets, including the mortgage securities markets*  
3       *and housing finance.*

4               “(2) *TERM AND REMOVAL.*—*The Director shall*  
5       *be appointed for a term of 5 years and may be re-*  
6       *moved by the President only for cause.*

7               “(3) *VACANCY.*—*A vacancy in the position of Di-*  
8       *rector that occurs before the expiration of the term for*  
9       *which a Director was appointed shall be filled in the*  
10       *manner established under paragraph (1), and the Di-*  
11       *rector appointed to fill such vacancy shall be ap-*  
12       *pointed only for the remainder of such term.*

13               “(4) *SERVICE AFTER END OF TERM.*—*An indi-*  
14       *vidual may serve as the Director after the expiration*  
15       *of the term for which appointed until a successor has*  
16       *been appointed.*

17               “(5) *TRANSITIONAL PROVISION.*—*Notwith-*  
18       *standing paragraphs (1) and (2), the Director of the*  
19       *Office of Federal Housing Enterprise Oversight of the*  
20       *Department of Housing and Urban Development shall*  
21       *serve as the Director until a successor has been ap-*  
22       *pointed under paragraph (1).*

23               “(c) *DEPUTY DIRECTOR OF THE DIVISION OF ENTER-*  
24       *PRISE REGULATION.*—

1           “(1) *IN GENERAL.*—*The Agency shall have a*  
2           *Deputy Director of the Division of Enterprise Regula-*  
3           *tion, who shall be appointed by the Director from*  
4           *among individuals who are citizens of the United*  
5           *States, and have a demonstrated understanding of fi-*  
6           *nancial management or oversight and of mortgage se-*  
7           *curities markets and housing finance.*

8           “(2) *FUNCTIONS.*—*The Deputy Director of the*  
9           *Division of Enterprise Regulation shall have such*  
10          *functions, powers, and duties with respect to the over-*  
11          *sight of the enterprises as the Director shall prescribe.*

12          “(d) *DEPUTY DIRECTOR OF THE DIVISION OF FED-*  
13          *ERAL HOME LOAN BANK REGULATION.*—

14                 “(1) *IN GENERAL.*—*The Agency shall have a*  
15                 *Deputy Director of the Division of Federal Home*  
16                 *Loan Bank Regulation, who shall be appointed by the*  
17                 *Director from among individuals who are citizens of*  
18                 *the United States, have a demonstrated under-*  
19                 *standing of financial management or oversight and of*  
20                 *the Federal Home Loan Bank System and housing fi-*  
21                 *nance.*

22                 “(2) *FUNCTIONS.*—*The Deputy Director of the*  
23                 *Division of Federal Home Loan Bank Regulation*  
24                 *shall have such functions, powers, and duties with re-*

1        *spect to the oversight of the Federal home loan banks*  
2        *as the Director shall prescribe.*

3        “(e) *DEPUTY DIRECTOR FOR HOUSING.*—

4                “(1) *IN GENERAL.*—*The Agency shall have a*  
5        *Deputy Director for Housing, who shall be appointed*  
6        *by the Director from among individuals who are citi-*  
7        *zens of the United States, and have a demonstrated*  
8        *understanding of the housing markets and housing fi-*  
9        *nance and of community and economic development.*

10               “(2) *FUNCTIONS.*—*The Deputy Director for*  
11        *Housing shall have such functions, powers, and duties*  
12        *with respect to the oversight of the housing mission*  
13        *and goals of the enterprises, and with respect to over-*  
14        *sight of the housing finance and community and eco-*  
15        *nomic development mission of the Federal home loan*  
16        *banks, as the Director shall prescribe.*

17        “(f) *LIMITATIONS.*—*The Director and each of the Dep-*  
18        *uty Directors may not—*

19                “(1) *have any direct or indirect financial inter-*  
20        *est in any regulated entity or regulated entity-affili-*  
21        *ated party;*

22                “(2) *hold any office, position, or employment in*  
23        *any regulated entity or regulated entity-affiliated*  
24        *party; or*

1           “(3) have served as an executive officer or direc-  
2           tor of any regulated entity, or regulated entity-affili-  
3           ated party, at any time during the 3-year period end-  
4           ing on the date of appointment of such individual as  
5           Director or Deputy Director.

6           “(g) OMBUDSMAN.—The Director shall establish the  
7           position of the Ombudsman in the Agency. The Director  
8           shall provide that the Ombudsman will consider complaints  
9           and appeals from any regulated entity and any person that  
10          has a business relationship with a regulated entity and  
11          shall specify the duties and authority of the Ombudsman.”.

12          (b) APPOINTMENT OF DIRECTOR.—Notwithstanding  
13          any other provision of law or of this Act, the President may,  
14          any time after the date of the enactment of this Act, appoint  
15          an individual to serve as the Director of the Federal Hous-  
16          ing Finance Agency, as such office is established by the  
17          amendment made by subsection (a). This subsection shall  
18          take effect on the date of the enactment of this Act.

19          **SEC. 102. DUTIES AND AUTHORITIES OF DIRECTOR.**

20          (a) IN GENERAL.—The Housing and Community De-  
21          velopment Act of 1992 (12 U.S.C. 4513) is amended by  
22          striking section 1313 and inserting the following new sec-  
23          tions:

24          **“SEC. 1313. DUTIES AND AUTHORITIES OF DIRECTOR.**

25          “(a) DUTIES.—

1           “(1) *PRINCIPAL DUTIES.*—*The principal duties*  
2 *of the Director shall be—*

3                   “(A) *to oversee the operations of each regu-*  
4 *lated entity and any joint office of the Federal*  
5 *Home Loan Banks; and*

6                   “(B) *to ensure that—*

7                           “(i) *each regulated entity operates in a*  
8 *safe and sound manner, including mainte-*  
9 *nance of adequate capital and internal con-*  
10 *trols;*

11                           “(ii) *the operations and activities of*  
12 *each regulated entity foster liquid, efficient,*  
13 *competitive, and resilient national housing*  
14 *finance markets that minimize the cost of*  
15 *housing finance (including activities relat-*  
16 *ing to mortgages on housing for low- and*  
17 *moderate- income families involving a rea-*  
18 *sonable economic return that may be less*  
19 *than the return earned on other activities);*

20                           “(iii) *each regulated entity complies*  
21 *with this title and the rules, regulations,*  
22 *guidelines, and orders issued under this title*  
23 *and the authorizing statutes; and*

24                           “(iv) *each regulated entity carries out*  
25 *its statutory mission only through activities*

1           that are consistent with this title and the  
2           authorizing statutes.

3           “(2) *SCOPE OF AUTHORITY.*—*The authority of*  
4           *the Director shall include the authority—*

5                   “(A) *to review and, if warranted based on*  
6                   *the principal duties described in paragraph (1),*  
7                   *reject any acquisition or transfer of a controlling*  
8                   *interest in an enterprise; and*

9                   “(B) *to exercise such incidental powers as*  
10                   *may be necessary or appropriate to fulfill the*  
11                   *duties and responsibilities of the Director in the*  
12                   *supervision and regulation of each regulated en-*  
13                   *tity.*

14           “(b) *DELEGATION OF AUTHORITY.*—*The Director may*  
15           *delegate to officers or employees of the Agency, including*  
16           *each of the Deputy Directors, any of the functions, powers,*  
17           *or duties of the Director, as the Director considers appro-*  
18           *priate.*

19           “(c) *LITIGATION AUTHORITY.*—

20                   “(1) *IN GENERAL.*—*In enforcing any provision*  
21                   *of this title, any regulation or order prescribed under*  
22                   *this title, or any other provision of law, rule, regula-*  
23                   *tion, or order, or in any other action, suit, or pro-*  
24                   *ceeding to which the Director is a party or in which*  
25                   *the Director is interested, and in the administration*

1       of conservatorships and receiverships, the Director  
2       may act in the Director's own name and through the  
3       Director's own attorneys, or request that the Attorney  
4       General of the United States act on behalf of the Di-  
5       rector.

6               “(2) CONSULTATION WITH ATTORNEY GEN-  
7       ERAL.—The Director shall provide notice to, and con-  
8       sult with, the Attorney General of the United States  
9       before taking an action under paragraph (1) of this  
10      subsection or under section 1344(a), 1345(d), 1348(c),  
11      1372(e), 1375(a), 1376(d), or 1379D(c), except that, if  
12      the Director determines that any delay caused by such  
13      prior notice and consultation may adversely affect the  
14      safety and soundness responsibilities of the Director  
15      under this title, the Director shall notify the Attorney  
16      General as soon as reasonably possible after taking  
17      such action.

18              “(3) SUBJECT TO SUIT.—Except as otherwise  
19      provided by law, the Director shall be subject to suit  
20      (other than suits on claims for money damages) by a  
21      regulated entity or director or officer thereof with re-  
22      spect to any matter under this title or any other ap-  
23      plicable provision of law, rule, order, or regulation  
24      under this title, in the United States district court for  
25      the judicial district in which the regulated entity has





1 *measure, monitor, and control market risks and, as*  
2 *warranted, that establish limitations on market risk;*

3 *“(6) adequacy and maintenance of liquidity and*  
4 *reserves;*

5 *“(7) management of any asset and investment*  
6 *portfolio;*

7 *“(8) investments and acquisitions by a regulated*  
8 *entity, to ensure that they are consistent with the*  
9 *purposes of this Act and the authorizing statutes;*

10 *“(9) maintenance of adequate records, in accord-*  
11 *ance with consistent accounting policies and practices*  
12 *that enable the Director to evaluate the financial con-*  
13 *dition of the regulated entity;*

14 *“(10) issuance of subordinated debt by that par-*  
15 *ticular regulated entity, as the Director considers nec-*  
16 *essary;*

17 *“(11) overall risk management processes, includ-*  
18 *ing adequacy of oversight by senior management and*  
19 *the board of directors and of processes and policies to*  
20 *identify, measure, monitor, and control material*  
21 *risks, including reputational risks, and for adequate,*  
22 *well-tested business resumption plans for all major*  
23 *systems with remote site facilities to protect against*  
24 *disruptive events; and*

1           “(12) *such other operational and management*  
2           *standards as the Director determines to be appro-*  
3           *priate.*

4           “(b) *FAILURE TO MEET STANDARDS.—*

5                 “(1) *PLAN REQUIREMENT.—*

6                     “(A) *IN GENERAL.—If the Director deter-*  
7                     *mines that a regulated entity fails to meet any*  
8                     *standard established under subsection (a)—*

9                             “(i) *if such standard is established by*  
10                            *regulation, the Director shall require the*  
11                            *regulated entity to submit an acceptable*  
12                            *plan to the Director within the time allowed*  
13                            *under subparagraph (C); and*

14                           “(ii) *if such standard is established by*  
15                            *guideline, the Director may require the reg-*  
16                            *ulated entity to submit a plan described in*  
17                            *clause (i).*

18                     “(B) *CONTENTS.—Any plan required under*  
19                     *subparagraph (A) shall specify the actions that*  
20                     *the regulated entity will take to correct the defi-*  
21                     *ciency. If the regulated entity is undercapital-*  
22                     *ized, the plan may be a part of the capital res-*  
23                     *toration plan for the regulated entity under sec-*  
24                     *tion 1369C.*

1           “(C) *DEADLINES FOR SUBMISSION AND RE-*  
2           *VIEW.—The Director shall by regulation establish*  
3           *deadlines that—*

4                   “(i) *provide the regulated entities with*  
5                   *reasonable time to submit plans required*  
6                   *under subparagraph (A), and generally re-*  
7                   *quire a regulated entity to submit a plan*  
8                   *not later than 30 days after the Director de-*  
9                   *termines that the entity fails to meet any*  
10                  *standard established under subsection (a);*  
11                  *and*

12                   “(ii) *require the Director to act on*  
13                   *plans expeditiously, and generally not later*  
14                   *than 30 days after the plan is submitted.*

15           “(2) *REQUIRED ORDER UPON FAILURE TO SUB-*  
16           *MIT OR IMPLEMENT PLAN.—If a regulated entity fails*  
17           *to submit an acceptable plan within the time allowed*  
18           *under paragraph (1)(C), or fails in any material re-*  
19           *spect to implement a plan accepted by the Director,*  
20           *the following shall apply:*

21                   “(A) *REQUIRED CORRECTION OF DEFI-*  
22                   *CIENCY.—The Director shall, by order, require*  
23                   *the regulated entity to correct the deficiency.*

1           “(B) *OTHER AUTHORITY.*—*The Director*  
2           *may, by order, take one or more of the following*  
3           *actions until the deficiency is corrected:*

4                   “(i) *Prohibit the regulated entity from*  
5                   *permitting its average total assets (as such*  
6                   *term is defined in section 1316(b)) during*  
7                   *any calendar quarter to exceed its average*  
8                   *total assets during the preceding calendar*  
9                   *quarter, or restrict the rate at which the av-*  
10                   *erage total assets of the entity may increase*  
11                   *from one calendar quarter to another.*

12                   “(ii) *Require the regulated entity—*

13                           “(I) *in the case of an enterprise,*  
14                           *to increase its ratio of core capital to*  
15                           *assets.*

16                           “(II) *in the case of a Federal*  
17                           *home loan bank, to increase its ratio of*  
18                           *total capital (as such term is defined*  
19                           *in section 6(a)(5) of the Federal Home*  
20                           *Loan Bank Act (12 U.S.C. 1426(a)(5))*  
21                           *to assets.*

22                           “(iii) *Require the regulated entity to*  
23                           *take any other action that the Director de-*  
24                           *termines will better carry out the purposes*

1                   of this section than any of the actions de-  
2                   scribed in this subparagraph.

3                   “(3) *MANDATORY RESTRICTIONS.*—In complying  
4                   with paragraph (2), the Director shall take one or  
5                   more of the actions described in clauses (i) through  
6                   (iii) of paragraph (2)(B) if—

7                   “(A) the Director determines that the regu-  
8                   lated entity fails to meet any standard pre-  
9                   scribed under subsection (a);

10                  “(B) the regulated entity has not corrected  
11                  the deficiency; and

12                  “(C) during the 18-month period before the  
13                  date on which the regulated entity first failed to  
14                  meet the standard, the entity underwent extraor-  
15                  dinary growth, as defined by the Director.

16                  “(c) *OTHER ENFORCEMENT AUTHORITY NOT AF-*  
17                  *FECTED.*—The authority of the Director under this section  
18                  is in addition to any other authority of the Director.”.

19                  (b) *INDEPENDENCE IN CONGRESSIONAL TESTIMONY*  
20                  *AND RECOMMENDATIONS.*—Section 111 of Public Law 93–  
21                  495 (12 U.S.C. 250) is amended by striking “the Federal  
22                  Housing Finance Board” and inserting “the Director of the  
23                  Federal Housing Finance Agency”.

1 **SEC. 103. FEDERAL HOUSING ENTERPRISE BOARD.**

2 (a) *IN GENERAL.*—*Title XIII of the Housing and*  
3 *Community Development Act of 1992 (12 U.S.C. 4501 et*  
4 *seq.) is amended by inserting after section 1313A, as added*  
5 *by section 102 of this Act, the following new section:*

6 **“SEC. 1313B. FEDERAL HOUSING ENTERPRISE BOARD.**

7 “(a) *IN GENERAL.*—*There is established the Federal*  
8 *Housing Enterprise Board, which shall advise the Director*  
9 *with respect to overall strategies and policies in carrying*  
10 *out the duties of the Director under this title.*

11 “(b) *LIMITATIONS.*—*The Board may not exercise any*  
12 *executive authority, and the Director may not delegate to*  
13 *the Board any of the functions, powers, or duties of the Di-*  
14 *rector.*

15 “(c) *COMPOSITION.*—*The Board shall be comprised of*  
16 *5 members, of whom—*

17 “(1) *one member shall be the Secretary of the*  
18 *Treasury;*

19 “(2) *one member shall be the Secretary of Hous-*  
20 *ing and Urban Development;*

21 “(3) *one member shall be the Director, who shall*  
22 *serve as the Chairperson of the Board; and*

23 “(4) *two members, who shall be appointed by the*  
24 *President, by and with the advise and consent of the*  
25 *Senate, who are experts or experienced in the field of*

1       *financial services, housing finance, affordable hous-*  
2       *ing, or mortgage lending.*

3       *The members pursuant to paragraph (4) shall be appointed*  
4       *for a term of four years. The Board may not, at any time,*  
5       *have more than three members of the same political party.*

6       “(d) *MEETINGS.*—

7               “(1) *IN GENERAL.*—*The Board shall meet upon*  
8       *notice by the Director, but in no event shall the Board*  
9       *meet less frequently than once every 3 months.*

10              “(2) *SPECIAL MEETINGS.*—*Either the Secretary*  
11       *of the Treasury or the Secretary of Housing and*  
12       *Urban Development may, upon giving written notice*  
13       *to the Director, require a special meeting of the*  
14       *Board.*

15       “(e) *TESTIMONY.*—*On an annual basis, the Board*  
16       *shall testify before Congress regarding—*

17              “(1) *the safety and soundness of the regulated en-*  
18       *tities;*

19              “(2) *any material deficiencies in the conduct of*  
20       *the operations of the regulated entities;*

21              “(3) *the overall operational status of the regu-*  
22       *lated entities;*

23              “(4) *an evaluation of the performance of the reg-*  
24       *ulated entities in carrying out their respective mis-*  
25       *sions;*



1           “(5) operations, resources, and performance of  
2     *the Agency; and*

3           “(6) such other matters relating to the Agency  
4     *and its fulfillment of its mission, as the Board deter-*  
5     *mines appropriate.”.*

6           **(b) ANNUAL REPORT OF THE DIRECTOR.**—Section  
7     *1319B(a) of the Housing and Community Development Act*  
8     *of 1992 (12 U.S.C. 4521 (a)) is amended—*

9           (1) *in paragraph (3), by striking “and” at the*  
10     *end; and*

11          (2) *by striking paragraph (4) and inserting the*  
12     *following new paragraphs:*

13          “(4) *an assessment of the Board or any of its*  
14     *members with respect to—*

15                 “(A) *the safety and soundness of the regu-*  
16     *lated entities;*

17                 “(B) *any material deficiencies in the con-*  
18     *duct of the operations of the regulated entities;*

19                 “(C) *the overall operational status of the*  
20     *regulated entities; and*

21                 “(D) *an evaluation of the performance of*  
22     *the regulated entities in carrying out their mis-*  
23     *sions;*

24          “(5) *operations, resources, and performance of*  
25     *the Agency;*

1           “(6) a description of the demographic makeup of  
2           the workforce of the Agency and the actions taken  
3           pursuant to section 1319A(b) to provide for diversity  
4           in the workforce; and

5           “(7) such other matters relating to the Agency  
6           and its fulfillment of its mission.”.

7   **SEC. 104. AUTHORITY TO REQUIRE REPORTS BY REGU-**  
8                                   **LATED ENTITIES.**

9           Section 1314 of the Housing and Community Develop-  
10          ment Act of 1992 (12 U.S.C. 4514) is amended—

11                           (1) in the section heading, by striking “**ENTER-**  
12                           **PRISES**” and inserting “**REGULATED ENTITIES**”;

13                           (2) in subsection (a)—

14                                   (A) in the subsection heading, by striking  
15                                   “**SPECIAL REPORTS AND REPORTS OF FINAN-**  
16                                   **CIAL CONDITION**” and inserting “**REGULAR AND**  
17                                   **SPECIAL REPORTS**”;

18                                   (B) in paragraph (1)—

19   (i) in the paragraph heading, by strik-  
20   ing “**FINANCIAL CONDITION**” and inserting  
21   “**REGULAR REPORTS**”; and

22   (ii) by striking “reports of financial  
23   condition and operations” and inserting  
24   “regular reports on the condition (including  
25   financial condition), management, activi-

1                    *ties, or operations of the regulated entity, as*  
2                    *the Director considers appropriate”; and*

3                    *(C) in paragraph (2), after “submit special*  
4                    *reports” insert “on any of the topics specified in*  
5                    *paragraph (1) or such other topics”; and*

6                    *(3) by adding at the end the following new sub-*  
7                    *section:*

8                    *“(c) REPORTS OF FRAUDULENT FINANCIAL TRANS-*  
9                    *ACTIONS.—*

10                    *“(1) REQUIREMENT TO REPORT.—The Director*  
11                    *shall require a regulated entity to submit to the Di-*  
12                    *rector a timely report upon discovery by the regulated*  
13                    *entity that it has purchased or sold a fraudulent loan*  
14                    *or financial instrument or suspects a possible fraud*  
15                    *relating to a purchase or sale of any loan or financial*  
16                    *instrument. The Director shall require the regulated*  
17                    *entities to establish and maintain procedures designed*  
18                    *to discover any such transactions.*

19                    *“(2) PROTECTION FROM LIABILITY FOR RE-*  
20                    *PORTS.—*

21                    *“(A) IN GENERAL.—If a regulated entity*  
22                    *makes a report pursuant to paragraph (1), or a*  
23                    *regulated entity-affiliated party makes, or re-*  
24                    *quires another to make, such a report, and such*  
25                    *report is made in a good faith effort to comply*

1           with the requirements of paragraph (1), such  
2           regulated entity or regulated entity-affiliated  
3           party shall not be liable to any person under  
4           any law or regulation of the United States, any  
5           constitution, law, or regulation of any State or  
6           political subdivision of any State, or under any  
7           contract or other legally enforceable agreement  
8           (including any arbitration agreement), for such  
9           report or for any failure to provide notice of  
10          such report to the person who is the subject of  
11          such report or any other person identified in the  
12          report.

13                 “(B) *RULE OF CONSTRUCTION.*—Subpara-  
14          graph (A) shall not be construed as creating—

15                         “(i) any inference that the term ‘per-  
16                         son’, as used in such subparagraph, may be  
17                         construed more broadly than its ordinary  
18                         usage so as to include any government or  
19                         agency of government; or

20                         “(ii) any immunity against, or other-  
21                         wise affecting, any civil or criminal action  
22                         brought by any government or agency of  
23                         government to enforce any constitution, law,  
24                         or regulation of such government or agen-  
25                         cy.”.

1 **SEC. 105. DISCLOSURE OF INCOME AND CHARITABLE CON-**  
2 **TRIBUTIONS BY ENTERPRISES.**

3 *Section 1314 of the Housing and Community Develop-*  
4 *ment Act of 1992 (12 U.S.C. 4514), as amended by the pre-*  
5 *ceding provisions of this Act, is further amended by adding*  
6 *at the end the following new subsections:*

7 *“(d) DISCLOSURE OF CHARITABLE CONTRIBUTIONS BY*  
8 *ENTERPRISES.—*

9 *“(1) REQUIRED DISCLOSURE.—The Director*  
10 *shall, by regulation, require each enterprise to submit*  
11 *a report annually, in a format designated by the Di-*  
12 *rector, containing the following information:*

13 *“(A) TOTAL VALUE.—The total value of*  
14 *contributions made by the enterprise to nonprofit*  
15 *organizations during its previous fiscal year.*

16 *“(B) SUBSTANTIAL CONTRIBUTIONS.—If the*  
17 *value of contributions made by the enterprise to*  
18 *any nonprofit organization during its previous*  
19 *fiscal year exceeds the designated amount, the*  
20 *name of that organization and the value of con-*  
21 *tributions.*

22 *“(C) SUBSTANTIAL CONTRIBUTIONS TO IN-*  
23 *SIDER-AFFILIATED CHARITIES.—Identification of*  
24 *each contribution whose value exceeds the des-*  
25 *ignated amount that were made by the enterprise*  
26 *during the enterprise’s previous fiscal year to*

1           *any nonprofit organization of which a director,*  
2           *officer, or controlling person of the enterprise, or*  
3           *a spouse thereof, was a director or trustee, the*  
4           *name of such nonprofit organization, and the*  
5           *value of the contribution.*

6           “(2) *DEFINITIONS.*—*For purposes of this sub-*  
7           *section—*

8                   “(A) *the term ‘designated amount’ means*  
9                   *such amount as may be designated by the Direc-*  
10                   *tor by regulation, consistent with the public in-*  
11                   *terest and the protection of investors for purposes*  
12                   *of this subsection; and*

13                   “(B) *the Director may, by such regulations*  
14                   *as the Director deems necessary or appropriate*  
15                   *in the public interest, define the terms officer*  
16                   *and controlling person.*

17           “(3) *PUBLIC AVAILABILITY.*—*The Director shall*  
18           *make the information submitted pursuant to this sub-*  
19           *section publicly available.*

20           “(e) *DISCLOSURE OF INCOME.*—*Each enterprise shall*  
21           *include, in each annual report filed under section 13 of the*  
22           *Securities Exchange Act of 1934 (15 U.S.C. 78m), the in-*  
23           *come reported by the issuer to the Internal Revenue Service*  
24           *for the most recent taxable year. Such income shall—*

1           “(1) be presented in a prominent location in  
2 each such report and in a manner that permits a  
3 ready comparison of such income to income otherwise  
4 required to be included in such reports under regula-  
5 tions issued under such section; and

6           “(2) be submitted to the Securities and Exchange  
7 Commission in a form and manner suitable for entry  
8 into the EDGAR system of such Commission for pub-  
9 lic availability under such system.”.

10 **SEC. 106. ASSESSMENTS.**

11           Section 1316 of the Housing and Community Develop-  
12 ment Act of 1992 (12 U.S.C. 4516) is amended—

13           (1) by striking subsection (a) and inserting the  
14 following new subsection:

15           “(a) ANNUAL ASSESSMENTS.—The Director shall es-  
16 tablish and collect from the regulated entities annual assess-  
17 ments in an amount not exceeding the amount sufficient  
18 to provide for reasonable costs and expenses of the Agency,  
19 including—

20           “(1) the expenses of any examinations under sec-  
21 tion 1317 of this Act and under section 20 of the Fed-  
22 eral Home Loan Bank Act;

23           “(2) the expenses of obtaining any reviews and  
24 credit assessments under section 1319;

1           “(3) such amounts in excess of actual expenses  
2           for any given year as deemed necessary by the Direc-  
3           tor to maintain a working capital fund in accordance  
4           with subsection (e); and

5           “(4) the wind up of the affairs of the Office of  
6           Federal Housing Enterprise Oversight and the Fed-  
7           eral Housing Finance Board under title III of the  
8           Federal Housing Finance Reform Act of 2007.”;

9           (2) in subsection (b)—

10           (A) in the subsection heading, by striking  
11           “ENTERPRISES” and inserting “REGULATED  
12           ENTITIES” ;

13           (B) by realigning paragraph (2) two ems  
14           from the left margin, so as to align the left mar-  
15           gin of such paragraph with the left margins of  
16           paragraph (1);

17           (C) in paragraph (1)—

18           (i) by striking “Each enterprise” and  
19           inserting “Each regulated entity”;

20           (ii) by striking “each enterprise” and  
21           inserting “each regulated entity”; and

22           (iii) by striking “both enterprises” and  
23           inserting “all of the regulated entities”; and

24           (D) in paragraph (3)—



1                   (i) in subparagraph (B), by striking  
2                   “subparagraph (A)” and inserting “clause  
3                   (i)”;

4                   (ii) by redesignating subparagraphs  
5                   (A), (B), and (C) as clauses (i), (ii) and  
6                   (ii), respectively, and realigning such  
7                   clauses, as so redesignated, so as to be in-  
8                   dented 6 ems from the left margin;

9                   (iii) by striking the matter that pre-  
10                   cedes clause (i), as so redesignated, and in-  
11                   serting the following:

12                   “(3) *DEFINITION OF TOTAL ASSETS.*—For pur-  
13                   poses of this section, the term ‘total assets’ means as  
14                   follows:

15                   “(A) *ENTERPRISES.*—With respect to an en-  
16                   terprise, the sum of—”; and

17                   (iv) by adding at the end the following  
18                   new subparagraph:

19                   “(B) *FEDERAL HOME LOAN BANKS.*—With  
20                   respect to a Federal home loan bank, the total  
21                   assets of the Bank, as determined by the Director  
22                   in accordance with generally accepted accounting  
23                   principles.”;

24                   (3) by striking subsection (c) and inserting the  
25                   following new subsection:

1       “(c) *INCREASED COSTS OF REGULATION.*—

2               “(1) *INCREASE FOR INADEQUATE CAPITALIZA-*  
3       *TION.*—*The semiannual payments made pursuant to*  
4       *subsection (b) by any regulated entity that is not*  
5       *classified (for purposes of subtitle B) as adequately*  
6       *capitalized may be increased, as necessary, in the dis-*  
7       *cretion of the Director to pay additional estimated*  
8       *costs of regulation of the regulated entity.*

9               “(2) *ADJUSTMENT FOR ENFORCEMENT ACTIVI-*  
10       *TIES.*—*The Director may adjust the amounts of any*  
11       *semiannual payments for an assessment under sub-*  
12       *section (a) that are to be paid pursuant to subsection*  
13       *(b) by a regulated entity, as necessary in the discre-*  
14       *tion of the Director, to ensure that the costs of enforce-*  
15       *ment activities under this Act for a regulated entity*  
16       *are borne only by such regulated entity.*

17               “(3) *ADDITIONAL ASSESSMENT FOR DEFICI-*  
18       *ENCIES.*—*If at any time, as a result of increased*  
19       *costs of regulation of a regulated entity that is not*  
20       *classified (for purposes of subtitle B) as adequately*  
21       *capitalized or as the result of supervisory or enforce-*  
22       *ment activities under this Act for a regulated entity,*  
23       *the amount available from any semiannual payment*  
24       *made by such regulated entity pursuant to subsection*  
25       *(b) is insufficient to cover the costs of the Agency with*

1       *respect to such entity, the Director may make and*  
2       *collect from such regulated entity an immediate as-*  
3       *essment to cover the amount of such deficiency for*  
4       *the semiannual period. If, at the end of any semi-*  
5       *annual period during which such an assessment is*  
6       *made, any amount remains from such assessment,*  
7       *such remaining amount shall be deducted from the as-*  
8       *essment for such regulated entity for the following*  
9       *semiannual period.”;*

10           *(4) in subsection (d), by striking “If” and insert-*  
11           *ing “Except with respect to amounts collected pursu-*  
12           *ant to subsection (a)(3), if”;* and

13           *(5) by striking subsections (e) through (g) and*  
14           *inserting the following new subsections:*

15           *“(e) WORKING CAPITAL FUND.—At the end of each*  
16           *year for which an assessment under this section is made,*  
17           *the Director shall remit to each regulated entity any*  
18           *amount of assessment collected from such regulated entity*  
19           *that is attributable to subsection (a)(3) and is in excess of*  
20           *the amount the Director deems necessary to maintain a*  
21           *working capital fund.*

22           *“(f) TREATMENT OF ASSESSMENTS.—*

23           *“(1) DEPOSIT.—Amounts received by the Direc-*  
24           *tor from assessments under this section may be depos-*  
25           *ited by the Director in the manner provided in sec-*

1        *tion 5234 of the Revised Statutes (12 U.S.C. 192) for*  
2        *monies deposited by the Comptroller of the Currency.*

3            “(2) *NOT GOVERNMENT FUNDS.—The amounts*  
4        *received by the Director from any assessment under*  
5        *this section shall not be construed to be Government*  
6        *or public funds or appropriated money.*

7            “(3) *NO APPORTIONMENT OF FUNDS.—Notwith-*  
8        *standing any other provision of law, the amounts re-*  
9        *ceived by the Director from any assessment under this*  
10       *section shall not be subject to apportionment for the*  
11       *purpose of chapter 15 of title 31, United States Code,*  
12       *or under any other authority.*

13           “(4) *USE OF FUNDS.—The Director may use any*  
14       *amounts received by the Director from assessments*  
15       *under this section for compensation of the Director*  
16       *and other employees of the Agency and for all other*  
17       *expenses of the Director and the Agency.*

18           “(5) *AVAILABILITY OF OVERSIGHT FUND*  
19       *AMOUNTS.—Notwithstanding any other provision of*  
20       *law, any amounts remaining in the Federal Housing*  
21       *Enterprises Oversight Fund established under this*  
22       *section (as in effect before the effective date under sec-*  
23       *tion 185 of the Federal Housing Finance Reform Act*  
24       *of 2007), and any amounts remaining from assess-*  
25       *ments on the Federal Home Loan banks pursuant to*

1 *section 18(b) of the Federal Home Loan Bank Act (12*  
2 *U.S.C. 1438(b)), shall, upon such effective date, be*  
3 *treated for purposes of this subsection as amounts re-*  
4 *ceived from assessments under this section.*

5 *“(6) TREASURY INVESTMENTS.—*

6 *“(A) AUTHORITY.—The Director may re-*  
7 *quest the Secretary of the Treasury to invest such*  
8 *portions of amount received by the Director from*  
9 *assessments paid under this section that, in the*  
10 *Director’s discretion, are not required to meet the*  
11 *current working needs of the Agency.*

12 *“(B) GOVERNMENT OBLIGATIONS.—Pursu-*  
13 *ant to a request under subparagraph (A), the*  
14 *Secretary of the Treasury shall invest such*  
15 *amounts in government obligations guaranteed*  
16 *as to principal and interest by the United States*  
17 *with maturities suitable to the needs of Agency*  
18 *and bearing interest at a rate determined by the*  
19 *Secretary of the Treasury taking into consider-*  
20 *ation current market yields on outstanding mar-*  
21 *ketable obligations of the United States of com-*  
22 *parable maturity.*

23 *“(g) BUDGET AND FINANCIAL MANAGEMENT.—*

24 *“(1) FINANCIAL OPERATING PLANS AND FORE-*  
25 *CASTS.—The Director shall provide to the Director of*

1     *the Office of Management and Budget copies of the*  
2     *Director’s financial operating plans and forecasts as*  
3     *prepared by the Director in the ordinary course of the*  
4     *Agency’s operations, and copies of the quarterly re-*  
5     *ports of the Agency’s financial condition and results*  
6     *of operations as prepared by the Director in the ordi-*  
7     *nary course of the Agency’s operations.*

8             “(2) *FINANCIAL STATEMENTS.*—*The Agency shall*  
9     *prepare annually a statement of assets and liabilities*  
10    *and surplus or deficit; a statement of income and ex-*  
11    *penses; and a statement of sources and application of*  
12    *funds.*

13            “(3) *FINANCIAL MANAGEMENT SYSTEMS.*—*The*  
14    *Agency shall implement and maintain financial*  
15    *management systems that comply substantially with*  
16    *Federal financial management systems requirements,*  
17    *applicable Federal accounting standards, and that*  
18    *uses a general ledger system that accounts for activity*  
19    *at the transaction level.*

20            “(4) *ASSERTION OF INTERNAL CONTROLS.*—*The*  
21    *Director shall provide to the Comptroller General an*  
22    *assertion as to the effectiveness of the internal controls*  
23    *that apply to financial reporting by the Agency,*  
24    *using the standards established in section 3512(c) of*  
25    *title 31, United States Code.*

1           “(5) *RULE OF CONSTRUCTION.*—*This subsection*  
2           *may not be construed as implying any obligation on*  
3           *the part of the Director to consult with or obtain the*  
4           *consent or approval of the Director of the Office of*  
5           *Management and Budget with respect to any reports,*  
6           *plans, forecasts, or other information referred to in*  
7           *paragraph (1) or any jurisdiction or oversight over*  
8           *the affairs or operations of the Agency.*

9           “(h) *AUDIT OF AGENCY.*—

10           “(1) *IN GENERAL.*—*The Comptroller General*  
11           *shall annually audit the financial transactions of the*  
12           *Agency in accordance with the U.S. generally accept-*  
13           *ed government auditing standards as may be pre-*  
14           *scribed by the Comptroller General of the United*  
15           *States. The audit shall be conducted at the place or*  
16           *places where accounts of the Agency are normally*  
17           *kept. The representatives of the Government Account-*  
18           *ability Office shall have access to the personnel and*  
19           *to all books, accounts, documents, papers, records (in-*  
20           *cluding electronic records), reports, files, and all other*  
21           *papers, automated data, things, or property belonging*  
22           *to or under the control of or used or employed by the*  
23           *Agency pertaining to its financial transactions and*  
24           *necessary to facilitate the audit, and such representa-*  
25           *tives shall be afforded full facilities for verifying*

1        *transactions with the balances or securities held by*  
2        *depositories, fiscal agents, and custodians. All such*  
3        *books, accounts, documents, records, reports, files, pa-*  
4        *pers, and property of the Agency shall remain in pos-*  
5        *session and custody of the Agency. The Comptroller*  
6        *General may obtain and duplicate any such books,*  
7        *accounts, documents, records, working papers, auto-*  
8        *mated data and files, or other information relevant to*  
9        *such audit without cost to the Comptroller General*  
10       *and the Comptroller General's right of access to such*  
11       *information shall be enforceable pursuant to section*  
12       *716(c) of title 31, United States Code.*

13            *“(2) REPORT.—The Comptroller General shall*  
14        *submit to the Congress a report of each annual audit*  
15        *conducted under this subsection. The report to the*  
16        *Congress shall set forth the scope of the audit and*  
17        *shall include the statement of assets and liabilities*  
18        *and surplus or deficit, the statement of income and*  
19        *expenses, the statement of sources and application of*  
20        *funds, and such comments and information as may*  
21        *be deemed necessary to inform Congress of the finan-*  
22        *cial operations and condition of the Agency, together*  
23        *with such recommendations with respect thereto as the*  
24        *Comptroller General may deem advisable. A copy of*



1 *each report shall be furnished to the President and to*  
2 *the Agency at the time submitted to the Congress.*

3 “(3) *ASSISTANCE AND COSTS.*—*For the purpose*  
4 *of conducting an audit under this subsection, the*  
5 *Comptroller General may, in the discretion of the*  
6 *Comptroller General, employ by contract, without re-*  
7 *gard to section 5 of title 41, United States Code, pro-*  
8 *fessional services of firms and organizations of cer-*  
9 *tified public accountants for temporary periods or for*  
10 *special purposes. Upon the request of the Comptroller*  
11 *General, the Director of the Agency shall transfer to*  
12 *the Government Accountability Office from funds*  
13 *available, the amount requested by the Comptroller*  
14 *General to cover the full costs of any audit and report*  
15 *conducted by the Comptroller General. The Comp-*  
16 *troller General shall credit funds transferred to the*  
17 *account established for salaries and expenses of the*  
18 *Government Accountability Office, and such amount*  
19 *shall be available upon receipt and without fiscal*  
20 *year limitation to cover the full costs of the audit and*  
21 *report.”.*

22 **SEC. 107. EXAMINERS AND ACCOUNTANTS.**

23 (a) *EXAMINATIONS.*—*Section 1317 of the Housing and*  
24 *Community Development Act of 1992 (12 U.S.C. 4517) is*  
25 *amended—*

1           (1) *in subsection (a), by adding after the period*  
2 *at the end the following: “Each examination under*  
3 *this subsection of a regulated entity shall include a*  
4 *review of the procedures required to be established and*  
5 *maintained by the regulated entity pursuant to sec-*  
6 *tion 1314(c) (relating to fraudulent financial trans-*  
7 *actions) and the report regarding each such examina-*  
8 *tion shall describe any problems with such procedures*  
9 *maintained by the regulated entity.”;*

10           (2) *in subsection (b)—*

11                 (A) *by inserting “of a regulated entity”*  
12 *after “under this section”; and*

13                 (B) *by striking “to determine the condition*  
14 *of an enterprise for the purpose of ensuring its*  
15 *financial safety and soundness” and inserting*  
16 *“or appropriate”; and*

17           (3) *in subsection (c)—*

18                 (A) *in the second sentence, by inserting “to*  
19 *conduct examinations under this section” before*  
20 *the period; and*

21                 (B) *in the third sentence, by striking “from*  
22 *amounts available in the Federal Housing En-*  
23 *terprises Oversight Fund”.*

24           (b) *ENHANCED AUTHORITY TO HIRE EXAMINERS AND*  
25 *ACCOUNTANTS.—Section 1317 of the Housing and Commu-*

1 *nity Development Act of 1992 (12 U.S.C. 4517) is amended*  
2 *by adding at the end the following new subsection:*

3 “(g) *APPOINTMENT OF ACCOUNTANTS, ECONOMISTS,*  
4 *SPECIALISTS, AND EXAMINERS.—*

5 “(1) *APPLICABILITY.—This section applies with*  
6 *respect to any position of examiner, accountant, spe-*  
7 *cialist in financial markets, specialist in information*  
8 *technology, and economist at the Agency, with respect*  
9 *to supervision and regulation of the regulated entities,*  
10 *that is in the competitive service.*

11 “(2) *APPOINTMENT AUTHORITY.—The Director*  
12 *may appoint candidates to any position described in*  
13 *paragraph (1)—*

14 “(A) *in accordance with the statutes, rules,*  
15 *and regulations governing appointments in the*  
16 *excepted service; and*

17 “(B) *notwithstanding any statutes, rules,*  
18 *and regulations governing appointments in the*  
19 *competitive service.*

20 “(3) *RULE OF CONSTRUCTION.—The appoint-*  
21 *ment of a candidate to a position under the authority*  
22 *of this subsection shall not be considered to cause such*  
23 *position to be converted from the competitive service*  
24 *to the excepted service.”.*

1       (c) *REPEAL.*—Section 20 of the Federal Home Loan  
2 *Bank Act* (12 U.S.C. 1440) is amended—

3           (1) by striking the section heading and inserting  
4 the following: “*EXAMINATIONS AND GAO AUDITS*”;

5           (2) in the third sentence, by striking “the Board  
6 and” each place such term appears; and

7           (3) by striking the first two sentences and insert-  
8 ing the following: “The Federal home loan banks shall  
9 be subject to examinations by the Director to the ex-  
10 tent provided in section 1317 of the Federal Housing  
11 Enterprises Financial Safety and Soundness Act of  
12 1992 (12 U.S.C. 4517).”.

13 **SEC. 108. PROHIBITION AND WITHHOLDING OF EXECUTIVE**  
14 **COMPENSATION.**

15       (a) *IN GENERAL.*—Section 1318 of the Housing and  
16 Community Development Act of 1992 (12 U.S.C. 4518) is  
17 amended—

18           (1) in the section heading, by striking “**OF EX-**  
19 **CESSIVE**” and inserting “**AND WITHHOLDING OF**  
20 **EXECUTIVE**”;

21           (2) by redesignating subsection (b) as subsection  
22 (d); and

23           (3) by inserting after subsection (a) the following  
24 new subsections:

1           “(b) *FACTORS.*—*In making any determination under*  
2 *subsection (a), the Director may take into consideration*  
3 *any factors the Director considers relevant, including any*  
4 *wrongdoing on the part of the executive officer, and such*  
5 *wrongdoing shall include any fraudulent act or omission,*  
6 *breach of trust or fiduciary duty, violation of law, rule, reg-*  
7 *ulation, order, or written agreement, and insider abuse with*  
8 *respect to the regulated entity. The approval of an agree-*  
9 *ment or contract pursuant to section 309(d)(3)(B) of the*  
10 *Federal National Mortgage Association Charter Act (12*  
11 *U.S.C. 1723a(d)(3)(B)) or section 303(h)(2) of the Federal*  
12 *Home Loan Mortgage Corporation Act (12 U.S.C.*  
13 *1452(h)(2)) shall not preclude the Director from making*  
14 *any subsequent determination under subsection (a).*

15           “(c) *WITHHOLDING OF COMPENSATION.*—*In carrying*  
16 *out subsection (a), the Director may require a regulated en-*  
17 *tity to withhold any payment, transfer, or disbursement of*  
18 *compensation to an executive officer, or to place such com-*  
19 *pensation in an escrow account, during the review of the*  
20 *reasonableness and comparability of compensation.”.*

21           (b) *CONFORMING AMENDMENTS.*—

22                   (1) *FANNIE MAE.*—*Section 309(d) of the Federal*  
23 *National Mortgage Association Charter Act (12*  
24 *U.S.C. 1723a(d)) is amended by adding at the end*  
25 *the following new paragraph:*

1       “(4) Notwithstanding any other provision of this sec-  
2 tion, the corporation shall not transfer, disburse, or pay  
3 compensation to any executive officer, or enter into an  
4 agreement with such executive officer, without the approval  
5 of the Director, for matters being reviewed under section  
6 1318 of the Federal Housing Enterprises Financial Safety  
7 and Soundness Act of 1992 (12 U.S.C. 4518).”.

8               (2) *FREDDIE MAC.*—Section 303(h) of the Fed-  
9 eral Home Loan Mortgage Corporation Act (12  
10 U.S.C. 1452(h)) is amended by adding at the end the  
11 following new paragraph:

12       “(4) Notwithstanding any other provision of this sec-  
13 tion, the Corporation shall not transfer, disburse, or pay  
14 compensation to any executive officer, or enter into an  
15 agreement with such executive officer, without the approval  
16 of the Director, for matters being reviewed under section  
17 1318 of the Federal Housing Enterprises Financial Safety  
18 and Soundness Act of 1992 (12 U.S.C. 4518).”.

19               (3) *FEDERAL HOME LOAN BANKS.*—Section 7 of  
20 the Federal Home Loan Bank Act (12 U.S.C. 1427)  
21 is amended by adding at the end the following new  
22 subsection:

23       “(l) *WITHHOLDING OF COMPENSATION.*—Notwith-  
24 standing any other provision of this section, a Federal home  
25 loan bank shall not transfer, disburse, or pay compensation

1 to any executive officer, or enter into an agreement with  
2 such executive officer, without the approval of the Director,  
3 for matters being reviewed under section 1318 of the Federal  
4 Housing Enterprises Financial Safety and Soundness Act  
5 of 1992 (12 U.S.C. 4518).”.

6 **SEC. 109. REVIEWS OF REGULATED ENTITIES.**

7 Section 1319 of the Housing and Community Develop-  
8 ment Act of 1992 (12 U.S.C. 4519) is amended—

9 (1) by striking the section designation and head-  
10 ing and inserting the following:

11 **“SEC. 1319. REVIEWS OF REGULATED ENTITIES.”;**

12 and

13 (2) by striking “is a nationally recognized” and  
14 all that follows through “1934” and inserting the fol-  
15 lowing: “the Director considers appropriate, includ-  
16 ing an entity that is registered under section 15 of the  
17 Securities Exchange Act of 1934 (15 U.S.C. 78a) as  
18 a nationally registered statistical rating organiza-  
19 tion”.

20 **SEC. 110. INCLUSION OF MINORITIES AND WOMEN; DIVER-**  
21 **SITY IN AGENCY WORKFORCE.**

22 Section 1319A of the Housing and Community Devel-  
23 opment Act of 1992 (12 U.S.C. 4520) is amended—

24 (1) in the section heading, by striking “**EQUAL**  
25 **OPPORTUNITY IN SOLICITATION OF CON-**

1       **TRACTS”** and inserting “**MINORITY AND WOMEN**  
2       **INCLUSION; DIVERSITY REQUIREMENTS**”;

3               (2) in subsection (a), by striking “(a) IN GEN-  
4       ERAL.—Each enterprise” and inserting “(e) OUT-  
5       REACH.—Each regulated entity”; and

6               (3) by striking subsection (b);

7               (4) by inserting before subsection (e), as so reded-  
8       esignated by paragraph (2) of this section, the following  
9       new subsections:

10       “(a) **OFFICE OF MINORITY AND WOMEN INCLUSION.**—  
11       Each regulated entity shall establish an Office of Minority  
12       and Women Inclusion, or designate an office of the entity,  
13       that shall be responsible for carrying out this section and  
14       all matters of the entity relating to diversity in manage-  
15       ment, employment, and business activities in accordance  
16       with such standards and requirements as the Director shall  
17       establish.

18       “(b) **INCLUSION IN ALL LEVELS OF BUSINESS ACTIVI-**  
19       **TIES.**—Each regulated entity shall develop and implement  
20       standards and procedures to ensure, to the maximum extent  
21       possible, the inclusion and utilization of minorities (as such  
22       term is defined in section 1204(c) of the Financial Institu-  
23       tions Reform, Recovery, and Enforcement Act of 1989 (12  
24       U.S.C. 1811 note)) and women, and minority- and women-  
25       owned businesses (as such terms are defined in section



1 21A(r)(4) of the Federal Home Loan Bank Act (12 U.S.C.  
2 1441a(r)(4)) (including financial institutions, investment  
3 banking firms, mortgage banking firms, asset management  
4 firms, broker-dealers, financial services firms, underwriters,  
5 accountants, brokers, investment consultants, and providers  
6 of legal services) in all business and activities of the regu-  
7 lated entity at all levels, including in procurement, insur-  
8 ance, and all types of contracts (including contracts for the  
9 issuance or guarantee of any debt, equity, or mortgage-re-  
10 lated securities, the management of its mortgage and securi-  
11 ties portfolios, the making of its equity investments, the  
12 purchase, sale and servicing of single- and multi-family  
13 mortgage loans, and the implementation of its affordable  
14 housing program and initiatives). The processes established  
15 by each regulated entity for review and evaluation for con-  
16 tract proposals and to hire service providers shall include  
17 a component that gives consideration to the diversity of the  
18 applicant.

19 “(c) *APPLICABILITY.*—This section shall apply to all  
20 contracts of a regulated entity for services of any kind, in-  
21 cluding services that require the services of investment bank-  
22 ing, asset management entities, broker-dealers, financial  
23 services entities, underwriters, accountants, investment con-  
24 sultants, and providers of legal services.

1           “(d) *INCLUSION IN ANNUAL REPORTS.*—Each regu-  
2 *lated entity shall include, in the annual report submitted*  
3 *by the entity to the Director pursuant to section 309(k) of*  
4 *the Federal National Mortgage Association Charter Act (12*  
5 *U.S.C. 1723a(k)), section 307(c) of the Federal Home Loan*  
6 *Mortgage Corporation Act (12 U.S.C. 1456(c)), and section*  
7 *20 of the Federal Home Loan Bank Act (12 U.S.C. 1440),*  
8 *as applicable, detailed information describing the actions*  
9 *taken by the entity pursuant to this section, which shall*  
10 *include a statement of the total amounts paid by the entity*  
11 *to third party contractors since the last such report and*  
12 *the percentage of such amounts paid to businesses described*  
13 *in subsection (b) of this section.”; and*

14                     (5) *by adding at the end the following new sub-*  
15 *section:*

16           “(f) *DIVERSITY IN AGENCY WORKFORCE.*—*The Agency*  
17 *shall take affirmative steps to seek diversity in its workforce*  
18 *at all levels of the agency consistent with the demographic*  
19 *diversity of the United States, which shall include—*

20                     “(1) *heavily recruiting at historically Black col-*  
21 *leges and universities, Hispanic-serving institutions,*  
22 *women’s colleges, and colleges that typically serve ma-*  
23 *jority minority populations;*

24                     “(2) *sponsoring and recruiting at job fairs in*  
25 *urban communities, and placing employment adver-*

1        *tisements in newspapers and magazines oriented to-*  
2        *ward women and people of color;*

3            *“(3) partnering with organizations that are fo-*  
4        *cused on developing opportunities for minorities and*  
5        *women to place talented young minorities and women*  
6        *in industry internships, summer employment, and*  
7        *full-time positions; and*

8            *“(4) where feasible, partnering with inner-city*  
9        *high schools, girls’ high schools, and high schools with*  
10       *majority minority populations to establish or enhance*  
11       *financial literacy programs and provide mentoring.”.*

12    **SEC. 111. REGULATIONS AND ORDERS.**

13        *Section 1319G of the Housing and Community Devel-*  
14       *opment Act of 1992 (12 U.S.C. 4526) is amended—*

15            *(1) by striking subsection (a) and inserting the*  
16        *following new subsection:*

17            *“(a) AUTHORITY.—The Director shall issue any regu-*  
18       *lations, guidelines, and orders necessary to carry out the*  
19       *duties of the Director under this title and each of the au-*  
20       *thorizing statutes to ensure that the purposes of this title*  
21       *and such statutes are accomplished.”;*

22            *(2) in subsection (b), by inserting “, this title, or*  
23       *any of the authorizing statutes” after “under this sec-*  
24       *tion”; and*

25            *(3) by striking subsection (c).*

1 **SEC. 112. NON-WAIVER OF PRIVILEGES.**

2 *Part 1 of subtitle A of title XIII of the Housing and*  
3 *Community Development Act of 1992 (12 U.S.C. 4511) is*  
4 *amended by adding at the end the following new section:*

5 **“SEC. 1319H. PRIVILEGES NOT AFFECTED BY DISCLOSURE.**

6 *“(a) IN GENERAL.—The submission by any person of*  
7 *any information to the Agency for any purpose in the*  
8 *course of any supervisory or regulatory process of the Agen-*  
9 *cy shall not be construed as waiving, destroying, or other-*  
10 *wise affecting any privilege such person may claim with*  
11 *respect to such information under Federal or State law as*  
12 *to any person or entity other than the Agency.*

13 *“(b) RULE OF CONSTRUCTION.—No provision of sub-*  
14 *section (a) may be construed as implying or establishing*  
15 *that—*

16 *“(1) any person waives any privilege applicable*  
17 *to information that is submitted or transferred under*  
18 *any circumstance to which subsection (a) does not*  
19 *apply; or*

20 *“(2) any person would waive any privilege ap-*  
21 *plicable to any information by submitting the infor-*  
22 *mation to the Agency, but for this subsection.”.*

23 **SEC. 113. RISK-BASED CAPITAL REQUIREMENTS.**

24 *(a) IN GENERAL.—Section 1361 of the Housing and*  
25 *Community Development Act of 1992 (12 U.S.C. 4611) is*  
26 *amended to read as follows:*

1 **“SEC. 1361. RISK-BASED CAPITAL LEVELS FOR REGULATED**  
2 **ENTITIES.**

3 “(a) *IN GENERAL.*—

4 “(1) *ENTERPRISES.*—*The Director shall, by reg-*  
5 *ulation, establish risk-based capital requirements for*  
6 *the enterprises to ensure that the enterprises operate*  
7 *in a safe and sound manner, maintaining sufficient*  
8 *capital and reserves to support the risks that arise in*  
9 *the operations and management of the enterprises.*

10 “(2) *FEDERAL HOME LOAN BANKS.*—*The Direc-*  
11 *tor shall establish risk-based capital standards under*  
12 *section 6 of the Federal Home Loan Bank Act for the*  
13 *Federal home loan banks.*

14 “(b) *CONFIDENTIALITY OF INFORMATION.*—*Any person*  
15 *that receives any book, record, or information from the Di-*  
16 *rector or a regulated entity to enable the risk-based capital*  
17 *requirements established under this section to be applied*  
18 *shall—*

19 “(1) *maintain the confidentiality of the book,*  
20 *record, or information in a manner that is generally*  
21 *consistent with the level of confidentiality established*  
22 *for the material by the Director or the regulated enti-*  
23 *ty; and*

24 “(2) *be exempt from section 552 of title 5,*  
25 *United States Code, with respect to the book, record,*  
26 *or information.*

1       “(c) *NO LIMITATION.*—Nothing in this section shall  
2 limit the authority of the Director to require other reports  
3 or undertakings, or take other action, in furtherance of the  
4 responsibilities of the Director under this Act.”.

5       (b) *FEDERAL HOME LOAN BANKS RISK-BASED CAP-*  
6 *ITAL.*—Section 6(a)(3) of the Federal Home Loan Bank Act  
7 (12 U.S.C. 1426(a)(3)) is amended—

8           (1) by striking subparagraph (A) and inserting  
9 the following new subparagraph:

10                   “(A) *RISK-BASED CAPITAL STANDARDS.*—  
11           The Director shall, by regulation, establish risk-  
12 based capital standards for the Federal home  
13 loan banks to ensure that the Federal home loan  
14 banks operate in a safe and sound manner, with  
15 sufficient permanent capital and reserves to sup-  
16 port the risks that arise in the operations and  
17 management of the Federal home loans banks.”;  
18           and

19           (2) in subparagraph (B), by striking “(A)(ii)”  
20 and inserting “(A)”.

21 **SEC. 114. MINIMUM AND CRITICAL CAPITAL LEVELS.**

22       (a) *MINIMUM CAPITAL LEVEL.*—Section 1362 of the  
23 Housing and Community Development Act of 1992 (12  
24 U.S.C. 4612) is amended—

1           (1) *in subsection (a), by striking “IN GENERAL”*  
2           *and inserting “ENTERPRISES”;* and

3           (2) *by striking subsection (b) and inserting the*  
4           *following new subsections:*

5           “(b) *FEDERAL HOME LOAN BANKS.—For purposes of*  
6           *this subtitle, the minimum capital level for each Federal*  
7           *home loan bank shall be the minimum capital required to*  
8           *be maintained to comply with the leverage requirement for*  
9           *the bank established under section 6(a)(2) of the Federal*  
10           *Home Loan Bank Act (12 U.S.C. 1426(a)(2)).*

11           “(c) *ESTABLISHMENT OF REVISED MINIMUM CAPITAL*  
12           *LEVELS.—Notwithstanding subsections (a) and (b) and*  
13           *notwithstanding the capital classifications of the regulated*  
14           *entities, the Director may, by regulations issued under sec-*  
15           *tion 1319G, establish a minimum capital level for the enter-*  
16           *prises, for the Federal home loan banks, or for both the en-*  
17           *terprises and the banks, that is higher than the level speci-*  
18           *fied in subsection (a) for the enterprises or the level specified*  
19           *in subsection (b) for the Federal home loan banks, to the*  
20           *extent needed to ensure that the regulated entities operate*  
21           *in a safe and sound manner.*

22           “(d) *AUTHORITY TO REQUIRE TEMPORARY IN-*  
23           *CREASE.—Notwithstanding subsections (a) and (b) and any*  
24           *minimum capital level established pursuant to subsection*  
25           *(c), the Director may, by order, increase the minimum cap-*

1 *ital level for a regulated entity on a temporary basis for*  
2 *such period as the Director may provide if the Director—*

3           “(1) *makes any determination specified in sub-*  
4 *paragraphs (A) through (C) of section 1364(c)(1);*

5           “(2) *determines that the regulated entity has vio-*  
6 *lated any of the prudential standards established pur-*  
7 *suant to section 1313A and, as a result of such viola-*  
8 *tion, determines that an unsafe and unsound condi-*  
9 *tion exists; or*

10           “(3) *determines that an unsafe and unsound*  
11 *condition exists, except that a temporary increase in*  
12 *minimum capital imposed on a regulated entity pur-*  
13 *suant to this paragraph shall not remain in place for*  
14 *a period of more than 6 months unless the Director*  
15 *makes a renewed determination of the existence of an*  
16 *unsafe and unsound condition.*

17           “(e) *AUTHORITY TO ESTABLISH ADDITIONAL CAPITAL*  
18 *AND RESERVE REQUIREMENTS FOR PARTICULAR PRO-*  
19 *GRAMS.—The Director may, at any time by order or regula-*  
20 *tion, establish such capital or reserve requirements with re-*  
21 *spect to any program or activity of a regulated entity as*  
22 *the Director considers appropriate to ensure that the regu-*  
23 *lated entity operates in a safe and sound manner, with suf-*  
24 *ficient capital and reserves to support the risks that arise*  
25 *in the operations and management of the regulated entity.*



1       “(f) *PERIODIC REVIEW.*—*The Director shall periodically*  
 2 *cally review the amount of core capital maintained by the*  
 3 *enterprises, the amount of capital retained by the Federal*  
 4 *home loan banks, and the minimum capital levels estab-*  
 5 *lished for such regulated entities pursuant to this section.*  
 6 *The Director shall rescind any temporary minimum capital*  
 7 *level increase if the Director determines that the cir-*  
 8 *cumstances or facts justifying the temporary increase are*  
 9 *no longer present.”.*

10       (b) *CRITICAL CAPITAL LEVELS.*—

11               (1) *IN GENERAL.*—*Section 1363 of the Housing*  
 12 *and Community Development Act of 1992 (12 U.S.C.*  
 13 *4613) is amended—*

14                       (A) *by striking “For” and inserting “(a)*  
 15 *ENTERPRISES.—FOR”; and*

16                       (B) *by adding at the end the following new*  
 17 *subsection:*

18       “(b) *FEDERAL HOME LOAN BANKS.*—

19               “(1) *IN GENERAL.*—*For purposes of this subtitle,*  
 20 *the critical capital level for each Federal home loan*  
 21 *bank shall be such amount of capital as the Director*  
 22 *shall, by regulation require.*

23               “(2) *CONSIDERATION OF OTHER CRITICAL CAP-*  
 24 *ITAL LEVELS.*—*In establishing the critical capital*  
 25 *level under paragraph (1) for the Federal home loan*



1 **“Subtitle B—Required Capital Lev-**  
 2 **els for Regulated Entities, Spe-**  
 3 **cial Enforcement Powers, and**  
 4 **Reviews of Assets and Liabil-**  
 5 **ities”;**

6 *and*

7 *(2) by adding at the end the following new sec-*  
 8 *tion:*

9 **“SEC. 1369E. REVIEWS OF ENTERPRISE ASSETS AND LIABIL-**  
 10 **ITIES.**

11 *“(a) IN GENERAL.—The Director shall, by regulation,*  
 12 *establish standards by which the portfolio holdings, or rate*  
 13 *of growth of the portfolio holdings, of the enterprises will*  
 14 *be deemed to be consistent with the mission and the safe*  
 15 *and sound operations of the enterprises. In developing such*  
 16 *standards, the Director shall consider—*

17 *“(1) the size or growth of the mortgage market;*

18 *“(2) the need for the portfolio in maintaining li-*  
 19 *quidity or stability of the secondary mortgage market*  
 20 *(including the market for the mortgage-backed securi-*  
 21 *ties the enterprises issue);*

22 *“(3) the need for an inventory of mortgages in*  
 23 *connection with securitizations;*

24 *“(4) the need for the portfolio to directly support*  
 25 *the affordable housing mission of the enterprises;*

1           “(5) the liquidity needs of the enterprises;

2           “(6) any potential risks posed by the nature of  
3           the portfolio holdings; and

4           “(7) any additional factors that the Director de-  
5           termines to be necessary to carry out the purpose  
6           under the first sentence of this subsection to establish  
7           standards for assessing whether the portfolio holdings  
8           are consistent with the mission and safe and sound  
9           operations of the enterprises.

10          “(b) *TEMPORARY ADJUSTMENTS.*—The Director may,  
11          by order, make temporary adjustments to the established  
12          standards for an enterprise or both enterprises, such as dur-  
13          ing times of economic distress or market disruption.

14          “(c) *AUTHORITY TO REQUIRE DISPOSITION OR ACQUI-*  
15          *SITION.*—The Director shall monitor the portfolio of each  
16          enterprise. Pursuant to subsection (a) and notwithstanding  
17          the capital classifications of the enterprises, the Director  
18          may, by order, require an enterprise, under such terms and  
19          conditions as the Director determines to be appropriate, to  
20          dispose of or acquire any asset, if the Director determines  
21          that such action is consistent with the purposes of this Act  
22          or any of the authorizing statutes.”.

23          “(b) *REGULATIONS.*—Not later than the expiration of  
24          the 180-day period beginning on the effective date under  
25          section 185, the Director of the Federal Housing Finance

1 *Agency shall issue regulations pursuant to section 1369E(a)*  
2 *of the Housing and Community Development Act of 1992*  
3 *(as added by subsection (a) of this section) establishing the*  
4 *portfolio holdings standards under such section.*

5 **SEC. 116. CORPORATE GOVERNANCE OF ENTERPRISES.**

6 *The Housing and Community Development Act of*  
7 *1992 is amended by inserting before section 1323 (12 U.S.C.*  
8 *4543) the following new section:*

9 **“SEC. 1322A. CORPORATE GOVERNANCE OF ENTERPRISES.**

10 **“(a) BOARD OF DIRECTORS.—**

11 **“(1) INDEPENDENCE.—***A majority of seated*  
12 *members of the board of directors of each enterprise*  
13 *shall be independent board members, as defined under*  
14 *rules set forth by the New York Stock Exchange, as*  
15 *such rules may be amended from time to time.*

16 **“(2) FREQUENCY OF MEETINGS.—***To carry out*  
17 *its obligations and duties under applicable laws,*  
18 *rules, regulations, and guidelines, the board of direc-*  
19 *tors of an enterprise shall meet at least eight times a*  
20 *year and not less than once a calendar quarter.*

21 **“(3) NON-MANAGEMENT BOARD MEMBER MEET-**  
22 **INGS.—***The non-management directors of an enter-*  
23 *prise shall meet at regularly scheduled executive ses-*  
24 *sions without management participation.*

1           “(4) *QUORUM; PROHIBITION ON PROXIES.*—*For*  
2           *the transaction of business, a quorum of the board of*  
3           *directors of an enterprise shall be at least a majority*  
4           *of the seated board of directors and a board member*  
5           *may not vote by proxy.*

6           “(5) *INFORMATION.*—*The management of an en-*  
7           *terprise shall provide a board member of the enter-*  
8           *prise with such adequate and appropriate informa-*  
9           *tion that a reasonable board member would find im-*  
10          *portant to the fulfillment of his or her fiduciary du-*  
11          *ties and obligations.*

12          “(6) *ANNUAL REVIEW.*—*At least annually, the*  
13          *board of directors of each enterprise shall review, with*  
14          *appropriate professional assistance, the requirements*  
15          *of laws, rules, regulations, and guidelines that are ap-*  
16          *licable to its activities and duties.*

17          “(b) *COMMITTEES OF BOARDS OF DIRECTORS.*—

18                 “(1) *FREQUENCY OF MEETINGS.*—*Any committee*  
19                 *of the board of directors of an enterprise shall meet*  
20                 *with sufficient frequency to carry out its obligations*  
21                 *and duties under applicable laws, rules, regulations,*  
22                 *and guidelines.*

23                 “(2) *REQUIRED COMMITTEES.*—*Each enterprise*  
24                 *shall provide for the establishment, however styled, of*  
25                 *the following committees of the board of directors:*

1           “(A) *Audit committee.*

2           “(B) *Compensation committee.*

3           “(C) *Nominating/corporate governance com-*  
4           *mittee.*

5           *Such committees shall be in compliance with the*  
6           *charter, independence, composition, expertise, duties,*  
7           *responsibilities, and other requirements set forth*  
8           *under section 10A(m) of the Securities Exchange Act*  
9           *of 1934 (15 U.S.C. 78j-1(m)), with respect to the*  
10          *audit committee, and under rules issued by the New*  
11          *York Stock Exchange, as such rules may be amended*  
12          *from time to time.*

13          “(c) *COMPENSATION.—*

14                 “(1) *IN GENERAL.—The compensation of board*  
15                 *members, executive officers, and employees of an en-*  
16                 *terprise—*

17                         “(A) *shall not be in excess of that which is*  
18                         *reasonable and appropriate;*

19                         “(B) *shall be commensurate with the duties*  
20                         *and responsibilities of such persons;*

21                         “(C) *shall be consistent with the long-term*  
22                         *goals of the enterprise;*

23                         “(D) *shall not focus solely on earnings per-*  
24                         *formance, but shall take into account risk man-*

1            *agement, operational stability and legal and reg-*  
2            *ulatory compliance as well; and*

3            *“(E) shall be undertaken in a manner that*  
4            *complies with applicable laws, rules, and regula-*  
5            *tions.*

6            *“(2) REIMBURSEMENT.—If an enterprise is re-*  
7            *quired to prepare an accounting restatement due to*  
8            *the material noncompliance of the enterprise, as a re-*  
9            *sult of misconduct, with any financial reporting re-*  
10           *quirement under the securities laws, the chief execu-*  
11           *tive officer and chief financial officer of the enterprise*  
12           *shall reimburse the enterprise as provided under sec-*  
13           *tion 304 of the Sarbanes-Oxley Act of 2002 (15*  
14           *U.S.C. 7243). This provision does not otherwise limit*  
15           *the authority of the Agency to employ remedies avail-*  
16           *able to it under its enforcement authorities.*

17           *“(d) CODE OF CONDUCT AND ETHICS.—*

18           *“(1) IN GENERAL.—An enterprise shall establish*  
19           *and administer a written code of conduct and ethics*  
20           *that is reasonably designed to assure the ability of*  
21           *board members, executive officers, and employees of*  
22           *the enterprise to discharge their duties and respon-*  
23           *sibilities, on behalf of the enterprise, in an objective*  
24           *and impartial manner, and that includes standards*  
25           *required under section 406 of the Sarbanes-Oxley Act*



1       of 2002 (15 U.S.C. 7264) and other applicable laws,  
2       rules, and regulations.

3               “(2) *REVIEW.*—Not less than once every three  
4       years, an enterprise shall review the adequacy of its  
5       code of conduct and ethics for consistency with prac-  
6       tices appropriate to the enterprise and make any ap-  
7       propriate revisions to such code.

8               “(e) *CONDUCT AND RESPONSIBILITIES OF BOARD OF*  
9       *DIRECTORS.*—The board of directors of an enterprise shall  
10      be responsible for directing the conduct and affairs of the  
11      enterprise in furtherance of the safe and sound operation  
12      of the enterprise and shall remain reasonably informed of  
13      the condition, activities, and operations of the enterprise.  
14      The responsibilities of the board of directors shall include  
15      having in place adequate policies and procedures to assure  
16      its oversight of, among other matters, the following:

17               “(1) *Corporate strategy, major plans of action,*  
18      *risk policy, programs for legal and regulatory compli-*  
19      *ance and corporate performance, including prudent*  
20      *plans for growth and allocation of adequate resources*  
21      *to manage operations risk.*

22               “(2) *Hiring and retention of qualified executive*  
23      *officers and succession planning for such executive of-*  
24      *ficers.*

25               “(3) *Compensation programs of the enterprise.*

1           “(4) *Integrity of accounting and financial re-*  
2           *porting systems of the enterprise, including inde-*  
3           *pendent audits and systems of internal control.*

4           “(5) *Process and adequacy of reporting, disclo-*  
5           *tures, and communications to shareholders, investors,*  
6           *and potential investors.*

7           “(6) *Extensions of credit to board members and*  
8           *executive officers.*

9           “(7) *Responsiveness of executive officers in pro-*  
10          *viding accurate and timely reports to Federal regu-*  
11          *lators and in addressing the supervisory concerns of*  
12          *Federal regulators in a timely and appropriate man-*  
13          *ner.*

14          “(f) *PROHIBITION OF EXTENSIONS OF CREDIT.—An*  
15          *enterprise may not directly or indirectly, including through*  
16          *any subsidiary, extend or maintain credit, arrange for the*  
17          *extension of credit, or renew an extension of credit, in the*  
18          *form of a personal loan to or for any board member or exec-*  
19          *utive officer of the enterprise, as provided by section 13(k)*  
20          *of the Securities Exchange Act of 1934 (15 U.S.C. 78m(k)).*

21          “(g) *CERTIFICATION OF DISCLOSURES.—The chief ex-*  
22          *ecutive officer and the chief financial officer of an enterprise*  
23          *shall review each quarterly report and annual report issued*  
24          *by the enterprise and such reports shall include certifi-*

1 cations by such officers as required by section 302 of the  
2 Sarbanes-Oxley Act of 2002 (15 U.S.C. 7241).

3 “(h) *CHANGE OF AUDIT PARTNER.*—An enterprise  
4 may not accept audit services from an external auditing  
5 firm if the lead or coordinating audit partner who has pri-  
6 mary responsibility for the external audit of the enterprise,  
7 or the external audit partner who has responsibility for re-  
8 viewing the external audit has performed audit services for  
9 the enterprise in each of the five previous fiscal years.

10 “(i) *COMPLIANCE PROGRAM.*—

11 “(1) *REQUIREMENT.*—Each enterprise shall es-  
12 tablish and maintain a compliance program that is  
13 reasonably designed to assure that the enterprise com-  
14 plies with applicable laws, rules, regulations, and in-  
15 ternal controls.

16 “(2) *COMPLIANCE OFFICER.*—The compliance  
17 program of an enterprise shall be headed by a compli-  
18 ance officer, however styled, who reports directly to  
19 the chief executive officer of the enterprise. The com-  
20 pliance officer shall report regularly to the board of  
21 directors or an appropriate committee of the board of  
22 directors on compliance with and the adequacy of  
23 current compliance policies and procedures of the en-  
24 terprise, and shall recommend any adjustments to

1 *such policies and procedures that the compliance offi-*  
2 *cer considers necessary and appropriate.*

3 “(j) *RISK MANAGEMENT PROGRAM.*—

4 “(1) *REQUIREMENT.*—*Each enterprise shall es-*  
5 *tablish and maintain a risk management program*  
6 *that is reasonably designed to manage the risks of the*  
7 *operations of the enterprise.*

8 “(2) *RISK MANAGEMENT OFFICER.*—*The risk*  
9 *management program of an enterprise shall be headed*  
10 *by a risk management officer, however styled, who re-*  
11 *ports directly to the chief executive officer of the enter-*  
12 *prise. The risk management officer shall report regu-*  
13 *larly to the board of directors or an appropriate com-*  
14 *mittee of the board of directors on compliance with*  
15 *and the adequacy of current risk management policies*  
16 *and procedures of the enterprise, and shall rec-*  
17 *ommend any adjustments to such policies and proce-*  
18 *dures that the risk management officer considers nec-*  
19 *essary and appropriate.*

20 “(k) *COMPLIANCE WITH OTHER LAWS.*—

21 “(1) *DEREGISTERED OR UNREGISTERED COM-*  
22 *MON STOCK.*—*If an enterprise deregisters or has not*  
23 *registered its common stock with the Securities and*  
24 *Exchange Commission under the Securities Exchange*  
25 *Act of 1934, the enterprise shall comply or continue*

1       to comply with sections 10A(m) and 13(k) of the Se-  
2       curities Exchange Act of 1934 (15 U.S.C. 78j-1(m),  
3       78m(k)) and sections 302, 304, and 406 of the Sar-  
4       banes-Oxley Act of 2002 (15 U.S.C. 7241, 7243,  
5       7264), subject to such requirements as provided by  
6       subsection (l) of this section.

7               “(2) REGISTERED COMMON STOCK.—An enter-  
8       prise that has its common stock registered with the  
9       Securities and Exchange Commission shall maintain  
10      such registered status, unless it provides 60 days  
11      prior written notice to the Director stating its intent  
12      to deregister and its understanding that it will re-  
13      main subject to the requirements of the sections of the  
14      Securities Exchange Act of 1934 and the Sarbanes-  
15      Oxley Act of 2002, subject to such requirements as  
16      provided by subsection (l) of this section.

17              “(l) OTHER MATTERS.—The Director may from time  
18      to time establish standards, by regulation, order, or guide-  
19      line, regarding such other corporate governance matters of  
20      the enterprises as the Director considers appropriate.

21              “(m) MODIFICATION OF STANDARDS.—In connection  
22      with standards of Federal or State law (including the Re-  
23      vised Model Corporation Act) or New York Stock Exchange  
24      rules that are made applicable to an enterprise by section  
25      1710.10 of the Director’s rules (12 C.F.R. 1710.10) and by

1 subsections (a), (b), (g), (i), (j), and (k) of this section, the  
2 Director, in the Director's sole discretion, may modify the  
3 standards contained in this section or in part 1710 of the  
4 Director's rules (12 C.F.R. Part 1710) in accordance with  
5 section 553 of title 5, United States Code, and upon written  
6 notice to the enterprise.”.

7 **SEC. 117. REQUIRED REGISTRATION UNDER SECURITIES**  
8 **EXCHANGE ACT OF 1934.**

9 *The Housing and Community Development Act of*  
10 *1992 is amended by adding after section 1322A, as added*  
11 *by the preceding provisions of this Act, the following new*  
12 *section:*

13 **“SEC. 1322B. REQUIRED REGISTRATION UNDER SECURITIES**  
14 **EXCHANGE ACT OF 1934.**

15 *“(a) IN GENERAL.—Each regulated entity shall reg-*  
16 *ister at least one class of the capital stock of such regulated*  
17 *entity, and maintain such registration with the Securities*  
18 *and Exchange Commission, under the Securities Exchange*  
19 *Act of 1934.*

20 *“(b) ENTERPRISES.—Each enterprise shall comply*  
21 *with sections 14 and 16 of the Securities Exchange Act of*  
22 *1934.”.*

1 **SEC. 118. LIAISON WITH FINANCIAL INSTITUTIONS EXAM-**  
2 **INATION COUNCIL.**

3 *Section 1007 of the Federal Financial Institutions Ex-*  
4 *amination Council Act of 1978 (12 U.S.C. 3306) is amend-*  
5 *ed—*

6 (1) *in the section heading, by inserting after*  
7 *“STATE” the following: “AND FEDERAL HOUSING FI-*  
8 *NANCE AGENCY”;* and

9 (2) *by inserting after “financial institutions” the*  
10 *following: “, and one representative of the Federal*  
11 *Housing Finance Agency,”.*

12 **SEC. 119. GUARANTEE FEE STUDY.**

13 (a) *IN GENERAL.—The Director of the Federal Hous-*  
14 *ing Finance Agency, in consultation with the heads of the*  
15 *federal banking agencies, shall, not later than 18 months*  
16 *after the date of the enactment of this Act, submit to the*  
17 *Congress a study concerning the pricing, transparency and*  
18 *reporting of the Federal National Mortgage Association, the*  
19 *Federal Home Loan Mortgage Corporation, and the Federal*  
20 *home loan banks with regard to guarantee fees and con-*  
21 *cerning analogous practices, transparency and reporting*  
22 *requirements (including advances pricing practices by the*  
23 *Federal Home Loan Banks) of other participants in the*  
24 *business of mortgage purchases and securitization.*

25 (b) *FACTORS.—The study required by this section shall*  
26 *examine various factors such as credit risk, counterparty*

1 *risk considerations, economic value considerations, and vol-*  
2 *ume considerations used by the regulated entities (as such*  
3 *term is defined in section 1303 of the Housing and Commu-*  
4 *nity Development Act of 1992) included in the study in*  
5 *setting the amount of fees they charge.*

6 (c) *CONTENTS OF REPORT.—The report required*  
7 *under subsection (a) shall identify and analyze—*

8 (1) *the factors used by each enterprise (as such*  
9 *term is defined in section 1303 of the Housing and*  
10 *Community Development Act of 1992) in determining*  
11 *the amount of the guarantee fees it charges;*

12 (2) *the total revenue the enterprises earn from*  
13 *guarantee fees;*

14 (3) *the total costs incurred by the enterprises for*  
15 *providing guarantees;*

16 (4) *the average guarantee fee charged by the en-*  
17 *terprises;*

18 (5) *an analysis of how and why the guarantee*  
19 *fees charged differ from such fees charged during the*  
20 *previous year;*

21 (6) *a breakdown of the revenue and costs associ-*  
22 *ated with providing guarantees, based on product*  
23 *type and risk classifications; and*



1           (7) *other relevant information on guarantee fees*  
2           *with other participants in the mortgage and*  
3           *securitization business.*

4           (d) *PROTECTION OF INFORMATION.*—*Nothing in this*  
5           *section may be construed to require or authorize the Direc-*  
6           *tor of the Federal Housing Finance Agency, in connection*  
7           *with the study mandated by this section, to disclose infor-*  
8           *mation of the enterprises or other organization that is con-*  
9           *fidential or proprietary.*

10          (e) *EFFECTIVE DATE.*—*This section shall take effect on*  
11          *the date of the enactment of this Act.*

12          **SEC. 120. CONFORMING AMENDMENTS.**

13          (a) *1992 ACT.*—*Part 1 of subtitle A of title XIII of*  
14          *the Housing and Community Development Act of 1992 (12*  
15          *U.S.C. 4511 et seq.), as amended by the preceding provi-*  
16          *sions of this Act, is further amended—*

17                  (1) *by striking “an enterprise” each place such*  
18                  *term appears in such part (except in sections*  
19                  *1313(a)(2)(A), 1313A(b)(2)(B)(ii)(I), and 1316(b)(3))*  
20                  *and inserting “a regulated entity”;*

21                  (2) *by striking “the enterprise” each place such*  
22                  *term appears in such part (except in section*  
23                  *1316(b)(3)) and inserting “the regulated entity”;*

24                  (3) *by striking “the enterprises” each place such*  
25                  *term appears in such part (except in sections*

1       1312(c)(2), and 1312(e)(2)) and inserting “the regu-  
2       lated entities”;

3               (4) by striking “each enterprise” each place such  
4       term appears in such part and inserting “each regu-  
5       lated entity”;

6               (5) by striking “Office” each place such term ap-  
7       pears in such part (except in sections 1311(b)(2),  
8       1312(b)(5), 1315(b), and 1316(a)(4), (g), and (h),  
9       1317(c), and 1319A(a)) and inserting “Agency”;

10              (6) in section 1315 (12 U.S.C. 4515)—

11                      (A) in subsection (a)—

12                              (i) in the subsection heading, by strik-  
13                              ing “OFFICE PERSONNEL” and inserting  
14                              “IN GENERAL”; and

15                              (ii) by striking “The” and inserting  
16                              “Subject to title III of the Federal Housing  
17                              Finance Reform Act of 2007, the”;

18                      (B) by striking subsections (d) and (f); and

19                      (C) by redesignating subsection (e) as sub-  
20       section (d);

21              (7) in section 1319B (12 U.S.C. 4521), by strik-  
22       ing “Committee on Banking, Finance and Urban Af-  
23       fairs” each place such term appears and inserting  
24       “Committee on Financial Services”; and

1           (8) in section 1319F (12 U.S.C. 4525), striking  
2           all that follows “United States Code” and inserting “,  
3           the Agency shall be considered an agency responsible  
4           for the regulation or supervision of financial institu-  
5           tions.”.

6           (b) AMENDMENTS TO FANNIE MAE CHARTER ACT.—  
7           The Federal National Mortgage Association Charter Act (12  
8           U.S.C. 1716 et seq.) is amended—

9           (1) by striking “Director of the Office of Federal  
10           Housing Enterprise Oversight of the Department of  
11           Housing and Urban Development” each place such  
12           term appears, and inserting “Director of the Federal  
13           Housing Finance Agency”, in—

14                   (A) section 303(c)(2) (12 U.S.C.  
15                   1718(c)(2));

16                   (B) section 309(d)(3)(B) (12 U.S.C.  
17                   1723a(d)(3)(B)); and

18                   (C) section 309(k)(1); and

19           (2) in section 309—

20                   (A) in subsections (d)(3)(A) and (n)(1), by  
21                   striking “Banking, Finance and Urban Affairs”  
22                   each place such term appears and inserting “Fi-  
23                   nancial Services”; and

24                   (B) in subsection (m)—

1           (i) in paragraph (1), by striking “Sec-  
2           retary” the second place such term appears  
3           and inserting “Director”;

4           (ii) in paragraph (2), by striking  
5           “Secretary” the second place such term ap-  
6           pears and inserting “Director”; and

7           (iii) by striking “Secretary” each other  
8           place such term appears and inserting “Di-  
9           rector of the Federal Housing Finance  
10          Agency”; and

11          (C) in subsection (n), by striking “Sec-  
12          retary” each place such term appears and insert-  
13          ing “Director of the Federal Housing Finance  
14          Agency”.

15          (c) *AMENDMENTS TO FREDDIE MAC ACT.*—*The Fed-*  
16          *eral Home Loan Mortgage Corporation Act is amended—*

17               (1) by striking “Director of the Office of Federal  
18               Housing Enterprise Oversight of the Department of  
19               Housing and Urban Development” each place such  
20               term appears, and inserting “Director of the Federal  
21               Housing Finance Agency”, in—

22                       (A) section 303(b)(2) (12 U.S.C.  
23                       1452(b)(2));

24                       (B) section 303(h)(2) (12 U.S.C.  
25                       1452(h)(2)); and

1                   (C) section 307(c)(1) (12 U.S.C.  
2                   1456(c)(1));

3                   (2) in sections 303(h)(1) and 307(f)(1) (12  
4                   U.S.C. 1452(h)(1), 1456(f)(1)), by striking “Banking,  
5                   Finance and Urban Affairs” each place such term ap-  
6                   pears and inserting “Financial Services”;

7                   (3) in section 306(i) (12 U.S.C. 1455(i))—

8                   (A) by striking “1316(c)” and inserting  
9                   “306(c)”; and

10                  (B) by striking “section 106” and inserting  
11                  “section 1316”; and

12                  (4) in section 307 (12 U.S.C. 1456)—

13                  (A) in subsection (e)—

14                   (i) in paragraph (1), by striking “Sec-  
15                   retary” the second place such term appears  
16                   and inserting “Director”;

17                   (ii) in paragraph (2), by striking  
18                   “Secretary” the second place such term ap-  
19                   pears and inserting “Director”; and

20                   (iii) by striking “Secretary” each other  
21                   place such term appears and inserting “Di-  
22                   rector of the Federal Housing Finance  
23                   Agency”; and

24                  (B) in subsection (f), by striking “Sec-  
25                  retary” each place such term appears and insert-

1           ing “Director of the Federal Housing Finance  
2           Agency”.

3       **Subtitle B—Improvement of Mission**  
4                                   **Supervision**

5       **SEC. 131. TRANSFER OF PRODUCT APPROVAL AND HOUS-**  
6                                   **ING GOAL OVERSIGHT.**

7           Part 2 of subtitle A of title XIII of the Housing and  
8       Community Development Act of 1992 (12 U.S.C. 4541 et  
9       seq.) is amended—

10           (1) by striking the designation and heading for  
11       the part and inserting the following:

12       **“PART 2—PRODUCT APPROVAL BY DIRECTOR,**  
13                                   **CORPORATE GOVERNANCE, AND ESTABLISH-**  
14                                   **MENT OF HOUSING GOALS”;**

15       and

16           (2) by striking sections 1321 and 1322.

17       **SEC. 132. REVIEW OF ENTERPRISE PRODUCTS.**

18           (a) *IN GENERAL.*—Part 2 of subtitle A of title XIII  
19       of the Housing and Community Development Act of 1992  
20       is amended by inserting before section 1323 (12 U.S.C.  
21       4543) the following new section:

22       **“SEC. 1321. PRIOR APPROVAL AUTHORITY FOR PRODUCTS**  
23                                   **OF ENTERPRISES.**

24           “(a) *IN GENERAL.*—The Director shall require each  
25       enterprise to obtain the approval of the Director for any

1 *product of the enterprise before initially offering the prod-*  
2 *uct.*

3       “(b) *STANDARD FOR APPROVAL.—In considering any*  
4 *request for approval of a product pursuant to subsection*  
5 *(a), the Director shall make a determination that—*

6               “(1) *in the case of a product of the Federal Na-*  
7 *tional Mortgage Association, the Director determines*  
8 *that the product is authorized under paragraph (2),*  
9 *(3), (4), or (5) of section 302(b) or section 304 of the*  
10 *Federal National Mortgage Association Charter Act,*  
11 *(12 U.S.C. 1717(b), 1719);*

12               “(2) *in the case of a product of the Federal*  
13 *Home Loan Mortgage Corporation, the Director deter-*  
14 *mines that the product is authorized under paragraph*  
15 *(1), (4), or (5) of section 305(a) of the Federal Home*  
16 *Loan Mortgage Corporation Act (12 U.S.C. 1454(a));*

17               “(3) *the product is in the public interest;*

18               “(4) *the product is consistent with the safety and*  
19 *soundness of the enterprise or the mortgage finance*  
20 *system; and*

21               “(5) *the product does not materially impair the*  
22 *efficiency of the mortgage finance system.*

23       “(c) *PROCEDURE FOR APPROVAL.—*

24               “(1) *SUBMISSION OF REQUEST.—An enterprise*  
25 *shall submit to the Director a written request for ap-*

1        *proval of a product that describes the product in such*  
2        *form as prescribed by order or regulation of the Di-*  
3        *rector.*

4            “(2) *REQUEST FOR PUBLIC COMMENT.*—*Imme-*  
5        *diately upon receipt of a request for approval of a*  
6        *product, as required under paragraph (1), the Direc-*  
7        *tor shall publish notice of such request and of the pe-*  
8        *riod for public comment pursuant to paragraph (3)*  
9        *regarding the product, and a description of the prod-*  
10       *uct proposed by the request. The Director shall give*  
11       *interested parties the opportunity to respond in writ-*  
12       *ing to the proposed product.*

13            “(3) *PUBLIC COMMENT PERIOD.*—*During the 30-*  
14        *day period beginning on the date of publication pur-*  
15        *suant to paragraph (2) of a request for approval of*  
16        *a product, the Director shall receive public comments*  
17        *regarding the proposed product.*

18            “(4) *OFFERING OF PRODUCT.*—

19            “(A) *IN GENERAL.*—*Not later than 30 days*  
20        *after the close of the public comment period de-*  
21        *scribed in paragraph (3), the Director shall ap-*  
22        *prove or deny the product, specifying the*  
23        *grounds for such decision in writing.*

24            “(B) *FAILURE TO ACT.*—*If the Director*  
25        *fails to act within the 30-day period described in*



1           *subparagraph (A), the enterprise may offer the*  
2           *product.*

3           “(d) *EXPEDITED REVIEW.*—

4           “(1) *DETERMINATION AND NOTICE.*—*If an enter-*  
5           *prise determines that any new activity, service, un-*  
6           *dertaking, or offering is not a product, as defined in*  
7           *subsection (f), the enterprise shall provide written no-*  
8           *tice to the Director prior to the commencement of such*  
9           *activity, service, undertaking, or offering.*

10           “(2) *DIRECTOR DETERMINATION OF APPLICABLE*  
11           *PROCEDURE.*—*Immediately upon receipt of any no-*  
12           *tice pursuant to paragraph (1), the Director shall*  
13           *make a determination under paragraph (3).*

14           “(3) *DETERMINATION AND TREATMENT AS PROD-*  
15           *UCT.*—*If the Director determines that any new activ-*  
16           *ity, service, undertaking, or offering consists of, re-*  
17           *lates to, or involves a product—*

18           “(A) *the Director shall notify the enterprise*  
19           *of the determination;*

20           “(B) *the new activity, service, undertaking,*  
21           *or offering described in the notice under para-*  
22           *graph (1) shall be considered a product for pur-*  
23           *poses of this section; and*

1                   “(C) the enterprise shall withdraw its re-  
2                   quest or submit a written request for approval of  
3                   the product pursuant to subsection (c).

4                   “(e) *CONDITIONAL APPROVAL.*—The Director may con-  
5                   ditionally approve the offering of any product by an enter-  
6                   prise, and may establish terms, conditions, or limitations  
7                   with respect to such product with which the enterprise must  
8                   comply in order to offer such product.

9                   “(f) *DEFINITION OF PRODUCT.*—For purposes of this  
10                  section, the term ‘product’ does not include—

11                  “(1) the automated loan underwriting system of  
12                  an enterprise in existence as of the date of the enact-  
13                  ment of the Federal Housing Finance Reform Act of  
14                  2007, including any upgrade to the technology, oper-  
15                  ating system, or software to operate the underwriting  
16                  system; or

17                  “(2) any modification to the mortgage terms and  
18                  conditions or mortgage underwriting criteria relating  
19                  to the mortgages that are purchased or guaranteed by  
20                  an enterprise: Provided, That such modifications do  
21                  not alter the underlying transaction so as to include  
22                  services or financing, other than residential mortgage  
23                  financing, or create significant new exposure to risk  
24                  for the enterprise or the holder of the mortgage.

1       “(g) *NO LIMITATION.*—*Nothing in this section shall be*  
2 *deemed to restrict—*

3               “(1) *the safety and soundness authority of the*  
4 *Director over all new and existing products or activi-*  
5 *ties; or*

6               “(2) *the authority of the Director to review all*  
7 *new and existing products or activities to determine*  
8 *that such products or activities are consistent with*  
9 *the statutory mission of the enterprise.”.*

10       (b) *CONFORMING AMENDMENTS.*—

11               (1) *FANNIE MAE.*—*Section 302(b)(6) of the Fed-*  
12 *eral National Mortgage Association Charter Act (12*  
13 *U.S.C. 1717(b)(6)) is amended—*

14                       (A) *by striking “implement any new pro-*  
15 *gram” and inserting “initially offer any prod-*  
16 *uct”;*

17                       (B) *by striking “section 1303” and insert-*  
18 *ing “section 1321(f)”;* and

19                       (C) *by striking “before obtaining the ap-*  
20 *proval of the Secretary under section 1322” and*  
21 *inserting “except in accordance with section*  
22 *1321”.*

23               (2) *FREDDIE MAC.*—*Section 305(c) of the Fed-*  
24 *eral Home Loan Mortgage Corporation Act (12*  
25 *U.S.C. 1454(c)) is amended—*

1           (A) by striking “implement any new pro-  
2           gram” and inserting “initially offer any prod-  
3           uct”;

4           (B) by striking “section 1303” and insert-  
5           ing “section 1321(f)”; and

6           (C) by striking “before obtaining the ap-  
7           proval of the Secretary under section 1322” and  
8           inserting “except in accordance with section  
9           1321”.

10          (3) 1992 ACT.—Section 1303 of the Housing and  
11          Community Development Act of 1992 (12 U.S.C.  
12          4502), as amended by section 2 of this Act, is further  
13          amended—

14               (A) by striking paragraph (17) (relating to  
15               the definition of “new program”) ; and

16               (B) by redesignating paragraphs (18)  
17               through (23) as paragraphs (17) through (22),  
18               respectively.

19          **SEC. 133. CONFORMING LOAN LIMITS.**

20          (a) FANNIE MAE.—

21               (1) GENERAL LIMIT.—Section 302(b)(2) of the  
22          Federal National Mortgage Association Charter Act  
23          (12 U.S.C. 1717(b)(2)) is amended—

24               (A) in the 4th sentence, by striking “the  
25          Resolution Trust Corporation,”; and

1           (B) by striking the 7th and 8th sentences  
2           and inserting the following new sentences: “For  
3           2007, such limitations shall not exceed \$417,000  
4           for a mortgage secured by a single-family resi-  
5           dence, \$533,850 for a mortgage secured by a 2-  
6           family residence, \$645,300 for a mortgage se-  
7           cured by a 3-family residence, and \$801,950 for  
8           a mortgage secured by a 4-family residence, ex-  
9           cept that such maximum limitations shall be ad-  
10          justed effective January 1 of each year beginning  
11          with 2008, subject to the limitations in this  
12          paragraph. Each adjustment shall be made by  
13          adding to or subtracting from each such amount  
14          (as it may have been previously adjusted) a per-  
15          centage thereof equal to the percentage increase  
16          or decrease, during the most recent 12-month or  
17          four-quarter period ending before the time of de-  
18          termining such annual adjustment, in the hous-  
19          ing price index maintained by the Director of  
20          the Federal Housing Finance Agency (pursuant  
21          to section 1322 of the Housing and Community  
22          Development Act of 1992 (12 U.S.C. 4541)).”.

23           (2) *HIGH-COST AREA LIMIT*.—Section 302(b)(2)  
24          of the Federal National Mortgage Association Charter  
25          Act is (12 U.S.C. 1717(b)(2)) is amended by adding

1       *after the period at the end the following: “Such fore-*  
2       *going limitations shall also be increased with respect*  
3       *to properties of a particular size located in any area*  
4       *for which the median price for such size residence ex-*  
5       *ceeds the foregoing limitation for such size residence,*  
6       *to the lesser of 150 percent of such foregoing limita-*  
7       *tion for such size residence or the amount that is*  
8       *equal to the median price in such area for such size*  
9       *residence, except that, subject to the order, if any,*  
10       *issued by the Director of the Federal Housing Fi-*  
11       *nance Agency pursuant to section 133(d)(3) of the*  
12       *Federal Housing Finance Reform Act of 2007, such*  
13       *increase shall apply only with respect to mortgages on*  
14       *which are based securities issued and sold by the cor-*  
15       *poration.”.*

16       ***(b) FREDDIE MAC.—***

17               ***(1) GENERAL LIMIT.—Section 305(a)(2) of the***  
18       ***Federal Home Loan Mortgage Corporation Act (12***  
19       ***U.S.C. 1454(a)(2)) is amended—***

20                       ***(A) in the 3rd sentence, by striking “the***  
21                       ***Resolution Trust Corporation,”; and***

22                       ***(B) by striking the 6th and 7th sentences***  
23                       ***and inserting the following new sentences: “For***  
24                       ***2007, such limitations shall not exceed \$417,000***  
25                       ***for a mortgage secured by a single-family resi-***

1            *dence, \$533,850 for a mortgage secured by a 2-*  
2            *family residence, \$645,300 for a mortgage se-*  
3            *cured by a 3-family residence, and \$801,950 for*  
4            *a mortgage secured by a 4-family residence, ex-*  
5            *cept that such maximum limitations shall be ad-*  
6            *justed effective January 1 of each year beginning*  
7            *with 2008, subject to the limitations in this*  
8            *paragraph. Each adjustment shall be made by*  
9            *adding to or subtracting from each such amount*  
10           *(as it may have been previously adjusted) a per-*  
11           *centage thereof equal to the percentage increase*  
12           *or decrease, during the most recent 12-month or*  
13           *four-quarter period ending before the time of de-*  
14           *termining such annual adjustment, in the hous-*  
15           *ing price index maintained by the Director of*  
16           *the Federal Housing Finance Agency (pursuant*  
17           *to section 1322 of the Housing and Community*  
18           *Development Act of 1992 (12 U.S.C. 4541)).”*

19           *(2) HIGH-COST AREA LIMIT.—Section 305(a)(2)*  
20           *of the Federal Home Loan Mortgage Corporation Act*  
21           *is amended by adding after the period at the end the*  
22           *following: “Such foregoing limitations shall also be*  
23           *increased with respect to properties of a particular*  
24           *size located in any area for which the median price*  
25           *for such size residence exceeds the foregoing limitation*

1       *for such size residence, to the lesser of 150 percent of*  
2       *such foregoing limitation for such size residence or the*  
3       *amount that is equal to the median price in such*  
4       *area for such size residence, except that, subject to the*  
5       *order, if any, issued by the Director of the Federal*  
6       *Housing Finance Agency pursuant to section*  
7       *133(d)(3) of the Federal Housing Finance Reform Act*  
8       *of 2007, such increase shall apply only with respect*  
9       *to mortgages on which are based securities issued and*  
10       *sold by the Corporation.”.*

11       *(c) HOUSING PRICE INDEX.—Subpart A of part 2 of*  
12       *subtitle A of title XIII of the Housing and Community De-*  
13       *velopment Act of 1992 (as amended by the preceding provi-*  
14       *sions of this Act) is amended by inserting after section 1321*  
15       *(as added by section 132 of this Act) the following new sec-*  
16       *tion:*

17       **“SEC. 1322. HOUSING PRICE INDEX.**

18       *“(a) IN GENERAL.—The Director shall establish and*  
19       *maintain a method of assessing the national average 1-fam-*  
20       *ily house price for use for adjusting the conforming loan*  
21       *limitations of the enterprises. In establishing such method,*  
22       *the Director shall take into consideration the monthly sur-*  
23       *vey of all major lenders conducted by the Federal Housing*  
24       *Finance Agency to determine the national average 1-family*  
25       *house price, the House Price Index maintained by the Office*



1 *of Federal Housing Enterprise Oversight of the Department*  
2 *of Housing and Urban Development before the effective date*  
3 *under section 185 of the Federal Housing Finance Reform*  
4 *Act of 2007, any appropriate house price indexes of the Bu-*  
5 *reau of the Census of the Department of Commerce, and*  
6 *any other indexes or measures that the Director considers*  
7 *appropriate.*

8 “(b) *GAO AUDIT.*—

9 “(1) *IN GENERAL.*—*At such times as are re-*  
10 *quired under paragraph (2), the Comptroller General*  
11 *of the United States shall conduct an audit of the*  
12 *methodology established by the Director under sub-*  
13 *section (a) to determine whether the methodology es-*  
14 *tablished is an accurate and appropriate means of*  
15 *measuring changes to the national average 1-family*  
16 *house price.*

17 “(2) *TIMING.*—*An audit referred to in para-*  
18 *graph (1) shall be conducted and completed not later*  
19 *than the expiration of the 180-day period that begins*  
20 *upon each of the following dates:*

21 “(A) *ESTABLISHMENT.*—*The date upon*  
22 *which such methodology is initially established*  
23 *under subsection (a) in final form by the Direc-*  
24 *tor.*

1                   “(B) *MODIFICATION OR AMENDMENT.*—  
2                   *Each date upon which any modification or*  
3                   *amendment to such methodology is adopted in*  
4                   *final form by the Director.*

5                   “(3) *REPORT.*—*Within 30 days of the comple-*  
6                   *tion of any audit conducted under this subsection, the*  
7                   *Comptroller General shall submit a report detailing*  
8                   *the results and conclusions of the audit to the Direc-*  
9                   *tor, the Committee on Financial Services of the House*  
10                   *of Representatives, and the Committee on Banking,*  
11                   *Housing, and Urban Affairs of the Senate.”.*

12                   “(d) *CONDITIONS ON CONFORMING LOAN LIMIT FOR*  
13                   *HIGH-COST AREAS.*—

14                   “(1) *STUDY.*—*The Director of the Federal Hous-*  
15                   *ing Finance Agency shall conduct a study under this*  
16                   *subsection during the six-month period beginning on*  
17                   *the effective date under section 185 of this Act.*

18                   “(2) *ISSUES.*—*The study under this subsection*  
19                   *shall determine—*

20                   “(A) *the effect that restricting the conforming*  
21                   *loan limits for high-cost areas only to mortgages*  
22                   *on which are based securities issued and sold by*  
23                   *the Federal National Mortgage Association and*  
24                   *the Federal Home Loan Mortgage Corporation*  
25                   *(as provided in the last sentence of section*

1           302(b)(2) of the Federal National Mortgage Asso-  
2           ciation Charter Act and the last sentence of sec-  
3           tion 305(a)(2) of the Federal Home Loan Mort-  
4           gage Corporation Act, pursuant to the amend-  
5           ments made by subsections (a)(2) and (b)(2) of  
6           this section) would have on the cost to borrowers  
7           for mortgages on housing in such high-cost areas;

8           (B) the effects that such restrictions would  
9           have on the availability of mortgages for housing  
10          in such high-cost areas; and

11          (C) the extent to which the Federal National  
12          Mortgage Association and the Federal Home  
13          Loan Mortgage Corporation will be able to issue  
14          and sell securities based on mortgages for hous-  
15          ing located in such high-cost areas.

16          (3) DETERMINATION.—

17          (A) IN GENERAL.—Not later than the expi-  
18          ration of the six-month period specified in para-  
19          graph (1), the Director of the Federal Housing  
20          Finance Agency shall make a determination,  
21          based on the results of the study under this sub-  
22          section, of whether the restriction of conforming  
23          loan limits for high-cost areas only to mortgages  
24          on which are based securities issued and sold by  
25          the Federal National Mortgage Association and

1           *the Federal Home Loan Mortgage Corporation*  
2           *(as provided in the amendments made by sub-*  
3           *sections (a)(2) and (b)(2) of this section) will re-*  
4           *sult in an increase in the cost to borrowers for*  
5           *mortgages on housing in such high-cost areas.*

6                   *(B) ORDER.—If such determination is that*  
7                   *costs to borrowers on housing in such high-cost*  
8                   *areas will be increased by such restrictions, the*  
9                   *Director may issue an order terminating such*  
10                   *restrictions, in whole or in part.*

11                   *(4) PUBLICATION.—Not later than the expiration*  
12                   *of the six-month period specified in paragraph (1),*  
13                   *the Director of the Federal Housing Finance Agency*  
14                   *shall cause to be published in the Federal Register—*

15                           *(A) a report that—*

16                                   *(i) describes the study under this sub-*  
17                                   *section; and*

18                                   *(ii) sets forth the conclusions of the*  
19                                   *study regarding the issues to be determined*  
20                                   *under paragraph (2); and*

21                                   *(B) notice of the determination of the Direc-*  
22                                   *tor under paragraph (3); and*

23                                   *(C) the order of the Director under para-*  
24                                   *graph (3).*

1           (5) *DEFINITION.*—For purposes of this sub-  
2           section, the term “conforming loan limits for high-cost  
3           areas” means the dollar amount limitations applica-  
4           ble under the section 302(b)(2) of the Federal Na-  
5           tional Mortgage Association Charter Act and section  
6           305(a)(2) of the Federal Home Loan Mortgage Cor-  
7           poration Act (as amended by subsections (a) and (b)  
8           of this section) for areas described in the last sentence  
9           of such sections (as so amended).

10 **SEC. 134. ANNUAL HOUSING REPORT REGARDING REGU-**  
11 **LATED ENTITIES.**

12           (a) *IN GENERAL.*—The Housing and Community De-  
13           velopment Act of 1992 is amended by striking section 1324  
14           (12 U.S.C. 4544) and inserting the following new section:

15 **“SEC. 1324. ANNUAL HOUSING REPORT REGARDING REGU-**  
16 **LATED ENTITIES.**

17           “(a) *IN GENERAL.*—After reviewing and analyzing the  
18           reports submitted under section 309(n) of the Federal Na-  
19           tional Mortgage Association Charter Act, section 307(f) of  
20           the Federal Home Loan Mortgage Corporation Act, and sec-  
21           tion 10(j)(11) of the Federal Home Loan Bank Act (12  
22           U.S.C. 1430(j)(11)), the Director shall submit a report, not  
23           later than October 30 of each year, to the Committee on  
24           Financial Services of the House of Representatives and the

1 *Committee on Banking, Housing, and Urban Affairs of the*  
2 *Senate, on the activities of each regulated entity.*

3 “(b) *CONTENTS.*—*The report shall—*

4 “(1) *discuss the extent to which—*

5 “(A) *each enterprise is achieving the annual*  
6 *housing goals established under subpart B of this*  
7 *part;*

8 “(B) *each enterprise is complying with sec-*  
9 *tion 1337;*

10 “(C) *each Federal home loan bank is com-*  
11 *plying with section 10(j) of the Federal Home*  
12 *Loan Bank Act; and*

13 “(D) *each regulated entity is achieving the*  
14 *purposes of the regulated entity established by*  
15 *law;*

16 “(2) *aggregate and analyze relevant data on in-*  
17 *come to assess the compliance by each enterprise with*  
18 *the housing goals established under subpart B;*

19 “(3) *aggregate and analyze data on income, race,*  
20 *and gender by census tract and other relevant classi-*  
21 *fications, and compare such data with larger demo-*  
22 *graphic, housing, and economic trends;*

23 “(4) *examine actions that—*

24 “(A) *each enterprise has undertaken or*  
25 *could undertake to promote and expand the an-*

1            *nual goals established under subpart B and the*  
2            *purposes of the enterprise established by law; and*

3            *“(B) each Federal home loan bank has*  
4            *taken or could undertake to promote and expand*  
5            *the community investment program and afford-*  
6            *able housing program of the bank established*  
7            *under section subsections (i) and (j) of section 10*  
8            *of the Federal Home Loan Bank Act;*

9            *“(5) examine the primary and secondary multi-*  
10          *family housing mortgage markets and describe—*

11            *“(A) the availability and liquidity of mort-*  
12          *gage credit;*

13            *“(B) the status of efforts to provide stand-*  
14          *ard credit terms and underwriting guidelines for*  
15          *multifamily housing and to securitize such mort-*  
16          *gage products; and*

17            *“(C) any factors inhibiting such standard-*  
18          *ization and securitization;*

19            *“(6) examine actions each regulated entity has*  
20          *undertaken and could undertake to promote and ex-*  
21          *pand opportunities for first-time homebuyers, includ-*  
22          *ing the use of alternative credit scoring;*

23            *“(7) describe any actions taken under section*  
24          *1325(5) with respect to originators found to violate*  
25          *fair lending procedures;*

1           “(8) discuss and analyze existing conditions and  
2 trends, including conditions and trends relating to  
3 pricing, in the housing markets and mortgage mar-  
4 kets; and

5           “(9) identify the extent to which each enterprise  
6 is involved in mortgage purchases and secondary  
7 market activities involving subprime loans (as identi-  
8 fied in accordance with the regulations issued pursu-  
9 ant to section 134(b) of the Federal Housing Finance  
10 Reform Act of 2007) and compare the characteristics  
11 of subprime loans purchased and securitized by the  
12 enterprises to other loans purchased and securitized  
13 by the enterprises.

14           “(c) DATA COLLECTION AND REPORTING.—

15           “(1) IN GENERAL.—To assist the Director in  
16 analyzing the matters described in subsection (b) and  
17 establishing the methodology described in section  
18 1322, the Director shall conduct, on a monthly basis,  
19 a survey of mortgage markets in accordance with this  
20 subsection.

21           “(2) DATA POINTS.—Each monthly survey con-  
22 ducted by the Director under paragraph (1) shall col-  
23 lect data on—

24           “(A) the characteristics of individual mort-  
25 gages that are eligible for purchase by the enter-



1            *prises and the characteristics of individual mort-*  
2            *gages that are not eligible for purchase by the en-*  
3            *terprises including, in both cases, information*  
4            *concerning—*

5                    *“(i) the price of the house that secures*  
6                    *the mortgage;*

7                    *“(ii) the loan-to-value ratio of the*  
8                    *mortgage, which shall reflect any secondary*  
9                    *liens on the relevant property;*

10                   *“(iii) the terms of the mortgage;*

11                   *“(iv) the creditworthiness of the bor-*  
12                   *rower or borrowers; and*

13                   *“(v) whether the mortgage, in the case*  
14                   *of a conforming mortgage, was purchased*  
15                   *by an enterprise; and*

16                   *“(B) such other matters as the Director de-*  
17                   *termines to be appropriate.*

18                   *“(3) PUBLIC AVAILABILITY.—The Director shall*  
19                   *make any data collected by the Director in connection*  
20                   *with the conduct of a monthly survey available to the*  
21                   *public in a timely manner, provided that the Director*  
22                   *may modify the data released to the public to ensure*  
23                   *that the data is not released in an identifiable form.*

24                   *“(4) DEFINITION.—For purposes of this sub-*  
25                   *section, the term ‘identifiable form’ means any rep-*

1        *resentation of information that permits the identity of*  
2        *a borrower to which the information relates to be rea-*  
3        *sonably inferred by either direct or indirect means.”.*

4        *(b) STANDARDS FOR SUBPRIME LOANS.—The Director*  
5        *shall, not later than one year after the effective date under*  
6        *section 185, by regulations issued under section 1316G of*  
7        *the Housing and Community Development Act of 1992, es-*  
8        *tablish standards by which mortgages purchased and mort-*  
9        *gages purchased and securitized shall be characterized as*  
10       *subprime for the purpose of, and only for the purpose of,*  
11       *complying with the reporting requirement under section*  
12       *1324(b)(9) of such Act.*

13       **SEC. 135. ANNUAL REPORTS BY REGULATED ENTITIES ON**  
14       **AFFORDABLE HOUSING STOCK.**

15       *The Housing and Community Development Act of*  
16       *1992 is amended by inserting after section 1328 (12 U.S.C.*  
17       *4548) the following new section:*

18       **“SEC. 1329. ANNUAL REPORTS ON AFFORDABLE HOUSING**  
19       **STOCK.**

20       *“(a) IN GENERAL.—To obtain information helpful in*  
21       *applying the formula under section 1337(c)(2) for the af-*  
22       *fordable housing program under such section and for other*  
23       *appropriate uses, the regulated entities shall conduct, or*  
24       *provide for the conducting of, a study on an annual basis*  
25       *to determine the levels of affordable housing inventory, and*

1 *the changes in such levels, in communities throughout the*  
2 *United States.*

3 “(b) *CONTENTS.*—*The annual study under this section*  
4 *shall determine, for the United States, each State, and each*  
5 *community within each State—*

6 “(1) *the level of affordable housing inventory, in-*  
7 *cluding affordable rental dwelling units and afford-*  
8 *able homeownership dwelling units;*

9 “(2) *any changes to the level of such inventory*  
10 *during the 12-month period of the study under this*  
11 *section, including—*

12 “(A) *any additions to such inventory,*  
13 *disaggregated by the category of such additions*  
14 *(including new construction or housing conver-*  
15 *sion);*

16 “(B) *any subtractions from such inventory,*  
17 *disaggregated by the category of such subtrac-*  
18 *tions (including abandonment, demolition, or*  
19 *upgrade to market-rate housing);*

20 “(C) *the number of new affordable dwelling*  
21 *units placed in service; and*

22 “(D) *the number of affordable housing*  
23 *dwelling units withdrawn from service;*

24 “(3) *the types of financing used to build any*  
25 *dwelling units added to such inventory level and the*

1       *period during which such units are required to re-*  
2       *main affordable;*

3             “(4) *any excess demand for affordable housing,*  
4       *including the number of households on rental housing*  
5       *waiting lists and the tenure of the wait on such lists;*  
6       *and*

7             “(5) *such other information as the Director may*  
8       *require.*

9       “(c) *REPORT.—For each annual study conducted pur-*  
10      *suant to this section, the regulated entities shall submit to*  
11      *the Congress, and make publicly available, a report setting*  
12      *forth the findings of the study.*

13       “(d) *REGULATIONS AND TIMING.—The Director shall,*  
14      *by regulation, establish requirements for the studies and re-*  
15      *ports under this section, including deadlines for the submis-*  
16      *sion of such annual reports and standards for determining*  
17      *affordable housing.”.*

18      **SEC. 136. REVISION OF HOUSING GOALS.**

19       “(a) *HOUSING GOALS.—The Housing and Community*  
20      *Development Act of 1992 is amended by striking sections*  
21      *1331 through 1334 (12 U.S.C. 4561–4) and inserting the*  
22      *following new sections:*

23      **“SEC. 1331. ESTABLISHMENT OF HOUSING GOALS.**

24       “(a) *IN GENERAL.—The Director shall establish, effec-*  
25      *tive for the first year that begins after the effective date*

1 *under section 185 of the Federal Housing Finance Reform*  
2 *Act of 2007 and each year thereafter, annual housing goals,*  
3 *with respect to the mortgage purchases by the enterprises,*  
4 *as follows:*

5           “(1) *SINGLE FAMILY HOUSING GOALS.*—*Three*  
6 *single-family housing goals under section 1332.*

7           “(2) *MULTIFAMILY SPECIAL AFFORDABLE HOUS-*  
8 *ING GOALS.*—*A multifamily special affordable hous-*  
9 *ing goal under section 1333.*

10          “(b) *ELIMINATING INTEREST RATE DISPARITIES.*—

11           “(1) *IN GENERAL.*—*Upon request by the Direc-*  
12 *tor, an enterprise shall provide to the Director, in a*  
13 *form determined by the Director, data the Director*  
14 *may review to determine whether there exist dispari-*  
15 *ties in interest rates charged on mortgages to bor-*  
16 *rowers who are minorities as compared with com-*  
17 *parable mortgages to borrowers of similar credit-*  
18 *worthiness who are not minorities.*

19           “(2) *REMEDIAL ACTIONS UPON PRELIMINARY*  
20 *FINDING.*—*Upon a preliminary finding by the Direc-*  
21 *tor that a pattern of disparities in interest rates with*  
22 *respect to any lender or lenders exists pursuant to the*  
23 *data provided by an enterprise in paragraph (1), the*  
24 *Director shall—*

1           “(A) refer the preliminary finding to the  
2           appropriate regulatory or enforcement agency for  
3           further review;

4           “(B) require the enterprise to submit addi-  
5           tional data with respect to any lender or lenders,  
6           as appropriate and to the extent practicable, to  
7           the Director who shall submit any such addi-  
8           tional data to the regulatory or enforcement  
9           agency for appropriate action; and

10          “(C) require the enterprise to undertake re-  
11          medial actions, as appropriate, pursuant to sec-  
12          tion 1325(5) (12 U.S.C. 4545(5)).

13          “(3) ANNUAL REPORT TO CONGRESS.—The Di-  
14          rector shall submit to the Committee on Financial  
15          Services of the House of Representatives and the Com-  
16          mittee on Banking, Housing, and Urban Affairs of  
17          the Senate a report describing the actions taken, and  
18          being taken, by the Director to carry out this sub-  
19          section. No such report shall identify any lender or  
20          lenders who have not been found to have engaged in  
21          discriminatory lending practices pursuant to a final  
22          adjudication on the record, and after opportunity for  
23          an administrative hearing, in accordance with sub-  
24          chapter II of chapter 5 of title 5, United States Code.

1           “(4) *PROTECTION OF IDENTITY OF INDIVID-*  
 2           *UALS.—In carrying out this subsection, the Director*  
 3           *shall ensure that no property-related or financial in-*  
 4           *formation that would enable a borrower to be identi-*  
 5           *fied shall be made public.*

6           “(c) *TIMING.—The Director shall establish an annual*  
 7           *deadline by which the Director shall establish the annual*  
 8           *housing goals under this subpart for each year, taking into*  
 9           *consideration the need for the enterprises to reasonably and*  
 10          *sufficiently plan their operations and activities in advance,*  
 11          *including operations and activities necessary to meet such*  
 12          *annual goals.*

13          **“SEC. 1332. SINGLE-FAMILY HOUSING GOALS.**

14          “(a) *IN GENERAL.—The Director shall establish an-*  
 15          *ual goals for the purchase by each enterprise of conven-*  
 16          *tional, conforming, single-family, purchase money mort-*  
 17          *gages financing owner-occupied and rental housing for each*  
 18          *of the following categories of families:*

19                  “(1) *Low-income families.*

20                  “(2) *Families that reside in low-income areas.*

21                  “(3) *Very low-income families.*

22          “(b) *REFINANCE SUBGOAL.—*

23                  “(1) *IN GENERAL.—The Director shall establish*  
 24          *a separate subgoal within each goal under subsection*  
 25          *(a)(1) for the purchase by each enterprise of mort-*

1        *gages for low-income families on single family hous-*  
2        *ing given to pay off or prepay an existing loan se-*  
3        *cured by the same property. The Director shall, for*  
4        *each year, determine whether each enterprise has com-*  
5        *plied with the subgoal under this subsection in the*  
6        *same manner provided under this section for deter-*  
7        *mining compliance with the housing goals.*

8                *“(2) ENFORCEMENT.—For purposes of section*  
9        *1336, the subgoal established under paragraph (1) of*  
10        *this subsection shall be considered to be a housing*  
11        *goal established under this section. Such subgoal shall*  
12        *not be enforceable under any other provision of this*  
13        *title (including subpart C of this part) other than sec-*  
14        *tion 1336 or under any provision of the Federal Na-*  
15        *tional Mortgage Association Charter Act or the Fed-*  
16        *eral Home Loan Mortgage Corporation Act.*

17                *“(c) DETERMINATION OF COMPLIANCE.—The Director*  
18        *shall determine, for each year that the housing goals under*  
19        *this section are in effect pursuant to section 1331(a), wheth-*  
20        *er each enterprise has complied with the single-family hous-*  
21        *ing goals established under this section for such year. An*  
22        *enterprise shall be considered to be in compliance with such*  
23        *a goal for a year only if, for each of the types of families*  
24        *described in subsection (a), the percentage of the number*  
25        *of conventional, conforming, single-family, owner-occupied*



1 *or rental, as applicable, purchase money mortgages pur-*  
2 *chased by each enterprise in such year that serve such fami-*  
3 *lies, meets or exceeds the target for the year for such type*  
4 *of family that is established under subsection (d).*

5 “(d) *ANNUAL TARGETS.*—

6 “(1) *IN GENERAL.*—*Except as provided in para-*  
7 *graph (2), for each of the types of families described*  
8 *in subsection (a), the target under this subsection for*  
9 *a year shall be the average percentage, for the three*  
10 *years that most recently precede such year and for*  
11 *which information under the Home Mortgage Disclo-*  
12 *sure Act of 1975 is publicly available, of the number*  
13 *of conventional, conforming, single-family, owner-oc-*  
14 *cupied or rental, as applicable, purchase money mort-*  
15 *gages originated in such year that serves such type of*  
16 *family, as determined by the Director using the infor-*  
17 *mation obtained and determined pursuant to para-*  
18 *graphs (3) and (4).*

19 “(2) *AUTHORITY TO INCREASE TARGETS.*—

20 “(A) *IN GENERAL.*—*The Director may, for*  
21 *any year, establish by regulation, for any or all*  
22 *of the types of families described in subsection*  
23 *(a), percentage targets that are higher than the*  
24 *percentages for such year determined pursuant to*  
25 *paragraph (1), to reflect expected changes in*

1           *market performance related to such information*  
2           *under the Home Mortgage Disclosure Act of*  
3           *1975.*

4           “(B) *FACTORS.*—*In establishing any targets*  
5           *pursuant to subparagraph (A), the Director shall*  
6           *consider the following factors:*

7                   “(i) *National housing needs.*

8                   “(ii) *Economic, housing, and demo-*  
9                   *graphic conditions.*

10                  “(iii) *The performance and effort of the*  
11                  *enterprises toward achieving the housing*  
12                  *goals under this section in previous years.*

13                  “(iv) *The size of the conventional mort-*  
14                  *gage market serving each of the types of*  
15                  *families described in subsection (a) relative*  
16                  *to the size of the overall conventional mort-*  
17                  *gage market.*

18                  “(v) *The ability of the enterprise to*  
19                  *lead the industry in making mortgage cred-*  
20                  *it available.*

21                  “(vi) *The need to maintain the sound*  
22                  *financial condition of the enterprises.*

23           “(3) *HMDA INFORMATION.*—*The Director shall*  
24           *annually obtain information submitted in compliance*  
25           *with the Home Mortgage Disclosure Act of 1975 re-*

1     *garding conventional, conforming, single-family,*  
2     *owner-occupied or rental, as applicable, purchase*  
3     *money mortgages originated and purchased for the*  
4     *previous year.*

5             “(4) *CONFORMING MORTGAGES.*—*In determining*  
6     *whether a mortgage is a conforming mortgage for*  
7     *purposes of this paragraph, the Director shall con-*  
8     *sider the original principal balance of the mortgage*  
9     *loan to be the principal balance as reported in the in-*  
10    *formation referred to in paragraph (3), as rounded to*  
11    *the nearest thousand dollars.*

12            “(e) *NOTICE OF DETERMINATION AND ENTERPRISE*  
13    *COMMENT.*—

14             “(1) *NOTICE.*—*Within 30 days of making a de-*  
15    *termination under subsection (c) regarding a compli-*  
16    *ance of an enterprise for a year with a housing goal*  
17    *established under this section and before any public*  
18    *disclosure thereof, the Director shall provide notice of*  
19    *the determination to the enterprise, which shall in-*  
20    *clude an analysis and comparison, by the Director, of*  
21    *the performance of the enterprise for the year and the*  
22    *targets for the year under subsection (d).*

23             “(2) *COMMENT PERIOD.*—*The Director shall pro-*  
24    *vide each enterprise an opportunity to comment on*



1           “(C) *Mortgages that finance dwelling units*  
2           *assisted by the low-income housing tax credit*  
3           *under section 42 of the Internal Revenue Code of*  
4           *1986.*

5           “(2) *ADDITIONAL REQUIREMENTS FOR SMALLER*  
6           *PROJECTS.—The Director shall establish, within the*  
7           *goal under this section, additional requirements for*  
8           *the purchase by each enterprise of mortgages described*  
9           *in paragraph (1) for multifamily housing projects of*  
10          *a smaller or limited size, which may be based on the*  
11          *number of dwelling units in the project or the amount*  
12          *of the mortgage, or both, and shall include multi-*  
13          *family housing projects of such smaller sizes as are*  
14          *typical among such projects that serve rural areas.*

15          “(3) *FACTORS.—In establishing the goal under*  
16          *this section relating to mortgages on multifamily*  
17          *housing for an enterprise for a year, the Director*  
18          *shall consider—*

19                 “(A) *national multifamily mortgage credit*  
20                 *needs;*

21                 “(B) *the performance and effort of the en-*  
22                 *terprise in making mortgage credit available for*  
23                 *multifamily housing in previous years;*

24                 “(C) *the size of the multifamily mortgage*  
25                 *market;*

1           “(D) the ability of the enterprise to lead the  
2           industry in making mortgage credit available,  
3           especially for underserved markets, such as for  
4           small multifamily projects of 5 to 50 units, mul-  
5           tifamily properties in need of rehabilitation, and  
6           multifamily properties located in rural areas;  
7           and

8           “(E) the need to maintain the sound finan-  
9           cial condition of the enterprise.

10          “(b) *UNITS FINANCED BY HOUSING FINANCE AGENCY*  
11 *BONDS.*—*The Director shall give credit toward the achieve-*  
12 *ment of the multifamily special affordable housing goal*  
13 *under this section (for purposes of section 1336) to dwelling*  
14 *units in multifamily housing that otherwise qualifies under*  
15 *such goal and that is financed by tax-exempt or taxable*  
16 *bonds issued by a State or local housing finance agency,*  
17 *but only if such bonds—*

18           “(1) are secured by a guarantee of the enterprise;

19          or

20           “(2) are not investment grade and are purchased  
21          by the enterprise.

22          “(c) *USE OF TENANT INCOME OR RENT.*—*The Director*  
23 *shall monitor the performance of each enterprise in meeting*  
24 *the goals established under this section and shall evaluate*  
25 *such performance (for purposes of section 1336) based on—*



1       “(b) *STANDARD FOR REDUCTION.*—*The Director may*  
2 *reduce the level for a goal pursuant to such a petition only*  
3 *if—*

4               “(1) *market and economic conditions or the fi-*  
5 *nancial condition of the enterprise require such ac-*  
6 *tion; or*

7               “(2) *efforts to meet the goal would result in the*  
8 *constraint of liquidity, over-investment in certain*  
9 *market segments, or other consequences contrary to*  
10 *the intent of this subpart, or section 301(3) of the*  
11 *Federal National Mortgage Association Charter Act*  
12 *(12 U.S.C. 1716(3)) or section 301(3) of the Federal*  
13 *Home Loan Mortgage Corporation Act (12 U.S.C.*  
14 *1451 note), as applicable.*

15       “(c) *DETERMINATION.*—*The Director shall make a de-*  
16 *termination regarding any proposed reduction within 30*  
17 *days of receipt of the petition regarding the reduction. The*  
18 *Director may extend such period for a single additional 15-*  
19 *day period, but only if the Director requests additional in-*  
20 *formation from the enterprise. A denial by the Director to*  
21 *reduce the level of any goal under this section may be ap-*  
22 *pealed to the United States District Court for the District*  
23 *of Columbia or the United States district court in the juris-*  
24 *isdiction in which the headquarters of an enterprise is lo-*  
25 *cated.”.*



1       (b) *CONFORMING AMENDMENTS.*—*The Housing and*  
2 *Community Development Act of 1992 is amended—*

3           (1) *in section 1335(a) (12 U.S.C. 4565(a)), in*  
4 *the matter preceding paragraph (1), by striking “low-*  
5 *and moderate-income housing goal” and all that fol-*  
6 *lows through “section 1334” and inserting “housing*  
7 *goals established under this subpart”; and*

8           (2) *in section 1336(a)(1) (12 U.S.C. 4566(a)(1)),*  
9 *by striking “sections 1332, 1333, and 1334,” and in-*  
10 *serting “this subpart”.*

11       (c) *DEFINITIONS.*—*Section 1303 of the Housing and*  
12 *Community Development Act of 1992 (12 U.S.C. 4502), as*  
13 *amended by the preceding provisions of this Act, is further*  
14 *amended—*

15           (1) *in paragraph (22) (relating to the definition*  
16 *of “very low-income”), by striking “60 percent” each*  
17 *place such term appears and inserting “50 percent”;*

18           (2) *by redesignating paragraphs (19) through*  
19 *(22) as paragraphs (23) through (26), respectively;*

20           (3) *by inserting after paragraph (18) the fol-*  
21 *lowing new paragraph:*

22           “(22) *RURAL AREA.*—*The term ‘rural area’ has*  
23 *the meaning given such term in section 520 of the*  
24 *Housing Act of 1949 (42 U.S.C. 1490), except that*

1 *such term includes micropolitan areas and tribal*  
2 *trust lands.”*

3 *(4) by redesignating paragraphs (13) through*  
4 *(18) as paragraphs (16) through (21), respectively;*

5 *(5) by inserting after paragraph (12) the fol-*  
6 *lowing new paragraph:*

7 *“(15) LOW-INCOME AREA.—The term ‘low in-*  
8 *come area’ means a census tract or block numbering*  
9 *area in which the median income does not exceed 80*  
10 *percent of the median income for the area in which*  
11 *such census tract or block numbering area is located,*  
12 *and, for the purposes of section 1332(a)(2), shall in-*  
13 *clude families having incomes not greater than 100*  
14 *percent of the area median income who reside in mi-*  
15 *nority census tracts.”;*

16 *(6) by redesignating paragraphs (11) and (12)*  
17 *as paragraphs (13) and (14), respectively;*

18 *(7) by inserting after paragraph (10) the fol-*  
19 *lowing new paragraph:*

20 *“(12) EXTREMELY LOW-INCOME.—The term ‘ex-*  
21 *tremely low-income’ means—*

22 *“(A) in the case of owner-occupied units,*  
23 *income not in excess of 30 percent of the area*  
24 *median income; and*

1           “(B) in the case of rental units, income not  
2           in excess of 30 percent of the area median in-  
3           come, with adjustments for smaller and larger  
4           families, as determined by the Secretary.”;

5           (8) by redesignating paragraphs (7) through (10)  
6           as paragraphs (8) through (11), respectively; and

7           (9) by inserting after paragraph (6) the fol-  
8           lowing new paragraph:

9           “(7) **CONFORMING MORTGAGE.**—The term ‘con-  
10          forming mortgage’ means, with respect to an enter-  
11          prise, a conventional mortgage having an original  
12          principal obligation that does not exceed the dollar  
13          limitation, in effect at the time of such origination,  
14          under, as applicable—

15                 “(A) section 302(b)(2) of the Federal Na-  
16                 tional Mortgage Association Charter Act; or

17                 “(B) section 305(a)(2) of the Federal Home  
18                 Loan Mortgage Corporation Act.”.

19 **SEC. 137. DUTY TO SERVE UNDERSERVED MARKETS.**

20           (a) **ESTABLISHMENT AND EVALUATION OF PERFORM-**  
21 **ANCE.**—Section 1335 of the Housing and Community De-  
22 **velopment Act of 1992 (12 U.S.C. 4565) is amended—**

23                 (1) in the section heading, by inserting “**DUTY**  
24                 **TO SERVE UNDERSERVED MARKETS AND**” before  
25                 “**OTHER**”;

1           (2) *by striking subsection (b);*

2           (3) *in subsection (a)—*

3                 (A) *in the matter preceding paragraph (1),*  
4                 *by inserting “and to carry out the duty under*  
5                 *subsection (a) of this section” before “, each en-*  
6                 *terprise shall”;*

7                 (B) *in paragraph (3), by inserting “and”*  
8                 *after the semicolon at the end;*

9                 (C) *in paragraph (4), by striking “; and”*  
10                 *and inserting a period;*

11                 (D) *by striking paragraph (5); and*

12                 (E) *by redesignating such subsection as sub-*  
13                 *section (b);*

14           (4) *by inserting before subsection (b) (as so re-*  
15           *designated by paragraph (3)(E) of this subsection) the*  
16           *following new subsection:*

17           “(a) *DUTY TO SERVE UNDERSERVED MARKETS.—*

18                 “(1) *DUTY.—In accordance with the purpose of*  
19                 *the enterprises under section 301(3) of the Federal*  
20                 *National Mortgage Association Charter Act (12*  
21                 *U.S.C. 1716) and section 301(b)(3) of the Federal*  
22                 *Home Loan Mortgage Corporation Act (12 U.S.C.*  
23                 *1451 note) to undertake activities relating to mort-*  
24                 *gages on housing for very low-, low-, and moderate-*  
25                 *income families involving a reasonable economic re-*

1        *turn that may be less than the return earned on other*  
2        *activities, each enterprise shall have the duty to in-*  
3        *crease the liquidity of mortgage investments and im-*  
4        *prove the distribution of investment capital available*  
5        *for mortgage financing for underserved markets.*

6            *“(2) UNDERSERVED MARKETS.—To meet its*  
7        *duty under paragraph (1), each enterprise shall com-*  
8        *ply with the following requirements with respect to*  
9        *the following underserved markets:*

10            *“(A) MANUFACTURED HOUSING.—The en-*  
11        *terprise shall lead the industry in developing*  
12        *loan products and flexible underwriting guide-*  
13        *lines to facilitate a secondary market for mort-*  
14        *gages on manufactured homes for very low-, low-*  
15        *, and moderate-income families.*

16            *“(B) AFFORDABLE HOUSING PRESERVA-*  
17        *TION.—The enterprise shall lead the industry in*  
18        *developing loan products and flexible under-*  
19        *writing guidelines to facilitate a secondary mar-*  
20        *ket to preserve housing affordable to very*  
21        *low-, low-, and moderate-income families, in-*  
22        *cluding housing projects subsidized under—*

23            *“(i) the project-based and tenant-based*  
24        *rental assistance programs under section 8*  
25        *of the United States Housing Act of 1937;*

1           “(ii) the program under section 236 of  
2           the *National Housing Act*;

3           “(iii) the below-market interest rate  
4           mortgage program under section 221(d)(4)  
5           of the *National Housing Act*;

6           “(iv) the supportive housing for the el-  
7           derly program under section 202 of the  
8           *Housing Act of 1959*;

9           “(v) the supportive housing program  
10          for persons with disabilities under section  
11          811 of the *Cranston-Gonzalez National Af-*  
12          *fordable Housing Act*;

13          “(vi) the programs under title IV of the  
14          *McKinney-Vento Homeless Assistance Act*  
15          (42 U.S.C. 11361 *et seq.*), but only perma-  
16          nent supportive housing projects subsidized  
17          under such programs; and

18          “(vii) the rural rental housing pro-  
19          gram under section 515 of the *Housing Act*  
20          of 1949.

21          “(C) *RURAL AND OTHER UNDERSERVED*  
22          *MARKETS.*—The enterprise shall lead the indus-  
23          try in developing loan products and flexible un-  
24          derwriting guidelines to facilitate a secondary  
25          market for mortgages on housing for very

1           *low-, low-, and moderate-income families in*  
2           *rural areas, and for mortgages for housing for*  
3           *any other underserved market for very low-, low-*  
4           *, and moderate-income families that the Sec-*  
5           *retary identifies as lacking adequate credit*  
6           *through conventional lending sources. Such un-*  
7           *derserved markets may be identified by borrower*  
8           *type, market segment, or geographic area.”; and*  
9           *(5) by adding at the end the following new sub-*  
10          *section:*

11          “(c) *EVALUATION AND REPORTING OF COMPLIANCE.—*

12                 “(1) *IN GENERAL.—Not later than 6 months*  
13                 *after the effective date under section 185 of the Fed-*  
14                 *eral Housing Finance Reform Act of 2007, the Direc-*  
15                 *tor shall establish a manner for evaluating whether,*  
16                 *and the extent to which, the enterprises have complied*  
17                 *with the duty under subsection (a) to serve under-*  
18                 *served markets and for rating the extent of such com-*  
19                 *pliance. Using such method, the Director shall, for*  
20                 *each year, evaluate such compliance and rate the per-*  
21                 *formance of each enterprise as to extent of compli-*  
22                 *ance. The Director shall include such evaluation and*  
23                 *rating for each enterprise for a year in the report for*  
24                 *that year submitted pursuant to section 1319B(a).*

1           “(2) *SEPARATE EVALUATIONS.*—*In determining*  
2           *whether an enterprise has complied with the duty re-*  
3           *ferred to in paragraph (1), the Director shall sepa-*  
4           *rately evaluate whether the enterprise has complied*  
5           *with such duty with respect to each of the underserved*  
6           *markets identified in subsection (a), taking into con-*  
7           *sideration—*

8                     “(A) *the development of loan products and*  
9                     *more flexible underwriting guidelines;*

10                    “(B) *the extent of outreach to qualified loan*  
11                    *sellers in each of such underserved markets; and*

12                    “(C) *the volume of loans purchased in each*  
13                    *of such underserved markets.*

14           “(3) *MANUFACTURED HOUSING MARKET.*—*In de-*  
15           *termining whether an enterprise has complied with*  
16           *the duty under subparagraph (A) of subsection (a)(2),*  
17           *the Director may consider loans secured by both real*  
18           *and personal property.”.*

19           “(b) *ENFORCEMENT.*—*Subsection (a) of section 1336 of*  
20           *the Housing and Community Development Act of 1992 (12*  
21           *U.S.C. 4566(a)) is amended—*

22                    (1) *in paragraph (1), by inserting “and with the*  
23                    *duty under section 1335(a) of each enterprise with re-*  
24                    *spect to underserved markets,” before “as provided in*  
25                    *this section”; and*



1           (2) *by adding at the end of such subsection, as*  
 2           *amended by the preceding provisions of this title, the*  
 3           *following new paragraph:*

4           “(4) *ENFORCEMENT OF DUTY TO PROVIDE MORT-*  
 5           *GAGE CREDIT TO UNDERSERVED MARKETS.—The duty*  
 6           *under section 1335(a) of each enterprise to serve un-*  
 7           *derserved markets (as determined in accordance with*  
 8           *section 1335(c)) shall be enforceable under this section*  
 9           *to the same extent and under the same provisions that*  
 10           *the housing goals established under this subpart are*  
 11           *enforceable. Such duty shall not be enforceable under*  
 12           *any other provision of this title (including subpart C*  
 13           *of this part) other than this section or under any pro-*  
 14           *vision of the Federal National Mortgage Association*  
 15           *Charter Act or the Federal Home Loan Mortgage Cor-*  
 16           *poration Act.”.*

17 **SEC. 138. MONITORING AND ENFORCING COMPLIANCE**  
 18           **WITH HOUSING GOALS.**

19           (a) *ADDITIONAL CREDIT FOR CERTAIN MORTGAGES.—*  
 20           *Section 1336(a) of the Housing and Community Develop-*  
 21           *ment Act of 1992 (12 U.S.C. 4566(a)) is amended—*

22           (1) *in paragraph (2), by inserting “, except as*  
 23           *provided in paragraph (4),” after “which”; and*

24           (2) *by adding at the end the following new para-*  
 25           *graph:*

1           “(5) *ADDITIONAL CREDIT.*—*The Director shall*  
2           *assign more than 125 percent credit toward achieve-*  
3           *ment, under this section, of the housing goals for*  
4           *mortgage purchase activities of the enterprises that*  
5           *comply with the requirements of such goals and sup-*  
6           *port—*

7                   “(A) *housing that meets energy efficiency or*  
8                   *other environmental standards that are estab-*  
9                   *lished by a Federal, State, or local governmental*  
10                   *authority with respect to the geographic area*  
11                   *where the housing is located or are otherwise*  
12                   *widely recognized; or*

13                   “(B) *housing that includes a licensed*  
14                   *childcare center.*

15           *The availability of additional credit under this para-*  
16           *graph shall not be used to increase any housing goal,*  
17           *subgoal, or target established under this subpart.”.*

18           “(b) *MONITORING AND ENFORCEMENT.*—*Section 1336*  
19           *of the Housing and Community Development Act of 1992*  
20           *(12 U.S.C. 4566) is amended—*

21                   (1) *in subsection (b)—*

22                           (A) *in the subsection heading, by inserting*  
23                           *“PRELIMINARY” before “DETERMINATION”;*

24                           (B) *by striking paragraph (1) and inserting*  
25                           *the following new paragraph:*

1           “(1) NOTICE.—If the Director preliminarily de-  
2           termines that an enterprise has failed, or that there  
3           is a substantial probability that an enterprise will  
4           fail, to meet any housing goal established under this  
5           subpart, the Director shall provide written notice to  
6           the enterprise of such a preliminary determination,  
7           the reasons for such determination, and the informa-  
8           tion on which the Director based the determination.”;

9           (C) in paragraph (2)—

10           (i) in subparagraph (A), by inserting  
11           “finally” before “determining”;

12           (ii) by striking subparagraphs (B) and  
13           (C) and inserting the following new sub-  
14           paragraph:

15           “(B) EXTENSION OR SHORTENING OF PE-  
16           RIOD.—The Director may—

17           “(i) extend the period under subpara-  
18           graph (A) for good cause for not more than  
19           30 additional days; and

20           “(ii) shorten the period under subpara-  
21           graph (A) for good cause.”; and

22           (iii) by redesignating subparagraph  
23           (D) as subparagraph (C); and  
24           (D) in paragraph (3)—

1                   (i) in subparagraph (A), by striking  
2                   “determine” and inserting “issue a final de-  
3                   termination of”;

4                   (ii) in subparagraph (B), by inserting  
5                   “final” before “determinations”; and

6                   (iii) in subparagraph (C)—

7                   (I) by striking “Committee on  
8                   Banking, Finance and Urban Affairs”  
9                   and inserting “Committee on Finan-  
10                  cial Services”; and

11                  (II) by inserting “final” before  
12                  “determination” each place such term  
13                  appears; and

14                  (2) in subsection (c)—

15                  (A) by striking the subsection designation  
16                  and heading and all that follows through the end  
17                  of paragraph (1) and inserting the following:

18                  “(c) *CEASE AND DESIST ORDERS, CIVIL MONEY PEN-*  
19                  *ALTIES, AND REMEDIES INCLUDING HOUSING PLANS.—*

20                  “(1) *REQUIREMENT.—If the Director finds, pur-*  
21                  *suant to subsection (b), that there is a substantial*  
22                  *probability that an enterprise will fail, or has actu-*  
23                  *ally failed, to meet any housing goal under this sub-*  
24                  *part and that the achievement of the housing goal was*  
25                  *or is feasible, the Director may require that the enter-*

1        *prise submit a housing plan under this subsection. If*  
2        *the Director makes such a finding and the enterprise*  
3        *refuses to submit such a plan, submits an unaccept-*  
4        *able plan, fails to comply with the plan or the Direc-*  
5        *tor finds that the enterprise has failed to meet any*  
6        *housing goal under this subpart, in addition to re-*  
7        *quiring an enterprise to submit a housing plan, the*  
8        *Director may issue a cease and desist order in accord-*  
9        *ance with section 1341, impose civil money penalties*  
10       *in accordance with section 1345, or order other rem-*  
11       *edies as set forth in paragraph (7) of this sub-*  
12       *section.”;*

13                    *(B) in paragraph (2)—*

14                    *(i) by striking “CONTENTS.—Each*  
15                    *housing plan” and inserting “HOUSING*  
16                    *PLAN.—If the Director requires a housing*  
17                    *plan under this section, such a plan”;* and

18                    *(ii) in subparagraph (B), by inserting*  
19                    *“and changes in its operations” after “im-*  
20                    *provements”;*

21                    *(C) in paragraph (3)—*

22                    *(i) by inserting “comply with any re-*  
23                    *medial action or” before “submit a housing*  
24                    *plan”;* and

1                   (ii) by striking “under subsection  
2                   (b)(3) that a housing plan is required”;

3                   (D) in paragraph (4), by striking the first  
4                   two sentences and inserting the following: “The  
5                   Director shall review each submission by an en-  
6                   terprise, including a housing plan submitted  
7                   under this subsection, and not later than 30 days  
8                   after submission, approve or disapprove the plan  
9                   or other action. The Director may extend the pe-  
10                  riod for approval or disapproval for a single ad-  
11                  ditional 30-day period if the Director determines  
12                  such extension necessary.”; and

13                  (E) by adding at the end the following new  
14                  paragraph:

15                  “(7) *ADDITIONAL REMEDIES FOR FAILURE TO*  
16                  *MEET GOALS.—In addition to ordering a housing*  
17                  *plan under this section, issuing cease and desist or-*  
18                  *ders under section 1341, and ordering civil money*  
19                  *penalties under section 1345, the Director may seek*  
20                  *other actions when an enterprise fails to meet a goal,*  
21                  *and exercise appropriate enforcement authority avail-*  
22                  *able to the Director under this Act to prohibit the en-*  
23                  *terprise from initially offering any product (as such*  
24                  *term is defined in section 1321(f)) or engaging in any*  
25                  *new activities, services, undertakings, and offerings*

1        *and to order the enterprise to suspend products and*  
2        *activities, services, undertakings, and offerings pend-*  
3        *ing its achievement of the goal.”.*

4        **SEC. 139. AFFORDABLE HOUSING FUND.**

5        *(a) IN GENERAL.—The Housing and Community De-*  
6        *velopment Act of 1992 is amended by striking sections 1337*  
7        *and 1338 (12 U.S.C. 4562 note) and inserting the following*  
8        *new section:*

9        **“SEC. 1337. AFFORDABLE HOUSING FUND.**

10        *“(a) ESTABLISHMENT AND PURPOSE.—The Director,*  
11        *in consultation with the Secretary of Housing and Urban*  
12        *Development, shall establish and manage an affordable*  
13        *housing fund in accordance with this section, which shall*  
14        *be funded with amounts allocated by the enterprises under*  
15        *subsection (b). The purpose of the affordable housing fund*  
16        *shall be to provide formula grants to grantees for use—*

17                *“(1) to increase homeownership for extremely*  
18                *low-and very low-income families;*

19                *“(2) to increase investment in housing in low-in-*  
20                *come areas, and areas designated as qualified census*  
21                *tracts or an area of chronic economic distress pursu-*  
22                *ant to section 143(j) of the Internal Revenue Code of*  
23                *1986 (26 U.S.C. 143(j));*

1           “(3) to increase and preserve the supply of rental  
2           and owner-occupied housing for extremely low- and  
3           very low-income families;

4           “(4) to increase investment in public infrastruc-  
5           ture development in connection with housing assisted  
6           under this section; and

7           “(5) to leverage investments from other sources  
8           in affordable housing and in public infrastructure de-  
9           velopment in connection with housing assisted under  
10          this section.

11          “(b) ALLOCATION OF AMOUNTS BY ENTERPRISES.—

12           “(1) IN GENERAL.—In accordance with regula-  
13           tions issued by the Director under subsection (m) and  
14           subject to paragraph (2) of this subsection and sub-  
15           section (i)(5), each enterprise shall allocate to the af-  
16           fordable housing fund established under subsection  
17           (a), in each of the years 2007 through 2011, an  
18           amount equal to 1.2 basis points for each dollar of the  
19           average total mortgage portfolio of the enterprise dur-  
20           ing the preceding year.

21           “(2) SUSPENSION OF CONTRIBUTIONS.—The Di-  
22           rector shall temporarily suspend the allocation under  
23           paragraph (1) by an enterprise to the affordable hous-  
24           ing fund upon a finding by the Director that such al-  
25           locations—



1           “(A) are contributing, or would contribute,  
2           to the financial instability of the enterprise;

3           “(B) are causing, or would cause, the enter-  
4           prise to be classified as undercapitalized; or

5           “(C) are preventing, or would prevent, the  
6           enterprise from successfully completing a capital  
7           restoration plan under section 1369C.

8           “(3) 5-YEAR SUNSET AND REPORT.—

9           “(A) SUNSET.—The enterprises shall not be  
10          required to make allocations to the affordable  
11          housing fund in 2012 or in any year thereafter.

12          “(B) REPORT ON PROGRAM CONTINU-  
13          ANCE.—Not later than June 30, 2011, the Direc-  
14          tor shall submit to the Committee on Financial  
15          Services of the House of Representatives and the  
16          Committee on Banking, Housing, and Urban Af-  
17          fairs of the Senate a report making recommenda-  
18          tions on whether the program under this section,  
19          including the requirement for the enterprises to  
20          make allocations to the affordable housing fund,  
21          should be extended and on any modifications for  
22          the program.

23          “(c) AFFORDABLE HOUSING NEEDS FORMULAS.—

24          “(1) ALLOCATION FOR 2007.—

1           “(A) *ALLOCATION PERCENTAGES FOR LOU-*  
2           *ISIANA AND MISSISSIPPI.—For purposes of sub-*  
3           *section (d)(1)(A), the allocation percentages for*  
4           *2007 for the grantees under this section for such*  
5           *year shall be as follows:*

6                     “(i) *The allocation percentage for the*  
7                     *Louisiana Housing Finance Agency shall be*  
8                     *75 percent.*

9                     “(ii) *The allocation percentage for the*  
10                    *Mississippi Development Authority shall be*  
11                    *25 percent.*

12           “(B) *USE IN DISASTER AREAS.—Affordable*  
13           *housing grant amounts for 2007 shall be used*  
14           *only as provided in subsection (g) only for such*  
15           *eligible activities in areas that were subject to a*  
16           *declaration by the President of a major disaster*  
17           *or emergency under the Robert T. Stafford Dis-*  
18           *aster Relief and Emergency Assistance Act (42*  
19           *U.S.C. 5121 et seq.) in connection with Hurri-*  
20           *cane Katrina or Rita of 2005.*

21           “(2) *ALLOCATION FORMULA FOR OTHER*  
22           *YEARS.—The Secretary of Housing and Urban Devel-*  
23           *opment shall, by regulation, establish a formula to al-*  
24           *locate, among the States (as such term is defined in*  
25           *section 1303) and federally recognized Indian tribes,*

1        *the amounts provided by the enterprises in each year*  
2        *referred to subsection (b)(1), other than 2007, to the*  
3        *affordable housing fund established under this section.*  
4        *The formula shall be based on the following factors,*  
5        *with respect to each State and tribe:*

6                *“(A) The ratio of the population of the*  
7                *State or federally recognized Indian tribe to the*  
8                *aggregate population of all the States and tribes.*

9                *“(B) The percentage of families in the State*  
10                *or federally recognized Indian tribe that pay*  
11                *more than 50 percent of their annual income for*  
12                *housing costs.*

13                *“(C) The percentage of persons in the State*  
14                *or federally recognized Indian tribe that are*  
15                *members of extremely low- or very low-income*  
16                *families.*

17                *“(D) The cost of developing or carrying out*  
18                *rehabilitation of housing in the State or for the*  
19                *federally recognized Indian tribe.*

20                *“(E) The percentage of families in the State*  
21                *or federally recognized Indian tribe that live in*  
22                *substandard housing.*

23                *“(F) The percentage of housing stock in the*  
24                *State or for the federally recognized Indian tribe*  
25                *that is extremely old housing.*

1           “(G) Any other factors that the Secretary  
2           determines to be appropriate.

3           “(3) *FAILURE TO ESTABLISH.*—If, in any year  
4           referred to in subsection (b)(1), other than 2007, the  
5           regulations establishing the formula required under  
6           paragraph (2) of this subsection have not been issued  
7           by the date that the Director determines the amounts  
8           described in subsection (d)(1) to be available for af-  
9           fordable housing fund grants in such year, for pur-  
10          poses of such year any amounts for a State (as such  
11          term is defined in section 1303 of this Act) that  
12          would otherwise be determined under subsection (d)  
13          by applying the formula established pursuant to  
14          paragraph (2) of this subsection shall be determined  
15          instead by applying, for such State, the percentage  
16          that is equal to the percentage of the total amounts  
17          made available for such year for allocation under sub-  
18          title A of title II of the Cranston-Gonzalez National  
19          Affordable Housing Act (42 U.S.C. 12741 et seq.) that  
20          are allocated in such year, pursuant to such subtitle,  
21          to such State (including any insular area or unit of  
22          general local government, as such terms are defined in  
23          section 104 of such Act (42 U.S.C. 12704), that is  
24          treated as a State under section 1303 of this Act) and

1 *to participating jurisdictions and other eligible enti-*  
2 *ties within such State.*

3 *“(d) ALLOCATION OF FORMULA AMOUNT; GRANTS.—*

4 *“(1) FORMULA AMOUNT.—For each year referred*  
5 *to in subsection (b)(1), the Director shall determine*  
6 *the formula amount under this section for each grant-*  
7 *ee, which shall be the amount determined for such*  
8 *grantee—*

9 *“(A) for 2007, by applying the allocation*  
10 *percentages under subparagraph (A) of sub-*  
11 *section (c)(1) to the sum of the total amounts al-*  
12 *located by the enterprises to the affordable hous-*  
13 *ing fund for such year, less any amounts used*  
14 *pursuant to subsection (i)(1); and*

15 *“(B) for any other year referred to in sub-*  
16 *section (b)(1) (other than 2007), by applying the*  
17 *formula established pursuant to paragraph (2) of*  
18 *subsection (c) to the sum of the total amounts al-*  
19 *located by the enterprises to the affordable hous-*  
20 *ing fund for such year and any recaptured*  
21 *amounts available pursuant to subsection (i)(4),*  
22 *less any amounts used pursuant to subsection*  
23 *(i)(1).*

24 *“(2) NOTICE.—In each year referred to in sub-*  
25 *section (b)(1), not later than 60 days after the date*

1       *that the Director determines the amounts described in*  
2       *paragraph (1) to be available for affordable housing*  
3       *fund grants to grantees in such year, the Director*  
4       *shall cause to be published in the Federal Register a*  
5       *notice that such amounts shall be so available.*

6               “(3) *GRANT AMOUNT.—*

7                       “(A) *IN GENERAL.—For each year referred*  
8                       *to in subsection (b)(1), the Director shall make*  
9                       *a grant from amounts in the affordable housing*  
10                      *fund to each grantee in an amount that is, ex-*  
11                      *cept as provided in subparagraph (B), equal to*  
12                      *the formula amount under this section for the*  
13                      *grantee. A grantee may designate a State hous-*  
14                      *ing finance agency, housing and community de-*  
15                      *velopment entity, tribally designated housing en-*  
16                      *tity (as such term is defined in section 4 of the*  
17                      *Native American Housing Assistance and Self-*  
18                      *Determination Act of 1997 (25 U.S.C. 4103)) or*  
19                      *other qualified instrumentality of the grantee to*  
20                      *receive such grant amounts.*

21                      “(B) *REDUCTION FOR FAILURE TO OBTAIN*  
22                      *RETURN OF MISUSED FUNDS.—If in any year a*  
23                      *grantee fails to obtain reimbursement or return*  
24                      *of the full amount required under subsection*

1           (j)(1)(B) to be reimbursed or returned to the  
2           grantee during such year—

3                   “(i) except as provided in clause (ii)—

4                           “(I) the amount of the grant for  
5                           the grantee for the succeeding year, as  
6                           determined pursuant to subparagraph  
7                           (A), shall be reduced by the amount by  
8                           which such amounts required to be re-  
9                           imbursed or returned exceed the  
10                          amount actually reimbursed or re-  
11                          turned; and

12                           “(II) the amount of the grant for  
13                           the succeeding year for each other  
14                           grantee whose grant is not reduced  
15                           pursuant to subclause (I) shall be in-  
16                           creased by the amount determined by  
17                           applying the formula established pur-  
18                           suant to subsection (c)(2) to the total  
19                           amount of all reductions for all grant-  
20                           ees for such year pursuant to subclause  
21                           (I); or

22                           “(ii) in any case in which such failure  
23                           to obtain reimbursement or return occurs  
24                           during a year immediately preceding a  
25                           year in which grants under this subsection

1           *will not be made, the grantee shall pay to*  
2           *the Director for reallocation among the*  
3           *other grantees an amount equal to the*  
4           *amount of the reduction for the grantee that*  
5           *would otherwise apply under clause (i)(I).*

6           “(e) *GRANTEE ALLOCATION PLANS.*—

7           “(1) *IN GENERAL.*—*For each year that a grantee*  
8           *receives affordable housing fund grant amounts, the*  
9           *grantee shall establish an allocation plan in accord-*  
10          *ance with this subsection, which shall be a plan for*  
11          *the distribution of such grant amounts of the grantee*  
12          *for such year that—*

13                 “(A) *is based on priority housing needs, as*  
14                 *determined by the grantee in accordance with the*  
15                 *regulations established under subsection*  
16                 *(m)(2)(C);*

17                 “(B) *complies with subsection (f); and*

18                 “(C) *includes performance goals, bench-*  
19                 *marks, and timetables for the grantee for the pro-*  
20                 *duction, preservation, and rehabilitation of af-*  
21                 *fordable rental and homeownership housing with*  
22                 *such grant amounts that comply with the re-*  
23                 *quirements established by the Director pursuant*  
24                 *to subsection (m)(2)(F).*



1           “(2) *ESTABLISHMENT.*—*In establishing an allo-*  
2           *cation plan, a grantee shall notify the public of the*  
3           *establishment of the plan, provide an opportunity for*  
4           *public comments regarding the plan, consider any*  
5           *public comments received, and make the completed*  
6           *plan available to the public.*

7           “(3) *CONTENTS.*—*An allocation plan of a grant-*  
8           *ee shall set forth the requirements for eligible recipi-*  
9           *ents under subsection (h) to apply to the grantee to*  
10          *receive assistance from affordable housing fund grant*  
11          *amounts, including a requirement that each such ap-*  
12          *plication include—*

13                   “(A) *a description of the eligible activities*  
14                   *to be conducted using such assistance; and*

15                   “(B) *a certification by the eligible recipient*  
16                   *applying for such assistance that any housing*  
17                   *units assisted with such assistance will comply*  
18                   *with the requirements under this section.*

19          “(f) *SELECTION OF ACTIVITIES FUNDED USING AF-*  
20          *FORDABLE HOUSING FUND GRANT AMOUNTS.*—*Affordable*  
21          *housing fund grant amounts of a grantee may be used, or*  
22          *committed for use, only for activities that—*

23                   “(1) *are eligible under subsection (g) for such*  
24                   *use;*

1           “(2) *comply with the applicable allocation plan*  
2           *under subsection (e) of the grantee; and*

3           “(3) *are selected for funding by the grantee in*  
4           *accordance with the process and criteria for such se-*  
5           *lection established pursuant to subsection (m)(2)(C).*

6           “(g) *ELIGIBLE ACTIVITIES.—Affordable housing fund*  
7           *grant amounts of a grantee shall be eligible for use, or for*  
8           *commitment for use, only for assistance for—*

9           “(1) *the production, preservation, and rehabili-*  
10           *tation of rental housing, including housing under the*  
11           *programs identified in section 1335(a)(2)(B), except*  
12           *that such grant amounts may be used for the benefit*  
13           *only of extremely low- and very low-income families;*

14           “(2) *the production, preservation, and rehabili-*  
15           *tation of housing for homeownership, including such*  
16           *forms as downpayment assistance, closing cost assist-*  
17           *ance, and assistance for interest-rate buy-downs,*  
18           *that—*

19           “(A) *is available for purchase only for use*  
20           *as a principal residence by families that qualify*  
21           *both as—*

22           “(i) *extremely low- and very-low in-*  
23           *come families at the times described in sub-*  
24           *paragraphs (A) through (C) of section*  
25           *215(b)(2) of the Cranston-Gonzalez National*

1           *Affordable Housing Act (42 U.S.C.*  
2           *12745(b)(2)); and*

3           “(ii) *first-time homebuyers, as such*  
4           *term is defined in section 104 of the Cran-*  
5           *ston-Gonzalez National Affordable Housing*  
6           *Act (42 U.S.C. 12704), except that any ref-*  
7           *erence in such section to assistance under*  
8           *title II of such Act shall for purposes of this*  
9           *section be considered to refer to assistance*  
10          *from affordable housing fund grant*  
11          *amounts;*

12          “(B) *has an initial purchase price that*  
13          *meets the requirements of section 215(b)(1) of the*  
14          *Cranston-Gonzalez National Affordable Housing*  
15          *Act;*

16          “(C) *is subject to the same resale restric-*  
17          *tions established under section 215(b)(3) of the*  
18          *Cranston-Gonzalez National Affordable Housing*  
19          *Act and applicable to the participating jurisdic-*  
20          *tion that is the State in which such housing is*  
21          *located; and*

22          “(D) *is made available for purchase only*  
23          *by, or in the case of assistance under this para-*  
24          *graph, is made available only to, homebuyers*  
25          *who have, before purchase, completed a program*

1           *of counseling with respect to the responsibilities*  
2           *and financial management involved in home-*  
3           *ownership that is approved by the Director; and*  
4           “(3) *public infrastructure development activities*  
5           *in connection with housing activities funded under*  
6           *paragraph (1) or (2).*

7           “(h) *ELIGIBLE RECIPIENTS.—Affordable housing fund*  
8           *grant amounts of a grantee may be provided only to a re-*  
9           *ipient that is an organization, agency, or other entity (in-*  
10          *cluding a for-profit entity, a nonprofit entity, and a faith-*  
11          *based organization) that—*

12           “(1) *has demonstrated experience and capacity*  
13          *to conduct an eligible activity under (g), as evidenced*  
14          *by its ability to—*

15                   “(A) *own, construct or rehabilitate, manage,*  
16                   *and operate an affordable multifamily rental*  
17                   *housing development;*

18                   “(B) *design, construct or rehabilitate, and*  
19                   *market affordable housing for homeownership;*

20                   “(C) *provide forms of assistance, such as*  
21                   *downpayments, closing costs, or interest-rate*  
22                   *buy-downs, for purchasers; or*

23                   “(D) *construct related public infrastructure*  
24                   *development activities in connection with such*  
25                   *housing activities;*

1           “(2) demonstrates the ability and financial ca-  
2           pacity to undertake, comply, and manage the eligible  
3           activity;

4           “(3) demonstrates its familiarity with the re-  
5           quirements of any other Federal, State or local hous-  
6           ing program that will be used in conjunction with  
7           such grant amounts to ensure compliance with all ap-  
8           plicable requirements and regulations of such pro-  
9           grams; and

10           “(4) makes such assurances to the grantee as the  
11           Director shall, by regulation, require to ensure that  
12           the recipient will comply with the requirements of  
13           this section during the entire period that begins upon  
14           selection of the recipient to receive such grant  
15           amounts and ending upon the conclusion of all activi-  
16           ties under subsection (g) that are engaged in by the  
17           recipient and funded with such grant amounts.

18           “(i) *LIMITATIONS ON USE.*—

19           “(1) *REQUIRED AMOUNT FOR REFCORP.*—Of the  
20           aggregate amount allocated pursuant to subsection (b)  
21           in each year to the affordable housing fund, 25 per-  
22           cent shall be used as provided in section 21B(f)(2)(E)  
23           of the Federal Home Loan Bank Act (12 U.S.C.  
24           1441b(f)(2)(E)).

1           “(2) *REQUIRED AMOUNT FOR HOMEOWNERSHIP*  
2           *ACTIVITIES.*—Of the aggregate amount of affordable  
3           housing fund grant amounts provided in each year to  
4           a grantee, not less than 10 percent shall be used for  
5           activities under paragraph (2) of subsection (g).

6           “(3) *MAXIMUM AMOUNT FOR PUBLIC INFRA-*  
7           *STRUCTURE DEVELOPMENT ACTIVITIES IN CONNEC-*  
8           *TION WITH AFFORDABLE HOUSING ACTIVITIES.*—Of  
9           the aggregate amount of affordable housing fund  
10          grant amounts provided in each year to a grantee,  
11          not more than 12.5 percent may be used for activities  
12          under paragraph (3) of subsection (g).

13          “(4) *DEADLINE FOR COMMITMENT OR USE.*—Any  
14          affordable housing fund grant amounts of a grantee  
15          shall be used or committed for use within two years  
16          of the date of that such grant amounts are made  
17          available to the grantee. The Director shall recapture  
18          into the affordable housing fund any such amounts  
19          not so used or committed for use and allocate such  
20          amounts under subsection (d)(1) in the first year  
21          after such recapture.

22          “(5) *USE OF RETURNS.*—The Director shall, by  
23          regulation provide that any return on a loan or other  
24          investment of any affordable housing fund grant  
25          amounts of a grantee shall be treated, for purposes of

1 *availability to and use by the grantee, as affordable*  
2 *housing fund grant amounts.*

3 “(6) *PROHIBITED USES.*—*The Director shall—*

4 “(A) *by regulation, set forth prohibited uses*  
5 *of affordable housing fund grant amounts, which*  
6 *shall include use for—*

7 “(i) *political activities;*

8 “(ii) *advocacy;*

9 “(iii) *lobbying, whether directly or*  
10 *through other parties;*

11 “(iv) *counseling services;*

12 “(v) *travel expenses; and*

13 “(vi) *preparing or providing advice on*  
14 *tax returns;*

15 “(B) *by regulation, provide that, except as*  
16 *provided in subparagraph (C), affordable hous-*  
17 *ing fund grant amounts of a grantee may not be*  
18 *used for administrative, outreach, or other costs*  
19 *of—*

20 “(i) *the grantee; or*

21 “(ii) *any recipient of such grant*  
22 *amounts; and*

23 “(C) *by regulation, limit the amount of any*  
24 *affordable housing fund grant amounts of the*  
25 *grantee for a year that may be used for adminis-*

1           *trative costs of the grantee of carrying out the*  
2           *program required under this section to a per-*  
3           *centage of such grant amounts of the grantee for*  
4           *such year, which may not exceed 10 percent.*

5           “(7) *PROHIBITION OF CONSIDERATION OF USE*  
6           *FOR MEETING HOUSING GOALS OR DUTY TO SERVE.—*  
7           *In determining compliance with the housing goals*  
8           *under this subpart and the duty to serve underserved*  
9           *markets under section 1335, the Director may not*  
10           *consider any affordable housing fund grant amounts*  
11           *used under this section for eligible activities under*  
12           *subsection (g). The Director shall give credit toward*  
13           *the achievement of such housing goals and such duty*  
14           *to serve underserved markets to purchases by the en-*  
15           *terprises of mortgages for housing that receives fund-*  
16           *ing from affordable housing fund grant amounts, but*  
17           *only to the extent that such purchases by the enter-*  
18           *prises are funded other than with such grant*  
19           *amounts.*

20           “(j) *ACCOUNTABILITY OF RECIPIENTS AND GRANT-*  
21           *EES.—*

22           “(1) *RECIPIENTS.—*

23           “(A) *TRACKING OF FUNDS.—The Director*  
24           *shall—*



1           “(i) require each grantee to develop  
2           and maintain a system to ensure that each  
3           recipient of assistance from affordable hous-  
4           ing fund grant amounts of the grantee uses  
5           such amounts in accordance with this sec-  
6           tion, the regulations issued under this sec-  
7           tion, and any requirements or conditions  
8           under which such amounts were provided;  
9           and—

10           “(ii) establish minimum requirements  
11           for agreements, between the grantee and re-  
12           cipients, regarding assistance from the af-  
13           fordable housing fund grant amounts of the  
14           grantee, which shall include—

15           “(I) appropriate continuing fi-  
16           nancial and project reporting, record  
17           retention, and audit requirements for  
18           the duration of the grant to the recipi-  
19           ent to ensure compliance with the limi-  
20           tations and requirements of this section  
21           and the regulations under this section;  
22           and

23           “(II) any other requirements that  
24           the Director determines are necessary

1           to ensure appropriate grant adminis-  
2           tration and compliance.

3           “(B) MISUSE OF FUNDS.—

4                   “(i) REIMBURSEMENT REQUIRE-  
5           MENT.—If any recipient of assistance from  
6           affordable housing fund grant amounts of a  
7           grantee is determined, in accordance with  
8           clause (ii), to have used any such amounts  
9           in a manner that is materially in violation  
10          of this section, the regulations issued under  
11          this section, or any requirements or condi-  
12          tions under which such amounts were pro-  
13          vided, the grantee shall require that, within  
14          12 months after the determination of such  
15          misuse, the recipient shall reimburse the  
16          grantee for such misused amounts and re-  
17          turn to the grantee any amounts from the  
18          affordable housing fund grant amounts of  
19          the grantee that remain unused or uncom-  
20          mitted for use. The remedies under this  
21          clause are in addition to any other remedies  
22          that may be available under law.

23                   “(ii) DETERMINATION.—A determina-  
24          tion is made in accordance with this clause  
25          if the determination is—

1                   “(I) made by the Director; or  
2                   “(II)(aa) made by the grantee;  
3                   “(bb) the grantee provides notifi-  
4                   cation of the determination to the Di-  
5                   rector for review, in the discretion of  
6                   the Director, of the determination; and  
7                   “(cc) the Director does not subse-  
8                   quently reverse the determination.

9                   “(2) GRANTEES.—

10                   “(A) REPORT.—

11                   “(i) IN GENERAL.—The Director shall  
12                   require each grantee receiving affordable  
13                   housing fund grant amounts for a year to  
14                   submit a report, for such year, to the Direc-  
15                   tor that—

16                   “(I) describes the activities funded  
17                   under this section during such year  
18                   with the affordable housing fund grant  
19                   amounts of the grantee; and

20                   “(II) the manner in which the  
21                   grantee complied during such year  
22                   with the allocation plan established  
23                   pursuant to subsection (e) for the  
24                   grantee.

1           “(i) *PUBLIC AVAILABILITY.*—*The Di-*  
2           *rector shall make such reports pursuant to*  
3           *this subparagraph publicly available.*

4           “(B) *MISUSE OF FUNDS.*—*If the Director*  
5           *determines, after reasonable notice and oppor-*  
6           *tunity for hearing, that a grantee has failed to*  
7           *comply substantially with any provision of this*  
8           *section and until the Director is satisfied that*  
9           *there is no longer any such failure to comply, the*  
10          *Director shall—*

11           “(i) *reduce the amount of assistance*  
12           *under this section to the grantee by an*  
13           *amount equal to the amount affordable*  
14           *housing fund grant amounts which were not*  
15           *used in accordance with this section;*

16           “(ii) *require the grantee to repay the*  
17           *Director an amount equal to the amount of*  
18           *the amount affordable housing fund grant*  
19           *amounts which were not used in accordance*  
20           *with this section;*

21           “(iii) *limit the availability of assist-*  
22           *ance under this section to the grantee to ac-*  
23           *tivities or recipients not affected by such*  
24           *failure to comply; or*

1                   “(iv) terminate any assistance under  
2                   this section to the grantee.

3           “(k) *CAPITAL REQUIREMENTS.*—*The utilization or*  
4 *commitment of amounts from the affordable housing fund*  
5 *shall not be subject to the risk-based capital requirements*  
6 *established pursuant to section 1361(a).*

7           “(l) *DEFINITIONS.*—*For purposes of this section, the*  
8 *following definitions shall apply:*

9                   “(1) *AFFORDABLE HOUSING FUND GRANT*  
10 *AMOUNTS.*—*The term ‘affordable housing fund grant*  
11 *amounts’ means amounts from the affordable housing*  
12 *fund established under subsection (a) that are pro-*  
13 *vided to a grantee pursuant to subsection (d)(3).*

14                   “(2) *GRANTEE.*—*The term ‘grantee’ means—*  
15                   “(A) *with respect to 2007, the Louisiana*  
16 *Housing Finance Agency and the Mississippi*  
17 *Development Authority; and*

18                   “(B) *with respect to the years referred to in*  
19 *subsection (b)(1), other than 2007, each State (as*  
20 *such term is defined in section 1303) and each*  
21 *federally recognized Indian tribe.*

22                   “(3) *RECIPIENT.*—*The term ‘recipient’ means an*  
23 *entity meeting the requirements under subsection (h)*  
24 *that receives assistance from a grantee from affordable*  
25 *housing fund grant amounts of the grantee.*

1           “(4) *TOTAL MORTGAGE PORTFOLIO.*—The term  
2           ‘total mortgage portfolio’ means, with respect to a  
3           year, the sum, for all mortgages outstanding during  
4           that year in any form, including whole loans, mort-  
5           gage-backed securities, participation certificates, or  
6           other structured securities backed by mortgages, of the  
7           dollar amount of the unpaid outstanding principal  
8           balances under such mortgages. Such term includes  
9           all such mortgages or securitized obligations, whether  
10          retained in portfolio, or sold in any form. The Direc-  
11          tor is authorized to promulgate rules further defining  
12          such term as necessary to implement this section and  
13          to address market developments.

14          “(5) *VERY-LOW INCOME FAMILY.*—The term ‘very  
15          low-income family’ has the meaning given such term  
16          in section 1303, except that such term includes any  
17          family that resides in a rural area that has an in-  
18          come that does not exceed the poverty line (as such  
19          term is defined in section 673(2) of the Omnibus  
20          Budget Reconciliation Act of 1981 (42 U.S.C.  
21          9902(2)), including any revision required by such sec-  
22          tion) applicable to a family of the size involved.

23          “(m) *REGULATIONS.*—

1           “(1) *IN GENERAL.*—*The Director, in consultation*  
2           *with the Secretary of Housing and Urban Develop-*  
3           *ment, shall issue regulations to carry out this section.*

4           “(2) *REQUIRED CONTENTS.*—*The regulations*  
5           *issued under this subsection shall include—*

6                   “(A) *a requirement that the Director ensure*  
7                   *that the program of each grantee for use of af-*  
8                   *fordable housing fund grant amounts of the*  
9                   *grantee is audited not less than annually to en-*  
10                  *sure compliance with this section;*

11                  “(B) *authority for the Director to audit,*  
12                  *provide for an audit, or otherwise verify a grant-*  
13                  *ee’s activities, to ensure compliance with this sec-*  
14                  *tion;*

15                  “(C) *requirements for a process for applica-*  
16                  *tion to, and selection by, each grantee for activi-*  
17                  *ties meeting the grantee’s priority housing needs*  
18                  *to be funded with affordable housing fund grant*  
19                  *amounts of the grantee, which shall provide for*  
20                  *priority in funding to be based upon—*

21                          “(i) *greatest impact;*

22                          “(ii) *geographic diversity;*

23                          “(iii) *ability to obligate amounts and*  
24                          *undertake activities so funded in a timely*  
25                          *manner;*

1           “(iv) in the case of rental housing  
2           projects under subsection (g)(1), the extent  
3           to which rents for units in the project fund-  
4           ed are affordable, especially for extremely  
5           low-income families;

6           “(v) in the case of rental housing  
7           projects under subsection (g)(1), the extent  
8           of the duration for which such rents will re-  
9           main affordable;

10           “(vi) the extent to which the applica-  
11           tion makes use of other funding sources; and

12           “(vii) the merits of an applicant’s pro-  
13           posed eligible activity;

14           “(D) requirements to ensure that amounts  
15           provided to a grantee from the affordable housing  
16           fund that are used for rental housing under sub-  
17           section (g)(1) are used only for the benefit of ex-  
18           tremely low- and very-low income families;

19           “(E) limitations on public infrastructure  
20           development activities that are eligible pursuant  
21           to subsection (g)(3) for funding with affordable  
22           housing fund grant amounts and requirements  
23           for the connection between such activities and  
24           housing activities funded under paragraph (1) or  
25           (2) of subsection (g); and



1           “(F) requirements and standards for estab-  
2           lishment, by grantees (including the grantees for  
3           2007 pursuant to subsection (l)(2)(A)), of per-  
4           formance goals, benchmarks, and timetables for  
5           the production, preservation, and rehabilitation  
6           of affordable rental and homeownership housing  
7           with affordable housing fund grant amounts.

8           “(n) ENFORCEMENT OF REQUIREMENTS ON ENTER-  
9           PRISE.—Compliance by the enterprises with the require-  
10          ments under this section shall be enforceable under subpart  
11          C. Any reference in such subpart to this part or to an order,  
12          rule, or regulation under this part specifically includes this  
13          section and any order, rule, or regulation under this sec-  
14          tion.

15          “(o) AFFORDABLE HOUSING TRUST FUND.—If, after  
16          the enactment of this Act, in any year, there is enacted any  
17          provision of Federal law establishing an affordable housing  
18          trust fund other than under this title for use only for grants  
19          to provide affordable rental housing and affordable home-  
20          ownership opportunities, and the subsequent year is a year  
21          referred to in subsection (b)(1), the Director shall in such  
22          subsequent year and any remaining years referred to in  
23          subsection (b)(1) transfer to such affordable housing trust  
24          fund the aggregate amount allocated pursuant to subsection  
25          (b) in such year to the affordable housing fund under this

1 *section, less any amounts used pursuant to subsection*  
 2 *(i)(1). For such subsequent and remaining years, the provi-*  
 3 *sions of subsections (c) and (d) shall not apply. Nothing*  
 4 *in this subsection shall be construed to alter the terms and*  
 5 *conditions of the affordable housing fund under this section*  
 6 *or to extend the life of such fund.”.*

7 *(b) TIMELY ESTABLISHMENT OF AFFORDABLE HOUS-*  
 8 *ING NEEDS FORMULA.—*

9 *(1) IN GENERAL.—The Secretary of Housing and*  
 10 *Urban Development shall, not later than the effective*  
 11 *date under section 185 of this Act, issue the regula-*  
 12 *tions establishing the affordable housing needs for-*  
 13 *mulas in accordance with the provisions of section*  
 14 *1337(c)(2) of the Housing and Community Develop-*  
 15 *ment Act of 1992, as such section is amended by sub-*  
 16 *section (a) of this section.*

17 *(2) EFFECTIVE DATE.—This subsection shall take*  
 18 *effect on the date of the enactment of this Act.*

19 *(c) REFCORP PAYMENTS.—Section 21B(f)(2) of the*  
 20 *Federal Home Loan Bank Act (12 U.S.C. 1441b(f)(2)) is*  
 21 *amended—*

22 *(1) in subparagraph (E), by striking “and (D)”*  
 23 *and inserting “(D), and (E)”;*

24 *(2) by redesignating subparagraph (E) as sub-*  
 25 *paragraph (F); and*

1           (3) by inserting after subparagraph (D) the fol-  
2           lowing new subparagraph:

3                   “(E) *PAYMENTS BY FANNIE MAE AND*  
4                   *FREDDIE MAC.—To the extent that the amounts*  
5                   *available pursuant to subparagraphs (A), (B),*  
6                   *(C), and (D) are insufficient to cover the amount*  
7                   *of interest payments, each enterprise (as such*  
8                   *term is defined in section 1303 of the Housing*  
9                   *and Community Development Act of 1992 (42*  
10                   *U.S.C. 4502)) shall transfer to the Funding Cor-*  
11                   *poration in each calendar year the amounts allo-*  
12                   *cated for use under this subparagraph pursuant*  
13                   *to section 1337(i)(1) of such Act.”.*

14           (d) *GAO REPORT.—The Comptroller General shall*  
15           *conduct a study to determine the effects that the affordable*  
16           *housing fund established under section 1337 of the Housing*  
17           *and Community Development Act of 1992, as added by the*  
18           *amendment made by subsection (a) of this section, will have*  
19           *on the availability and affordability of credit for home-*  
20           *buyers, including the effects on such credit of the require-*  
21           *ment under such section 1337(b) that the Federal National*  
22           *Mortgage Association and Federal Home Loan Mortgage*  
23           *Corporation make allocations of amounts to such fund*  
24           *based on the average total mortgage portfolios, and the ex-*  
25           *tent to which the costs of such allocation requirement will*

1 *be borne by such entities or will be passed on to homebuyers.*  
2 *Not later than the expiration of the 12-month period begin-*  
3 *ning on the date of the enactment of this Act, the Comp-*  
4 *troller General shall submit a report to the Congress setting*  
5 *forth the results and conclusions of such study. This sub-*  
6 *section shall take effect on the date of the enactment of this*  
7 *Act.*

8 **SEC. 140. CONSISTENCY WITH MISSION.**

9 *Subpart B of part 2 of subtitle A of title XIII of the*  
10 *Housing and Community Development Act of 1992 (12*  
11 *U.S.C. 4561 et seq.) is amended by adding after section*  
12 *1337, as added by section 139 of this Act, the following new*  
13 *section:*

14 **“SEC. 1338. CONSISTENCY WITH MISSION.**

15 *“This subpart may not be construed to authorize an*  
16 *enterprise to engage in any program or activity that con-*  
17 *travenes or is inconsistent with the Federal National Mort-*  
18 *gage Association Charter Act or the Federal Home Loan*  
19 *Mortgage Corporation Act.”.*

20 **SEC. 141. ENFORCEMENT.**

21 *(a) CEASE-AND-DESIST PROCEEDINGS.—Section 1341*  
22 *of the Housing and Community Development Act of 1992*  
23 *(12 U.S.C. 4581) is amended—*

24 *(1) by striking subsection (a) and inserting the*  
25 *following new subsection:*

1       “(a) *GROUNDS FOR ISSUANCE.*—*The Director may*  
2 *issue and serve a notice of charges under this section upon*  
3 *an enterprise if the Director determines—*

4               “(1) *the enterprise has failed to meet any hous-*  
5 *ing goal established under subpart B, following a*  
6 *written notice and determination of such failure in*  
7 *accordance with section 1336;*

8               “(2) *the enterprise has failed to submit a report*  
9 *under section 1314, following a notice of such failure,*  
10 *an opportunity for comment by the enterprise, and a*  
11 *final determination by the Director;*

12               “(3) *the enterprise has failed to submit the infor-*  
13 *mation required under subsection (m) or (n) of sec-*  
14 *tion 309 of the Federal National Mortgage Association*  
15 *Charter Act, or subsection (e) or (f) of section 307 of*  
16 *the Federal Home Loan Mortgage Corporation Act;*

17               “(4) *the enterprise has violated any provision of*  
18 *this part or any order, rule or regulation under this*  
19 *part;*

20               “(5) *the enterprise has failed to submit a hous-*  
21 *ing plan that complies with section 1336(c) within*  
22 *the applicable period; or*

23               “(6) *the enterprise has failed to comply with a*  
24 *housing plan under section 1336(c).”;*

1           (2) *in subsection (b)(2), by striking “requiring*  
2 *the enterprise to” and all that follows through the end*  
3 *of the paragraph and inserting the following: “requir-*  
4 *ing the enterprise to—*

5                   *“(A) comply with the goal or goals;*

6                   *“(B) submit a report under section 1314;*

7                   *“(C) comply with any provision this part*  
8 *or any order, rule or regulation under such part;*

9                   *“(D) submit a housing plan in compliance*  
10 *with section 1336(c);*

11                   *“(E) comply with a housing plan submitted*  
12 *under section 1336(c); or*

13                   *“(F) provide the information required*  
14 *under subsection (m) or (n) of section 309 of the*  
15 *Federal National Mortgage Association Charter*  
16 *Act or subsection (e) or (f) of section 307 of the*  
17 *Federal Home Loan Mortgage Corporation Act,*  
18 *as applicable.”;*

19           (3) *in subsection (c), by inserting “date of the”*  
20 *before “service of the order”; and*

21                   *(4) by striking subsection (d).*

22           ***(b) AUTHORITY OF DIRECTOR TO ENFORCE NOTICES***  
23 ***AND ORDERS.—Section 1344 of the Housing and Commu-***  
24 ***nity Development Act of 1992 (12 U.S.C. 4584) is amended***

1 *by striking subsection (a) and inserting the following new*  
2 *subsection:*

3       “(a) *ENFORCEMENT.*—*The Director may, in the dis-*  
4 *cretion of the Director, apply to the United States District*  
5 *Court for the District of Columbia, or the United States*  
6 *district court within the jurisdiction of which the head-*  
7 *quarters of the enterprise is located, for the enforcement of*  
8 *any effective and outstanding notice or order issued under*  
9 *section 1341 or 1345, or request that the Attorney General*  
10 *of the United States bring such an action. Such court shall*  
11 *have jurisdiction and power to order and require compli-*  
12 *ance with such notice or order.”.*

13       (c) *CIVIL MONEY PENALTIES.*—*Section 1345 of the*  
14 *Housing and Community Development Act of 1992 (12*  
15 *U.S.C. 4585) is amended—*

16             (1) *by striking subsections (a) and (b) and in-*  
17 *serting the following new subsections:*

18       “(a) *AUTHORITY.*—*The Director may impose a civil*  
19 *money penalty, in accordance with the provisions of this*  
20 *section, on any enterprise that has failed to—*

21             “(1) *meet any housing goal established under*  
22 *subpart B, following a written notice and determina-*  
23 *tion of such failure in accordance with section*  
24 *1336(b);*

1           “(2) submit a report under section 1314, fol-  
2           lowing a notice of such failure, an opportunity for  
3           comment by the enterprise, and a final determination  
4           by the Director;

5           “(3) submit the information required under sub-  
6           section (m) or (n) of section 309 of the Federal Na-  
7           tional Mortgage Association Charter Act, or sub-  
8           section (e) or (f) of section 307 of the Federal Home  
9           Loan Mortgage Corporation Act;

10           “(4) comply with any provision of this part or  
11           any order, rule or regulation under this part;

12           “(5) submit a housing plan pursuant to section  
13           1336(c) within the required period; or

14           “(6) comply with a housing plan for the enter-  
15           prise under section 1336(c).

16           “(b) AMOUNT OF PENALTY.—The amount of the pen-  
17           alty, as determined by the Director, may not exceed—

18           “(1) for any failure described in paragraph (1),  
19           (5), or (6) of subsection (a), \$50,000 for each day that  
20           the failure occurs; and

21           “(2) for any failure described in paragraph (2),  
22           (3), or (4) of subsection (a), \$20,000 for each day that  
23           the failure occurs.”;

24           (2) in subsection (c)—

25           (A) in paragraph (1)—



1                   (i) in subparagraph (A), by inserting  
2                   “and” after the semicolon at the end;

3                   (ii) in subparagraph (B), by striking  
4                   “; and” and inserting a period; and

5                   (iii) by striking subparagraph (C);  
6                   and

7                   (B) in paragraph (2), by inserting after the  
8                   period at the end the following: “In determining  
9                   the penalty under subsection (a)(1), the Director  
10                  shall give consideration to the length of time the  
11                  enterprise should reasonably take to achieve the  
12                  goal.”;

13                  (3) in the first sentence of subsection (d)—

14                   (A) by striking “request the Attorney Gen-  
15                   eral of the United States to” and inserting “, in  
16                   the discretion of the Director,”; and

17                   (B) by inserting “, or request that the At-  
18                   torney General of the United States bring such  
19                   an action” before the period at the end;

20                  (4) by striking subsection (f); and

21                  (5) by redesignating subsection (g) as subsection  
22                  (f).

23                  (d) *ENFORCEMENT OF SUBPOENAS.*—Section 1348(c)  
24                  of the Housing and Community Development Act of 1992  
25                  (12 U.S.C. 4588(c)) is amended—

1           (1) by striking “request the Attorney General of  
2           the United States to” and inserting “, in the discre-  
3           tion of the Director;”; and

4           (2) by inserting “or request that the Attorney  
5           General of the United States bring such an action,”  
6           after “District of Columbia,”

7           (e) *CONFORMING AMENDMENT.*—The heading for sub-  
8           part C of part 2 of subtitle A of title XIII of the Housing  
9           and Community Development Act of 1992 is amended to  
10          read as follows:

11                                   **“Subpart C—Enforcement”.**

12          **SEC. 142. CONFORMING AMENDMENTS.**

13          Part 2 of subtitle A of title XIII of the Housing and  
14          Community Development Act of 1992 (12 U.S.C. 4541 et  
15          seq.) is amended—

16               (1) by striking “Secretary” each place such term  
17               appears in such part and inserting “Director”;

18               (2) in the section heading for section 1323 (12  
19               U.S.C. 4543), by inserting “**OF ENTERPRISES**” be-  
20               fore the period at the end;

21               (3) by striking section 1327 (12 U.S.C. 4547);

22               (4) by striking section 1328 (12 U.S.C. 4548);

23               (5) by redesignating section 1329 (as amended  
24               by section 135) as section 1327;

1           (6) in sections 1345(c)(1)(A), 1346(a), and  
 2           1346(b) (12 U.S.C. 4585(c)(1)(A), 4586(a), and  
 3           4586(b)), by striking “Secretary’s” each place such  
 4           term appears and inserting “Director’s”; and  
 5           (7) by striking section 1349 (12 U.S.C. 4589).

## 6           **Subtitle C—Prompt Corrective** 7           **Action**

### 8           **SEC. 151. CAPITAL CLASSIFICATIONS.**

9           (a) *IN GENERAL.*—Section 1364 of the Housing and  
 10          Community Development Act of 1992 (12 U.S.C. 4614) is  
 11          amended—

12           (1) in the heading for subsection (a), by striking  
 13          “*IN GENERAL*” and inserting “*ENTERPRISES*”.

14           (2) in subsection (c)—

15           (A) by striking “subsection (b)” and insert-  
 16          ing “subsection (c)”;

17           (B) by striking “enterprises” and inserting  
 18          “regulated entities”; and

19           (C) by striking the last sentence;

20           (3) by redesignating subsections (c) (as so  
 21          amended by paragraph (2) of this subsection) and (d)  
 22          as subsections (d) and (f), respectively;

23           (4) by striking subsection (b) and inserting the  
 24          following new subsections:

25          “(b) *FEDERAL HOME LOAN BANKS.*—

1           “(1) *ESTABLISHMENT AND CRITERIA.*—For pur-  
2           poses of this subtitle, the Director shall, by regula-  
3           tion—

4                   “(A) *establish the capital classifications*  
5                   *specified under paragraph (2) for the Federal*  
6                   *home loan banks;*

7                   “(B) *establish criteria for each such capital*  
8                   *classification based on the amount and types of*  
9                   *capital held by a bank and the risk-based, min-*  
10                   *imum, and critical capital levels for the banks*  
11                   *and taking due consideration of the capital clas-*  
12                   *sifications established under subsection (a) for*  
13                   *the enterprises, with such modifications as the*  
14                   *Director determines to be appropriate to reflect*  
15                   *the difference in operations between the banks*  
16                   *and the enterprises; and*

17                   “(C) *shall classify the Federal home loan*  
18                   *banks according to such capital classifications.*

19           “(2) *CLASSIFICATIONS.*—The capital classifica-  
20           tions specified under this paragraph are—

21                   “(A) *adequately capitalized;*

22                   “(B) *undercapitalized;*

23                   “(C) *significantly undercapitalized; and*

24                   “(D) *critically undercapitalized.*

25           “(c) *DISCRETIONARY CLASSIFICATION.*—

1           “(1) *GROUNDS FOR RECLASSIFICATION.*—*The*  
2           *Director may reclassify a regulated entity under*  
3           *paragraph (2) if—*

4                   “(A) *at any time, the Director determines*  
5                   *in writing that the regulated entity is engaging*  
6                   *in conduct that could result in a rapid depletion*  
7                   *of core or total capital or, in the case of an en-*  
8                   *terprise, that the value of the property subject to*  
9                   *mortgages held or securitized by the enterprise*  
10                   *has decreased significantly;*

11                   “(B) *after notice and an opportunity for*  
12                   *hearing, the Director determines that the regu-*  
13                   *lated entity is in an unsafe or unsound condi-*  
14                   *tion; or*

15                   “(C) *pursuant to section 1371(b), the Direc-*  
16                   *tor deems the regulated entity to be engaging in*  
17                   *an unsafe or unsound practice.*

18           “(2) *RECLASSIFICATION.*—*In addition to any*  
19           *other action authorized under this title, including the*  
20           *reclassification of a regulated entity for any reason*  
21           *not specified in this subsection, if the Director takes*  
22           *any action described in paragraph (1) the Director*  
23           *may classify a regulated entity—*

1           “(A) as undercapitalized, if the regulated  
2           entity is otherwise classified as adequately cap-  
3           italized;

4           “(B) as significantly undercapitalized, if  
5           the regulated entity is otherwise classified as  
6           undercapitalized; and

7           “(C) as critically undercapitalized, if the  
8           regulated entity is otherwise classified as signifi-  
9           cantly undercapitalized.”; and

10          (5) by inserting after subsection (d) (as so reded-  
11          ignated by paragraph (3) of this subsection), the fol-  
12          lowing new subsection:

13          “(e) *RESTRICTION ON CAPITAL DISTRIBUTIONS.*—

14                 “(1) *IN GENERAL.*—A regulated entity shall  
15                 make no capital distribution if, after making the dis-  
16                 tribution, the regulated entity would be undercapital-  
17                 ized.

18                 “(2) *EXCEPTION.*—Notwithstanding paragraph  
19                 (1), the Director may permit a regulated entity, to  
20                 the extent appropriate or applicable, to repurchase,  
21                 redeem, retire, or otherwise acquire shares or owner-  
22                 ship interests if the repurchase, redemption, retire-  
23                 ment, or other acquisition—

24                         “(A) is made in connection with the  
25                         issuance of additional shares or obligations of the

1           *regulated entity in at least an equivalent*  
 2           *amount; and*

3                   “(B) will reduce the financial obligations of  
 4           the regulated entity or otherwise improve the fi-  
 5           nancial condition of the entity.”.

6           (b) *REGULATIONS*.—Not later than the expiration of  
 7           the 180-day period beginning on the effective date under  
 8           section 185, the Director of the Federal Housing Finance  
 9           Agency shall issue regulations to carry out section 1364(b)  
 10          of the Housing and Community Development Act of 1992  
 11          (as added by paragraph (4) of this subsection), relating to  
 12          capital classifications for the Federal home loan banks.

13   **SEC. 152. SUPERVISORY ACTIONS APPLICABLE TO UNDER-**  
 14                   **CAPITALIZED REGULATED ENTITIES.**

15          Section 1365 of the Housing and Community Develop-  
 16          ment Act of 1992 (12 U.S.C. 4615) is amended—

17                   (1) in the section heading, by striking “**ENTER-**  
 18           **PRISES**” and inserting “**REGULATED ENTITIES**”;

19                   (2) in subsection (a)—

20                           (A) by redesignating paragraphs (1) and  
 21                           (2) as paragraphs (2) and (3), respectively;

22                           (B) by inserting before paragraph (2), as so  
 23                           redesignated by subparagraph (A) of this para-  
 24                           graph, the following paragraph:

1           “(1) *REQUIRED MONITORING.*—*The Director*  
2     *shall—*

3           “(A) *closely monitor the condition of any*  
4     *regulated entity that is classified as under-*  
5     *capitalized;*

6           “(B) *closely monitor compliance with the*  
7     *capital restoration plan, restrictions, and re-*  
8     *quirements imposed under this section; and*

9           “(C) *periodically review the plan, restric-*  
10    *tions, and requirements applicable to the under-*  
11    *capitalized regulated entity to determine whether*  
12    *the plan, restrictions, and requirements are*  
13    *achieving the purpose of this section.”; and*

14          (C) *by inserting at the end the following*  
15    *new paragraphs:*

16          “(4) *RESTRICTION OF ASSET GROWTH.*—*A regu-*  
17    *lated entity that is classified as undercapitalized shall*  
18    *not permit its average total assets (as such term is de-*  
19    *finied in section 1316(b) during any calendar quarter*  
20    *to exceed its average total assets during the preceding*  
21    *calendar quarter unless—*

22          “(A) *the Director has accepted the capital*  
23    *restoration plan of the regulated entity;*

24          “(B) *any increase in total assets is con-*  
25    *sistent with the plan; and*



1           “(C) *the ratio of total capital to assets for*  
2           *the regulated entity increases during the cal-*  
3           *endar quarter at a rate sufficient to enable the*  
4           *entity to become adequately capitalized within a*  
5           *reasonable time.*

6           “(5) *PRIOR APPROVAL OF ACQUISITIONS, NEW*  
7           *PRODUCTS, AND NEW ACTIVITIES.—A regulated entity*  
8           *that is classified as undercapitalized shall not, di-*  
9           *rectly or indirectly, acquire any interest in any enti-*  
10          *ty or initially offer any new product (as such term*  
11          *is defined in section 1321(f)) or engage in any new*  
12          *activity, service, undertaking, or offering unless—*

13                 “(A) *the Director has accepted the capital*  
14                 *restoration plan of the regulated entity, the enti-*  
15                 *ty is implementing the plan, and the Director*  
16                 *determines that the proposed action is consistent*  
17                 *with and will further the achievement of the*  
18                 *plan; or*

19                 “(B) *the Director determines that the pro-*  
20                 *posed action will further the purpose of this sec-*  
21                 *tion.”;*

22                 (3) *in the subsection heading for subsection (b),*  
23                 *by striking “FROM UNDERCAPITALIZED TO SIGNIFI-*  
24                 *CANTLY UNDERCAPITALIZED”;* and

1           (4) *by striking subsection (c) and inserting the*  
2           *following new subsection:*

3           “(c) *OTHER DISCRETIONARY SAFEGUARDS.—The Di-*  
4           *rector may take, with respect to a regulated entity that is*  
5           *classified as undercapitalized, any of the actions authorized*  
6           *to be taken under section 1366 with respect to a regulated*  
7           *entity that is classified as significantly undercapitalized,*  
8           *if the Director determines that such actions are necessary*  
9           *to carry out the purpose of this subtitle.”.*

10 **SEC. 153. SUPERVISORY ACTIONS APPLICABLE TO SIGNIFI-**  
11   **CANTLY UNDERCAPITALIZED REGULATED EN-**  
12   **TITIES.**

13           *Section 1366 of the Housing and Community Develop-*  
14           *ment Act of 1992 (12 U.S.C. 4616) is amended—*

15           (1) *in the section heading, by striking “ENTER-*  
16           *PRISES” and inserting “REGULATED ENTITIES”;*

17           (2) *in subsection (a)(2)(A), by striking “enter-*  
18           *prise” the last place such term appears;*

19           (3) *in subsection (b)—*

20                       (A) *in the subsection heading, by striking*  
21                       *“DISCRETIONARY SUPERVISORY ACTIONS” and*  
22                       *inserting “SPECIFIC ACTIONS”.*

23                       (B) *in the matter preceding paragraph (1),*  
24                       *by striking “may, at any time, take any” and*

1           inserting “shall carry out this section by taking,  
2           at any time, one or more”;

3           (C) by redesignating paragraphs (5) and  
4           (6) as paragraphs (6) and (7), respectively;

5           (D) by inserting after paragraph (4) the fol-  
6           lowing new paragraph:

7           “(5) *IMPROVEMENT OF MANAGEMENT.*—Take one  
8           or more of the following actions:

9           “(A) *NEW ELECTION OF BOARD.*—Order a  
10           new election for the board of directors of the reg-  
11           ulated entity.

12           “(B) *DISMISSAL OF DIRECTORS OR EXECU-*  
13           *TIVE OFFICERS.*—Require the regulated entity to  
14           dismiss from office any director or executive offi-  
15           cer who had held office for more than 180 days  
16           immediately before the entity became under-  
17           capitalized. Dismissal under this subparagraph  
18           shall not be construed to be a removal pursuant  
19           to the Director’s enforcement powers provided in  
20           section 1377.

21           “(C) *EMPLOY QUALIFIED EXECUTIVE OFFI-*  
22           *CERS.*—Require the regulated entity to employ  
23           qualified executive officers (who, if the Director  
24           so specifies, shall be subject to approval by the  
25           Director).”; and

1           (E) by inserting at the end the following  
2           new paragraph:

3           “(8) *OTHER ACTION.*—Require the regulated en-  
4           tity to take any other action that the Director deter-  
5           mines will better carry out the purpose of this section  
6           than any of the actions specified in this paragraph.”;

7           (4) by redesignating subsection (c) as subsection  
8           (d); and

9           (5) by inserting after subsection (b) the following  
10          new subsection:

11          “(c) *RESTRICTION ON COMPENSATION OF EXECUTIVE*  
12          *OFFICERS.*—A regulated entity that is classified as signifi-  
13          cantly undercapitalized may not, without prior written ap-  
14          proval by the Director—

15                 “(1) pay any bonus to any executive officer; or

16                 “(2) provide compensation to any executive offi-  
17                 cer at a rate exceeding that officer’s average rate of  
18                 compensation (excluding bonuses, stock options, and  
19                 profit sharing) during the 12 calendar months pre-  
20                 ceding the calendar month in which the regulated en-  
21                 tity became undercapitalized.”.

1 **SEC. 154. AUTHORITY OVER CRITICALLY UNDERCAPITAL-**  
2 **IZED REGULATED ENTITIES.**

3 (a) *IN GENERAL.*—Section 1367 of the Housing and  
4 Community Development Act of 1992 (12 U.S.C. 4617) is  
5 amended to read as follows:

6 **“SEC. 1367. AUTHORITY OVER CRITICALLY UNDERCAPITAL-**  
7 **IZED REGULATED ENTITIES.**

8 “(a) *APPOINTMENT OF AGENCY AS CONSERVATOR OR*  
9 *RECEIVER.*—

10 “(1) *IN GENERAL.*—Notwithstanding any other  
11 provision of Federal or State law, if any of the  
12 grounds under paragraph (3) exist, at the discretion  
13 of the Director, the Director may establish a con-  
14 servatorship or receivership, as appropriate, for the  
15 purpose of reorganizing, rehabilitating, or winding  
16 up the affairs of a regulated entity.

17 “(2) *APPOINTMENT.*—In any conservatorship or  
18 receivership established under this section, the Direc-  
19 tor shall appoint the Agency as conservator or re-  
20 ceiver.

21 “(3) *GROUND FOR APPOINTMENT.*—The grounds  
22 for appointing a conservator or receiver for a regu-  
23 lated entity are as follows:

24 “(A) *ASSETS INSUFFICIENT FOR OBLIGA-*  
25 *TIONS.*—The assets of the regulated entity are

1           *less than the obligations of the regulated entity*  
2           *to its creditors and others.*

3           “(B) *SUBSTANTIAL DISSIPATION.*—*Substan-*  
4           *tial dissipation of assets or earnings due to—*

5                     “(i) *any violation of any provision of*  
6                     *Federal or State law; or*

7                     “(ii) *any unsafe or unsound practice.*

8           “(C) *UNSAFE OR UNSOUND CONDITION.*—*An*  
9           *unsafe or unsound condition to transact busi-*  
10           *ness.*

11           “(D) *CEASE-AND-DESIST ORDERS.*—*Any*  
12           *willful violation of a cease-and-desist order that*  
13           *has become final.*

14           “(E) *CONCEALMENT.*—*Any concealment of*  
15           *the books, papers, records, or assets of the regu-*  
16           *lated entity, or any refusal to submit the books,*  
17           *papers, records, or affairs of the regulated entity,*  
18           *for inspection to any examiner or to any lawful*  
19           *agent of the Director.*

20           “(F) *INABILITY TO MEET OBLIGATIONS.*—  
21           *The regulated entity is likely to be unable to pay*  
22           *its obligations or meet the demands of its credi-*  
23           *tors in the normal course of business.*

24           “(G) *LOSSES.*—*The regulated entity has in-*  
25           *curring or is likely to incur losses that will de-*

1            *plete all or substantially all of its capital, and*  
2            *there is no reasonable prospect for the regulated*  
3            *entity to become adequately capitalized (as de-*  
4            *defined in section 1364(a)(1)).*

5            *“(H) VIOLATIONS OF LAW.—Any violation*  
6            *of any law or regulation, or any unsafe or un-*  
7            *sound practice or condition that is likely to—*

8                    *“(i) cause insolvency or substantial*  
9                    *dissipation of assets or earnings; or*

10                   *“(ii) weaken the condition of the regu-*  
11                   *lated entity.*

12            *“(I) CONSENT.—The regulated entity, by*  
13            *resolution of its board of directors or its share-*  
14            *holders or members, consents to the appointment.*

15            *“(J) UNDERCAPITALIZATION.—The regu-*  
16            *lated entity is undercapitalized or significantly*  
17            *undercapitalized (as defined in section*  
18            *1364(a)(3) or in regulations issued pursuant to*  
19            *section 1364(b), as applicable), and—*

20                   *“(i) has no reasonable prospect of be-*  
21                   *coming adequately capitalized;*

22                   *“(ii) fails to become adequately cap-*  
23                   *italized, as required by—*

1           “(I) section 1365(a)(1) with re-  
2           spect to an undercapitalized regulated  
3           entity; or

4           “(II) section 1366(a)(1) with re-  
5           spect to a significantly undercapital-  
6           ized regulated entity;

7           “(iii) fails to submit a capital restora-  
8           tion plan acceptable to the Agency within  
9           the time prescribed under section 1369C; or

10           “(iv) materially fails to implement a  
11           capital restoration plan submitted and ac-  
12           cepted under section 1369C.

13           “(K) *CRITICAL UNDERCAPITALIZATION.*—  
14           *The regulated entity is critically undercapital-*  
15           *ized, as defined in section 1364(a)(4) or in regu-*  
16           *lations issued pursuant to section 1364(b), as*  
17           *applicable.*

18           “(L) *MONEY LAUNDERING.*—*The Attorney*  
19           *General notifies the Director in writing that the*  
20           *regulated entity has been found guilty of a*  
21           *criminal offense under section 1956 or 1957 of*  
22           *title 18, United States Code, or section 5322 or*  
23           *5324 of title 31, United States Code.*

24           “(4) *MANDATORY RECEIVERSHIP.*—



1           “(A) *IN GENERAL.*—*The Director shall ap-*  
2           *point the Agency as receiver for a regulated enti-*  
3           *ty if the Director determines, in writing, that—*

4                     “(i) *the assets of the regulated entity*  
5                     *are, and during the preceding 30 calendar*  
6                     *days have been, less than the obligations of*  
7                     *the regulated entity to its creditors and oth-*  
8                     *ers; or*

9                     “(ii) *the regulated entity is not, and*  
10                    *during the preceding 30 calendar days has*  
11                    *not been, generally paying the debts of the*  
12                    *regulated entity (other than debts that are*  
13                    *the subject of a bona fide dispute) as such*  
14                    *debts become due.*

15           “(B) *PERIODIC DETERMINATION REQUIRED*  
16           *FOR CRITICALLY UNDER CAPITALIZED REGU-*  
17           *LATED ENTITY.*—*If a regulated entity is criti-*  
18           *cally undercapitalized, the Director shall make a*  
19           *determination, in writing, as to whether the reg-*  
20           *ulated entity meets the criteria specified in*  
21           *clause (i) or (ii) of subparagraph (A)—*

22                     “(i) *not later than 30 calendar days*  
23                     *after the regulated entity initially becomes*  
24                     *critically undercapitalized; and*

1           “(ii) at least once during each suc-  
2           ceeding 30-calendar day period.

3           “(C) DETERMINATION NOT REQUIRED IF  
4           RECEIVERSHIP ALREADY IN PLACE.—Subpara-  
5           graph (B) shall not apply with respect to a regu-  
6           lated entity in any period during which the  
7           Agency serves as receiver for the regulated entity.

8           “(D) RECEIVERSHIP TERMINATES CON-  
9           SERVATORSHIP.—The appointment under this  
10          section of the Agency as receiver of a regulated  
11          entity shall immediately terminate any con-  
12          servatorship established under this title for the  
13          regulated entity.

14          “(5) JUDICIAL REVIEW.—

15          “(A) IN GENERAL.—If the Agency is ap-  
16          pointed conservator or receiver under this sec-  
17          tion, the regulated entity may, within 30 days of  
18          such appointment, bring an action in the United  
19          States District Court for the judicial district in  
20          which the principal place of business of such regu-  
21          lated entity is located, or in the United States  
22          District Court for the District of Columbia, for  
23          an order requiring the Agency to remove itself as  
24          conservator or receiver.

1           “(B) *REVIEW.*—Upon the filing of an ac-  
2           tion under subparagraph (A), the court shall,  
3           upon the merits, dismiss such action or direct  
4           the Agency to remove itself as such conservator  
5           or receiver.

6           “(6) *DIRECTORS NOT LIABLE FOR ACQUIESCING*  
7           *IN APPOINTMENT OF CONSERVATOR OR RECEIVER.*—  
8           The members of the board of directors of a regulated  
9           entity shall not be liable to the shareholders or credi-  
10          tors of the regulated entity for acquiescing in or con-  
11          senting in good faith to the appointment of the Agen-  
12          cy as conservator or receiver for that regulated entity.

13          “(7) *AGENCY NOT SUBJECT TO ANY OTHER FED-*  
14          *ERAL AGENCY.*—When acting as conservator or re-  
15          ceiver, the Agency shall not be subject to the direction  
16          or supervision of any other agency of the United  
17          States or any State in the exercise of the rights, pow-  
18          ers, and privileges of the Agency.

19          “(b) *POWERS AND DUTIES OF THE AGENCY AS CON-*  
20          *SERVATOR OR RECEIVER.*—

21                 “(1) *RULEMAKING AUTHORITY OF THE AGEN-*  
22                 *CY.*—The Agency may prescribe such regulations as  
23                 the Agency determines to be appropriate regarding  
24                 the conduct of conservatorships or receiverships.

25                 “(2) *GENERAL POWERS.*—

1           “(A) *SUCCESSOR TO REGULATED ENTITY.*—

2           *The Agency shall, as conservator or receiver, and*  
3           *by operation of law, immediately succeed to—*

4                   “(i) *all rights, titles, powers, and*  
5                   *privileges of the regulated entity, and of*  
6                   *any stockholder, officer, or director of such*  
7                   *regulated entity with respect to the regu-*  
8                   *lated entity and the assets of the regulated*  
9                   *entity; and*

10                   “(ii) *title to the books, records, and as-*  
11                   *sets of any other legal custodian of such reg-*  
12                   *ulated entity.*

13           “(B) *OPERATE THE REGULATED ENTITY.*—

14           *The Agency may, as conservator or receiver—*

15                   “(i) *take over the assets of and operate*  
16                   *the regulated entity with all the powers of*  
17                   *the shareholders, the directors, and the offi-*  
18                   *cers of the regulated entity and conduct all*  
19                   *business of the regulated entity;*

20                   “(ii) *collect all obligations and money*  
21                   *due the regulated entity;*

22                   “(iii) *perform all functions of the regu-*  
23                   *lated entity in the name of the regulated en-*  
24                   *tity which are consistent with the appoint-*  
25                   *ment as conservator or receiver; and*

1                   “(iv) *preserve and conserve the assets*  
2                   *and property of such regulated entity.*

3                   “(C) *FUNCTIONS OF OFFICERS, DIRECTORS,*  
4                   *AND SHAREHOLDERS OF A REGULATED ENTI-*  
5                   *TY.—The Agency may, by regulation or order,*  
6                   *provide for the exercise of any function by any*  
7                   *stockholder, director, or officer of any regulated*  
8                   *entity for which the Agency has been named con-*  
9                   *servator or receiver.*

10                  “(D) *POWERS AS CONSERVATOR.—The*  
11                  *Agency may, as conservator, take such action as*  
12                  *may be—*

13                         “(i) *necessary to put the regulated en-*  
14                         *tity in a sound and solvent condition; and*

15                         “(ii) *appropriate to carry on the busi-*  
16                         *ness of the regulated entity and preserve*  
17                         *and conserve the assets and property of the*  
18                         *regulated entity, including, if two or more*  
19                         *Federal home loan banks have been placed*  
20                         *in conservatorship contemporaneously,*  
21                         *merging two or more such banks into a sin-*  
22                         *gle Federal home loan bank.*

23                         “(E) *ADDITIONAL POWERS AS RECEIVER.—*  
24                         *The Agency may, as receiver, place the regulated*  
25                         *entity in liquidation and proceed to realize upon*

1           *the assets of the regulated entity, having due re-*  
2           *gard to the conditions of the housing finance*  
3           *market.*

4           “(F) ORGANIZATION OF NEW REGULATED  
5           ENTITIES.—*The Agency may, as receiver, orga-*  
6           *nize a successor regulated entity that will oper-*  
7           *ate pursuant to subsection (i).*

8           “(G) TRANSFER OF ASSETS AND LIABIL-  
9           ITIES.—*The Agency may, as conservator or re-*  
10          *ceiver, transfer any asset or liability of the regu-*  
11          *lated entity in default without any approval, as-*  
12          *signment, or consent with respect to such trans-*  
13          *fer. Any Federal home loan bank may, with the*  
14          *approval of the Agency, acquire the assets of any*  
15          *Bank in conservatorship or receivership, and as-*  
16          *sume the liabilities of such Bank.*

17          “(H) PAYMENT OF VALID OBLIGATIONS.—  
18          *The Agency, as conservator or receiver, shall, to*  
19          *the extent of proceeds realized from the perform-*  
20          *ance of contracts or sale of the assets of a regu-*  
21          *lated entity, pay all valid obligations of the regu-*  
22          *lated entity in accordance with the prescrip-*  
23          *tions and limitations of this section.*

24          “(I) SUBPOENA AUTHORITY.—

25                 “(i) IN GENERAL.—

1           “(I) *IN GENERAL.*—*The Agency*  
2           *may, as conservator or receiver, and*  
3           *for purposes of carrying out any*  
4           *power, authority, or duty with respect*  
5           *to a regulated entity (including deter-*  
6           *mining any claim against the regu-*  
7           *lated entity and determining and real-*  
8           *izing upon any asset of any person in*  
9           *the course of collecting money due the*  
10           *regulated entity), exercise any power*  
11           *established under section 1348.*

12           “(II) *APPLICABILITY OF LAW.*—  
13           *The provisions of section 1348 shall*  
14           *apply with respect to the exercise of*  
15           *any power exercised under this sub-*  
16           *paragraph in the same manner as such*  
17           *provisions apply under that section.*

18           “(ii) *AUTHORITY OF DIRECTOR.*—*A*  
19           *subpoena or subpoena duces tecum may be*  
20           *issued under clause (i) only by, or with the*  
21           *written approval of, the Director, or the des-*  
22           *ignee of the Director.*

23           “(iii) *RULE OF CONSTRUCTION.*—*This*  
24           *subsection shall not be construed to limit*  
25           *any rights that the Agency, in any capac-*

1            *ity, might otherwise have under section*  
2            *1317 or 1379D.*

3            “(J) *CONTRACTING FOR SERVICES.—The*  
4            *Agency may, as conservator or receiver, provide*  
5            *by contract for the carrying out of any of its*  
6            *functions, activities, actions, or duties as conser-*  
7            *vator or receiver.*

8            “(K) *INCIDENTAL POWERS.—The Agency*  
9            *may, as conservator or receiver—*

10            *“(i) exercise all powers and authorities*  
11            *specifically granted to conservators or re-*  
12            *ceivers, respectively, under this section, and*  
13            *such incidental powers as shall be necessary*  
14            *to carry out such powers; and*

15            *“(ii) take any action authorized by*  
16            *this section, which the Agency determines is*  
17            *in the best interests of the regulated entity*  
18            *or the Agency.*

19            “(3) *AUTHORITY OF RECEIVER TO DETERMINE*  
20            *CLAIMS.—*

21            “(A) *IN GENERAL.—The Agency may, as re-*  
22            *ceiver, determine claims in accordance with the*  
23            *requirements of this subsection and any regula-*  
24            *tions prescribed under paragraph (4).*



1           “(B) *NOTICE REQUIREMENTS.*—*The re-*  
2           *ceiver, in any case involving the liquidation or*  
3           *winding up of the affairs of a closed regulated*  
4           *entity, shall—*

5                   “(i) *promptly publish a notice to the*  
6                   *creditors of the regulated entity to present*  
7                   *their claims, together with proof, to the re-*  
8                   *ceiver by a date specified in the notice*  
9                   *which shall be not less than 90 days after*  
10                  *the publication of such notice; and*

11                   “(ii) *republish such notice approxi-*  
12                   *mately 1 month and 2 months, respectively,*  
13                   *after the publication under clause (i).*

14           “(C) *MAILING REQUIRED.*—*The receiver*  
15           *shall mail a notice similar to the notice pub-*  
16           *lished under subparagraph (B)(i) at the time of*  
17           *such publication to any creditor shown on the*  
18           *books of the regulated entity—*

19                   “(i) *at the last address of the creditor*  
20                   *appearing in such books; or*

21                   “(ii) *upon discovery of the name and*  
22                   *address of a claimant not appearing on the*  
23                   *books of the regulated entity within 30 days*  
24                   *after the discovery of such name and ad-*  
25                   *dress.*

1           “(4) *RULEMAKING AUTHORITY RELATING TO DE-*  
2           *TERMINATION OF CLAIMS.*—Subject to subsection (c),  
3           the Director may prescribe regulations regarding the  
4           allowance or disallowance of claims by the receiver  
5           and providing for administrative determination of  
6           claims and review of such determination.

7           “(5) *PROCEDURES FOR DETERMINATION OF*  
8           *CLAIMS.*—

9           “(A) *DETERMINATION PERIOD.*—

10           “(i) *IN GENERAL.*—Before the end of  
11           the 180-day period beginning on the date on  
12           which any claim against a regulated entity  
13           is filed with the Agency as receiver, the  
14           Agency shall determine whether to allow or  
15           disallow the claim and shall notify the  
16           claimant of any determination with respect  
17           to such claim.

18           “(ii) *EXTENSION OF TIME.*—The pe-  
19           riod described in clause (i) may be extended  
20           by a written agreement between the claim-  
21           ant and the Agency.

22           “(iii) *MAILING OF NOTICE SUFFI-*  
23           *CIENT.*—The notification requirements of  
24           clause (i) shall be deemed to be satisfied if  
25           the notice of any determination with respect

1           to any claim is mailed to the last address  
2           of the claimant which appears—

3                   “(I) on the books of the regulated  
4                   entity;

5                   “(II) in the claim filed by the  
6                   claimant; or

7                   “(III) in documents submitted in  
8                   proof of the claim.

9                   “(iv) CONTENTS OF NOTICE OF DIS-  
10                  ALLOWANCE.—If any claim filed under  
11                  clause (i) is disallowed, the notice to the  
12                  claimant shall contain—

13                   “(I) a statement of each reason for  
14                   the disallowance; and

15                   “(II) the procedures available for  
16                   obtaining agency review of the deter-  
17                   mination to disallow the claim or judi-  
18                   cial determination of the claim.

19                  “(B) ALLOWANCE OF PROVEN CLAIM.—The  
20                  receiver shall allow any claim received on or be-  
21                  fore the date specified in the notice published  
22                  under paragraph (3)(B)(i), or the date specified  
23                  in the notice required under paragraph (3)(C),  
24                  which is proved to the satisfaction of the receiver.

1           “(C) *DISALLOWANCE OF CLAIMS FILED*  
2 *AFTER END OF FILING PERIOD.*—*Claims filed*  
3 *after the date specified in the notice published*  
4 *under paragraph (3)(B)(i), or the date specified*  
5 *under paragraph (3)(C), shall be disallowed and*  
6 *such disallowance shall be final.*

7           “(D) *AUTHORITY TO DISALLOW CLAIMS.*—

8           “(i) *IN GENERAL.*—*The receiver may*  
9 *disallow any portion of any claim by a*  
10 *creditor or claim of security, preference, or*  
11 *priority which is not proved to the satisfac-*  
12 *tion of the receiver.*

13           “(ii) *PAYMENTS TO LESS THAN FULLY*  
14 *SECURED CREDITORS.*—*In the case of a*  
15 *claim of a creditor against a regulated enti-*  
16 *ty which is secured by any property or*  
17 *other asset of such regulated entity, the re-*  
18 *ceiver—*

19           “(I) *may treat the portion of such*  
20 *claim which exceeds an amount equal*  
21 *to the fair market value of such prop-*  
22 *erty or other asset as an unsecured*  
23 *claim against the regulated entity; and*

24           “(II) *may not make any payment*  
25 *with respect to such unsecured portion*

1           *of the claim other than in connection*  
2           *with the disposition of all claims of*  
3           *unsecured creditors of the regulated en-*  
4           *tity.*

5           “(iii) *EXCEPTIONS.—No provision of*  
6           *this paragraph shall apply with respect to*  
7           *any extension of credit from any Federal*  
8           *Reserve Bank, Federal home loan bank, or*  
9           *the Treasury of the United States.*

10           “(E) *NO JUDICIAL REVIEW OF DETERMINA-*  
11           *TION PURSUANT TO SUBPARAGRAPH (D).—No*  
12           *court may review the determination of the Agen-*  
13           *cy under subparagraph (D) to disallow a claim.*  
14           *This subparagraph shall not affect the authority*  
15           *of a claimant to obtain de novo judicial review*  
16           *of a claim pursuant to paragraph (6).*

17           “(F) *LEGAL EFFECT OF FILING.—*

18           “(i) *STATUTE OF LIMITATION*  
19           *TOLLED.—For purposes of any applicable*  
20           *statute of limitations, the filing of a claim*  
21           *with the receiver shall constitute a com-*  
22           *mencement of an action.*

23           “(ii) *NO PREJUDICE TO OTHER AC-*  
24           *TIONS.—Subject to paragraph (10), the fil-*  
25           *ing of a claim with the receiver shall not*

1           *prejudice any right of the claimant to con-*  
2           *tinue any action which was filed before the*  
3           *date of the appointment of the receiver, sub-*  
4           *ject to the determination of claims by the*  
5           *receiver.*

6           “(6) *PROVISION FOR JUDICIAL DETERMINATION*  
7           *OF CLAIMS.—*

8           “(A) *IN GENERAL.—The claimant may file*  
9           *suit on a claim (or continue an action com-*  
10           *menced before the appointment of the receiver) in*  
11           *the district or territorial court of the United*  
12           *States for the district within which the principal*  
13           *place of business of the regulated entity is located*  
14           *or the United States District Court for the Dis-*  
15           *trict of Columbia (and such court shall have ju-*  
16           *risdiction to hear such claim), before the end of*  
17           *the 60-day period beginning on the earlier of—*

18           “(i) *the end of the period described in*  
19           *paragraph (5)(A)(i) with respect to any*  
20           *claim against a regulated entity for which*  
21           *the Agency is receiver; or*

22           “(ii) *the date of any notice of disallow-*  
23           *ance of such claim pursuant to paragraph*  
24           *(5)(A)(i).*

1           “(B) *STATUTE OF LIMITATIONS.*—A claim  
2 shall be deemed to be disallowed (other than any  
3 portion of such claim which was allowed by the  
4 receiver), and such disallowance shall be final,  
5 and the claimant shall have no further rights or  
6 remedies with respect to such claim, if the claim-  
7 ant fails, before the end of the 60-day period de-  
8 scribed under subparagraph (A), to file suit on  
9 such claim (or continue an action commenced be-  
10 fore the appointment of the receiver).

11           “(7) *REVIEW OF CLAIMS.*—

12           “(A) *OTHER REVIEW PROCEDURES.*—

13           “(i) *IN GENERAL.*—The Agency shall  
14 establish such alternative dispute resolution  
15 processes as may be appropriate for the res-  
16 olution of claims filed under paragraph  
17 (5)(A)(i).

18           “(ii) *CRITERIA.*—In establishing alter-  
19 native dispute resolution processes, the  
20 Agency shall strive for procedures which are  
21 expeditious, fair, independent, and low cost.

22           “(iii) *VOLUNTARY BINDING OR NON-*  
23 *BINDING PROCEDURES.*—The Agency may  
24 establish both binding and nonbinding proc-  
25 esses, which may be conducted by any gov-

1            *ernment or private party. All parties, in-*  
2            *cluding the claimant and the Agency, must*  
3            *agree to the use of the process in a par-*  
4            *ticular case.*

5            *“(B) CONSIDERATION OF INCENTIVES.—The*  
6            *Agency shall seek to develop incentives for claim-*  
7            *ants to participate in the alternative dispute res-*  
8            *olution process.*

9            *“(8) EXPEDITED DETERMINATION OF CLAIMS.—*

10            *“(A) ESTABLISHMENT REQUIRED.—The*  
11            *Agency shall establish a procedure for expedited*  
12            *relief outside of the routine claims process estab-*  
13            *lished under paragraph (5) for claimants who—*

14            *“(i) allege the existence of legally valid*  
15            *and enforceable or perfected security inter-*  
16            *ests in assets of any regulated entity for*  
17            *which the Agency has been appointed re-*  
18            *ceiver; and*

19            *“(ii) allege that irreparable injury will*  
20            *occur if the routine claims procedure is fol-*  
21            *lowed.*

22            *“(B) DETERMINATION PERIOD.—Before the*  
23            *end of the 90-day period beginning on the date*  
24            *any claim is filed in accordance with the proce-*



1           *dures established under subparagraph (A), the*  
2           *Director shall—*

3                     “(i) *determine—*

4                             “(I) *whether to allow or disallow*  
5                             *such claim; or*

6                             “(II) *whether such claim should*  
7                             *be determined pursuant to the proce-*  
8                             *dures established under paragraph (5);*  
9                             *and*

10                            “(ii) *notify the claimant of the deter-*  
11                            *mination, and if the claim is disallowed,*  
12                            *provide a statement of each reason for the*  
13                            *disallowance and the procedure for obtain-*  
14                            *ing agency review or judicial determina-*  
15                            *tion.*

16                            “(C) *PERIOD FOR FILING OR RENEWING*  
17                            *SUIT.—Any claimant who files a request for ex-*  
18                            *pedited relief shall be permitted to file a suit, or*  
19                            *to continue a suit filed before the appointment of*  
20                            *the receiver, seeking a determination of the rights*  
21                            *of the claimant with respect to such security in-*  
22                            *terest after the earlier of—*

23                                     “(i) *the end of the 90-day period begin-*  
24                                     *ning on the date of the filing of a request*  
25                                     *for expedited relief; or*

1                   “(ii) *the date the Agency denies the*  
2                   *claim.*

3                   “(D) *STATUTE OF LIMITATIONS.—If an ac-*  
4                   *tion described under subparagraph (C) is not*  
5                   *filed, or the motion to renew a previously filed*  
6                   *suit is not made, before the end of the 30-day pe-*  
7                   *riod beginning on the date on which such action*  
8                   *or motion may be filed under subparagraph (B),*  
9                   *the claim shall be deemed to be disallowed as of*  
10                  *the end of such period (other than any portion*  
11                  *of such claim which was allowed by the receiver),*  
12                  *such disallowance shall be final, and the claim-*  
13                  *ant shall have no further rights or remedies with*  
14                  *respect to such claim.*

15                  “(E) *LEGAL EFFECT OF FILING.—*

16                  “(i)    *STATUTE OF LIMITATION*  
17                  *TOLLED.—For purposes of any applicable*  
18                  *statute of limitations, the filing of a claim*  
19                  *with the receiver shall constitute a com-*  
20                  *mencement of an action.*

21                  “(ii) *NO PREJUDICE TO OTHER AC-*  
22                  *TIONS.—Subject to paragraph (10), the fil-*  
23                  *ing of a claim with the receiver shall not*  
24                  *prejudice any right of the claimant to con-*  
25                  *tinue any action that was filed before the*

1                   *appointment of the receiver, subject to the*  
2                   *determination of claims by the receiver.*

3                   “(9) *PAYMENT OF CLAIMS.—*

4                   “(A) *IN GENERAL.—The receiver may, in*  
5                   *the discretion of the receiver, and to the extent*  
6                   *funds are available from the assets of the regu-*  
7                   *lated entity, pay creditor claims, in such man-*  
8                   *ner and amounts as are authorized under this*  
9                   *section, which are—*

10                   “(i) *allowed by the receiver;*

11                   “(ii) *approved by the Agency pursuant*  
12                   *to a final determination pursuant to para-*  
13                   *graph (7) or (8); or*

14                   “(iii) *determined by the final judgment*  
15                   *of any court of competent jurisdiction.*

16                   “(B) *AGREEMENTS AGAINST THE INTEREST*  
17                   *OF THE AGENCY.—No agreement that tends to*  
18                   *diminish or defeat the interest of the Agency in*  
19                   *any asset acquired by the Agency as receiver*  
20                   *under this section shall be valid against the*  
21                   *Agency unless such agreement is in writing, and*  
22                   *executed by an authorized official of the regu-*  
23                   *lated entity, except that such requirements for*  
24                   *qualified financial contracts shall be applied in*  
25                   *a manner consistent with reasonable business*

1           *trading practices in the financial contracts mar-*  
2           *ket.*

3           “(C) *PAYMENT OF DIVIDENDS ON CLAIMS.—*

4           *The receiver may, in the sole discretion of the re-*  
5           *ceiver, pay from the assets of the regulated entity*  
6           *dividends on proved claims at any time, and no*  
7           *liability shall attach to the Agency, by reason of*  
8           *any such payment, for failure to pay dividends*  
9           *to a claimant whose claim is not proved at the*  
10          *time of any such payment.*

11          “(D) *RULEMAKING AUTHORITY OF THE DI-*

12          *RECTOR.—The Director may prescribe such*  
13          *rules, including definitions of terms, as the Di-*  
14          *rector deems appropriate to establish a single*  
15          *uniform interest rate for, or to make payments*  
16          *of post-insolvency interest to creditors holding*  
17          *proven claims against the receivership estates of*  
18          *regulated entities following satisfaction by the re-*  
19          *ceiver of the principal amount of all creditor*  
20          *claims.*

21          “(10) *SUSPENSION OF LEGAL ACTIONS.—*

22          “(A) *IN GENERAL.—After the appointment*  
23          *of a conservator or receiver for a regulated enti-*  
24          *ty, the conservator or receiver may, in any judi-*  
25          *cial action or proceeding to which such regulated*

1           entity is or becomes a party, request a stay for  
2           a period not to exceed—

3                   “(i) 45 days, in the case of any conser-  
4                   vator; and

5                   “(ii) 90 days, in the case of any re-  
6                   ceiver.

7                   “(B) GRANT OF STAY BY ALL COURTS RE-  
8                   QUIRED.—Upon receipt of a request by any con-  
9                   servator or receiver under subparagraph (A) for  
10                  a stay of any judicial action or proceeding in  
11                  any court with jurisdiction of such action or  
12                  proceeding, the court shall grant such stay as to  
13                  all parties.

14                  “(11) ADDITIONAL RIGHTS AND DUTIES.—

15                   “(A) PRIOR FINAL ADJUDICATION.—The  
16                   Agency shall abide by any final unappealable  
17                   judgment of any court of competent jurisdiction  
18                   which was rendered before the appointment of  
19                   the Agency as conservator or receiver.

20                   “(B) RIGHTS AND REMEDIES OF CONSER-  
21                   VATOR OR RECEIVER.—In the event of any ap-  
22                   pealable judgment, the Agency as conservator or  
23                   receiver shall—

24                           “(i) have all the rights and remedies  
25                           available to the regulated entity (before the

1           *appointment of such conservator or receiver)*  
2           *and the Agency, including removal to Fed-*  
3           *eral court and all appellate rights; and*

4                   “(ii) *not be required to post any bond*  
5                   *in order to pursue such remedies.*

6                   “(C) *NO ATTACHMENT OR EXECUTION.—No*  
7                   *attachment or execution may issue by any court*  
8                   *upon assets in the possession of the receiver.*

9                   “(D) *LIMITATION ON JUDICIAL REVIEW.—*  
10                   *Except as otherwise provided in this subsection,*  
11                   *no court shall have jurisdiction over—*

12                           “(i) *any claim or action for payment*  
13                           *from, or any action seeking a determination*  
14                           *of rights with respect to, the assets of any*  
15                           *regulated entity for which the Agency has*  
16                           *been appointed receiver; or*

17                           “(ii) *any claim relating to any act or*  
18                           *omission of such regulated entity or the*  
19                           *Agency as receiver.*

20                   “(E) *DISPOSITION OF ASSETS.—In exer-*  
21                   *cising any right, power, privilege, or authority*  
22                   *as conservator or receiver in connection with any*  
23                   *sale or disposition of assets of a regulated entity*  
24                   *for which the Agency has been appointed conser-*  
25                   *vator or receiver, the Agency shall conduct its*

1           *operations in a manner which maintains sta-*  
2           *bility in the housing finance markets and, to the*  
3           *extent consistent with that goal—*

4                   “(i) *maximizes the net present value*  
5                   *return from the sale or disposition of such*  
6                   *assets;*

7                   “(ii) *minimizes the amount of any loss*  
8                   *realized in the resolution of cases; and*

9                   “(iii) *ensures adequate competition*  
10                  *and fair and consistent treatment of*  
11                  *offerors.*

12                  “(12) *STATUTE OF LIMITATIONS FOR ACTIONS*  
13                  *BROUGHT BY CONSERVATOR OR RECEIVER.—*

14                   “(A) *IN GENERAL.—Notwithstanding any*  
15                   *provision of any contract, the applicable statute*  
16                   *of limitations with regard to any action brought*  
17                   *by the Agency as conservator or receiver shall*  
18                   *be—*

19                           “(i) *in the case of any contract claim,*  
20                           *the longer of—*

21                                   “(I) *the 6-year period beginning*  
22                                   *on the date the claim accrues; or*

23                                   “(II) *the period applicable under*  
24                                   *State law; and*

1                   “(ii) in the case of any tort claim, the  
2                   longer of—

3                   “(I) the 3-year period beginning  
4                   on the date the claim accrues; or

5                   “(II) the period applicable under  
6                   State law.

7                   “(B) DETERMINATION OF THE DATE ON  
8                   WHICH A CLAIM ACCRUES.—For purposes of sub-  
9                   paragraph (A), the date on which the statute of  
10                  limitations begins to run on any claim described  
11                  in such subparagraph shall be the later of—

12                  “(i) the date of the appointment of the  
13                  Agency as conservator or receiver; or

14                  “(ii) the date on which the cause of ac-  
15                  tion accrues.

16                  “(13) REVIVAL OF EXPIRED STATE CAUSES OF  
17                  ACTION.—

18                  “(A) IN GENERAL.—In the case of any tort  
19                  claim described under subparagraph (B) for  
20                  which the statute of limitations applicable under  
21                  State law with respect to such claim has expired  
22                  not more than 5 years before the appointment of  
23                  the Agency as conservator or receiver, the Agency  
24                  may bring an action as conservator or receiver  
25                  on such claim without regard to the expiration



1           *of the statute of limitation applicable under*  
2           *State law.*

3           “(B) *CLAIMS DESCRIBED.*—*A tort claim re-*  
4           *ferred to under subparagraph (A) is a claim*  
5           *arising from fraud, intentional misconduct re-*  
6           *sulting in unjust enrichment, or intentional mis-*  
7           *conduct resulting in substantial loss to the regu-*  
8           *lated entity.*

9           “(14) *ACCOUNTING AND RECORDKEEPING RE-*  
10          *QUIREMENTS.*—

11           “(A) *IN GENERAL.*—*The Agency as conser-*  
12           *vator or receiver shall, consistent with the ac-*  
13           *counting and reporting practices and procedures*  
14           *established by the Agency, maintain a full ac-*  
15           *counting of each conservatorship and receiver-*  
16           *ship or other disposition of a regulated entity in*  
17           *default.*

18           “(B) *ANNUAL ACCOUNTING OR REPORT.*—  
19           *With respect to each conservatorship or receiver-*  
20           *ship, the Agency shall make an annual account-*  
21           *ing or report available to the Board, the Comp-*  
22           *troller General of the United States, the Com-*  
23           *mittee on Banking, Housing, and Urban Affairs*  
24           *of the Senate, and the Committee on Financial*  
25           *Services of the House of Representatives.*

1           “(C) *AVAILABILITY OF REPORTS.*—Any re-  
2           port prepared under subparagraph (B) shall be  
3           made available by the Agency upon request to  
4           any shareholder of a regulated entity or any  
5           member of the public.

6           “(D) *RECORDKEEPING REQUIREMENT.*—  
7           After the end of the 6-year period beginning on  
8           the date that the conservatorship or receivership  
9           is terminated by the Director, the Agency may  
10          destroy any records of such regulated entity  
11          which the Agency, in the discretion of the Agen-  
12          cy, determines to be unnecessary unless directed  
13          not to do so by a court of competent jurisdiction  
14          or governmental agency, or prohibited by law.

15          “(15) *FRAUDULENT TRANSFERS.*—

16          “(A) *IN GENERAL.*—The Agency, as conser-  
17          vator or receiver, may avoid a transfer of any  
18          interest of a regulated entity-affiliated party, or  
19          any person who the conservator or receiver deter-  
20          mines is a debtor of the regulated entity, in  
21          property, or any obligation incurred by such  
22          party or person, that was made within 5 years  
23          of the date on which the Agency was appointed  
24          conservator or receiver, if such party or person  
25          voluntarily or involuntarily made such transfer

1           *or incurred such liability with the intent to*  
2           *hinder, delay, or defraud the regulated entity,*  
3           *the Agency, the conservator, or receiver.*

4           “(B) *RIGHT OF RECOVERY.*—*To the extent a*  
5           *transfer is avoided under subparagraph (A), the*  
6           *conservator or receiver may recover, for the ben-*  
7           *efit of the regulated entity, the property trans-*  
8           *ferred, or, if a court so orders, the value of such*  
9           *property (at the time of such transfer) from—*

10           “(i) *the initial transferee of such trans-*  
11           *fer or the regulated entity-affiliated party*  
12           *or person for whose benefit such transfer*  
13           *was made; or*

14           “(ii) *any immediate or mediate trans-*  
15           *feree of any such initial transferee.*

16           “(C) *RIGHTS OF TRANSFEREE OR OBLI-*  
17           *GEE.*—*The conservator or receiver may not re-*  
18           *cover under subparagraph (B) from—*

19           “(i) *any transferee that takes for value,*  
20           *including satisfaction or securing of a*  
21           *present or antecedent debt, in good faith; or*

22           “(ii) *any immediate or mediate good*  
23           *faith transferee of such transferee.*

24           “(D) *RIGHTS UNDER THIS PARAGRAPH.*—  
25           *The rights under this paragraph of the conser-*

1           vator or receiver described under subparagraph  
2           (A) shall be superior to any rights of a trustee  
3           or any other party (other than any party which  
4           is a Federal agency) under title 11, United  
5           States Code.

6           “(16) *ATTACHMENT OF ASSETS AND OTHER IN-*  
7           *JUNCTIVE RELIEF.*—Subject to paragraph (17), any  
8           court of competent jurisdiction may, at the request of  
9           the conservator or receiver, issue an order in accord-  
10          ance with Rule 65 of the Federal Rules of Civil Proce-  
11          dure, including an order placing the assets of any  
12          person designated by the Agency or such conservator  
13          under the control of the court, and appointing a  
14          trustee to hold such assets.

15          “(17) *STANDARDS OF PROOF.*—Rule 65 of the  
16          Federal Rules of Civil Procedure shall apply with re-  
17          spect to any proceeding under paragraph (16) with-  
18          out regard to the requirement of such rule that the ap-  
19          plicant show that the injury, loss, or damage is irrep-  
20          arable and immediate.

21          “(18) *TREATMENT OF CLAIMS ARISING FROM*  
22          *BREACH OF CONTRACTS EXECUTED BY THE RECEIVER*  
23          *OR CONSERVATOR.*—

24                  “(A) *IN GENERAL.*—Notwithstanding any  
25                  other provision of this subsection, any final and

1            *unappealable judgment for monetary damages*  
2            *entered against a receiver or conservator for the*  
3            *breach of an agreement executed or approved in*  
4            *writing by such receiver or conservator after the*  
5            *date of its appointment, shall be paid as an ad-*  
6            *ministrative expense of the receiver or conser-*  
7            *vator.*

8            “(B) *NO LIMITATION OF POWER.—Nothing*  
9            *in this paragraph shall be construed to limit the*  
10           *power of a receiver or conservator to exercise any*  
11           *rights under contract or law, including to termi-*  
12           *nate, breach, cancel, or otherwise discontinue*  
13           *such agreement.*

14           “(19) *GENERAL EXCEPTIONS.—*

15           “(A) *LIMITATIONS.—The rights of a conser-*  
16           *vator or receiver appointed under this section*  
17           *shall be subject to the limitations on the powers*  
18           *of a receiver under sections 402 through 407 of*  
19           *the Federal Deposit Insurance Corporation Im-*  
20           *provement Act of 1991 (12 U.S.C. 4402 through*  
21           *4407).*

22           “(B) *MORTGAGES HELD IN TRUST.—*

23           “(i) *IN GENERAL.—Any mortgage, pool*  
24           *of mortgages, or interest in a pool of mort-*  
25           *gages, held in trust, custodial, or agency ca-*

1           *capacity by a regulated entity for the benefit*  
2           *of persons other than the regulated entity*  
3           *shall not be available to satisfy the claims*  
4           *of creditors generally.*

5           “(ii) *HOLDING OF MORTGAGES.—Any*  
6           *mortgage, pool of mortgages, or interest in*  
7           *a pool of mortgages, described under clause*  
8           *(i) shall be held by the conservator or re-*  
9           *ceiver appointed under this section for the*  
10           *beneficial owners of such mortgage, pool of*  
11           *mortgages, or interest in a pool of mort-*  
12           *gages in accordance with the terms of the*  
13           *agreement creating such trust, custodial, or*  
14           *other agency arrangement.*

15           “(iii) *LIABILITY OF RECEIVER.—The*  
16           *liability of a receiver appointed under this*  
17           *section for damages shall, in the case of any*  
18           *contingent or unliquidated claim relating to*  
19           *the mortgages held in trust, be estimated in*  
20           *accordance set forth in the regulations of the*  
21           *Director.*

22           “(c) *PRIORITY OF EXPENSES AND UNSECURED*  
23           *CLAIMS.—*

24           “(1) *IN GENERAL.—Unsecured claims against a*  
25           *regulated entity, or a receiver, that are proven to the*

1       *satisfaction of the receiver shall have priority in the*  
2       *following order:*

3               “(A) *Administrative expenses of the re-*  
4               *ceiver.*

5               “(B) *Any other general or senior liability of*  
6               *the regulated entity and claims of other Federal*  
7               *home loan banks arising from their payment ob-*  
8               *ligations (including joint and several payment*  
9               *obligations).*

10              “(C) *Any obligation subordinated to general*  
11              *creditors.*

12              “(D) *Any obligation to shareholders or*  
13              *members arising as a result of their status as*  
14              *shareholder or members.*

15              “(2) *CREDITORS SIMILARLY SITUATED.—All*  
16              *creditors that are similarly situated under paragraph*  
17              *(1) shall be treated in a similar manner, except that*  
18              *the Agency may make such other payments to credi-*  
19              *tors necessary to maximize the present value return*  
20              *from the sale or disposition or such regulated entity’s*  
21              *assets or to minimize the amount of any loss realized*  
22              *in the resolution of cases so long as all creditors simi-*  
23              *larly situated receive not less than the amount pro-*  
24              *vided under subsection (e)(2).*

1           “(3) *DEFINITION.*—*The term ‘administrative ex-*  
2           *penditures of the receiver’ shall include the actual, nec-*  
3           *essary costs and expenses incurred by the receiver in*  
4           *preserving the assets of the regulated entity or liqui-*  
5           *dating or otherwise resolving the affairs of the regu-*  
6           *lated entity. Such expenses shall include obligations*  
7           *that are incurred by the receiver after appointment as*  
8           *receiver that the Director determines are necessary*  
9           *and appropriate to facilitate the smooth and orderly*  
10          *liquidation or other resolution of the regulated entity.*

11          “(d) *PROVISIONS RELATING TO CONTRACTS ENTERED*  
12          *INTO BEFORE APPOINTMENT OF CONSERVATOR OR RE-*  
13          *CEIVER.*—

14                 “(1) *AUTHORITY TO REPUDIATE CONTRACTS.*—  
15                 *In addition to any other rights a conservator or re-*  
16                 *ceiver may have, the conservator or receiver for any*  
17                 *regulated entity may disaffirm or repudiate any con-*  
18                 *tract or lease—*

19                         “(A) *to which such regulated entity is a*  
20                         *party;*

21                         “(B) *the performance of which the conser-*  
22                         *vator or receiver, in its sole discretion, deter-*  
23                         *mines to be burdensome; and*

24                         “(C) *the disaffirmance or repudiation of*  
25                         *which the conservator or receiver determines, in*



1           *its sole discretion, will promote the orderly ad-*  
2           *ministration of the affairs of the regulated enti-*  
3           *ty.*

4           “(2) *TIMING OF REPUDIATION.*—*The conservator*  
5           *or receiver shall determine whether or not to exercise*  
6           *the rights of repudiation under this subsection within*  
7           *a reasonable period following such appointment.*

8           “(3) *CLAIMS FOR DAMAGES FOR REPUDIATION.*—

9           “(A) *IN GENERAL.*—*Except as otherwise*  
10           *provided under subparagraph (C) and para-*  
11           *graphs (4), (5), and (6), the liability of the con-*  
12           *servator or receiver for the disaffirmance or re-*  
13           *pudiation of any contract pursuant to para-*  
14           *graph (1) shall be—*

15                   “(i) *limited to actual direct compen-*  
16                   *satory damages; and*

17                   “(ii) *determined as of—*

18                           “(I) *the date of the appointment*  
19                           *of the conservator or receiver; or*

20                           “(II) *in the case of any contract*  
21                           *or agreement referred to in paragraph*  
22                           *(8), the date of the disaffirmance or re-*  
23                           *pudiation of such contract or agree-*  
24                           *ment.*

1           “(B) *NO LIABILITY FOR OTHER DAMAGES.*—  
2           *For purposes of subparagraph (A), the term ‘ac-*  
3           *tual direct compensatory damages’ shall not in-*  
4           *clude—*

5                     “(i) *punitive or exemplary damages;*

6                     “(ii) *damages for lost profits or oppor-*  
7                     *tunity; or*

8                     “(iii) *damages for pain and suffering.*

9           “(C) *MEASURE OF DAMAGES FOR REPUDI-*  
10           *ATION OF FINANCIAL CONTRACTS.*—*In the case of*  
11           *any qualified financial contract or agreement to*  
12           *which paragraph (8) applies, compensatory*  
13           *damages shall be—*

14                     “(i) *deemed to include normal and rea-*  
15                     *sonable costs of cover or other reasonable*  
16                     *measures of damages utilized in the indus-*  
17                     *tries for such contract and agreement*  
18                     *claims; and*

19                     “(ii) *paid in accordance with this sub-*  
20                     *section and subsection (e), except as other-*  
21                     *wise specifically provided in this section.*

22           “(4) *LEASES UNDER WHICH THE REGULATED*  
23           *ENTITY IS THE LESSEE.*—

24                     “(A) *IN GENERAL.*—*If the conservator or re-*  
25                     *ceiver disaffirms or repudiates a lease under*

1           *which the regulated entity was the lessee, the con-*  
2           *servator or receiver shall not be liable for any*  
3           *damages (other than damages determined under*  
4           *subparagraph (B)) for the disaffirmance or repu-*  
5           *diation of such lease.*

6           “(B) *PAYMENTS OF RENT.—Notwith-*  
7           *standing subparagraph (A), the lessor under a*  
8           *lease to which that subparagraph applies shall—*

9                   “(i) *be entitled to the contractual rent*  
10                   *accruing before the later of the date—*

11                           “(I) *the notice of disaffirmance or*  
12                           *repudiation is mailed; or*

13                           “(II) *the disaffirmance or repudi-*  
14                           *ation becomes effective, unless the lessor*  
15                           *is in default or breach of the terms of*  
16                           *the lease;*

17                   “(ii) *have no claim for damages under*  
18                   *any acceleration clause or other penalty*  
19                   *provision in the lease; and*

20                   “(iii) *have a claim for any unpaid*  
21                   *rent, subject to all appropriate offsets and*  
22                   *defenses, due as of the date of the appoint-*  
23                   *ment, which shall be paid in accordance*  
24                   *with this subsection and subsection (e).*

1           “(5) *LEASES UNDER WHICH THE REGULATED*  
2           *ENTITY IS THE LESSOR.—*

3           “(A) *IN GENERAL.—If the conservator or re-*  
4           *ceiver repudiates an unexpired written lease of*  
5           *real property of the regulated entity under which*  
6           *the regulated entity is the lessor and the lessee is*  
7           *not, as of the date of such repudiation, in de-*  
8           *fault, the lessee under such lease may either—*

9                   “(i) *treat the lease as terminated by*  
10                   *such repudiation; or*

11                   “(ii) *remain in possession of the lease-*  
12                   *hold interest for the balance of the term of*  
13                   *the lease, unless the lessee defaults under the*  
14                   *terms of the lease after the date of such re-*  
15                   *pu diation.*

16           “(B) *PROVISIONS APPLICABLE TO LESSEE*  
17           *REMAINING IN POSSESSION.—If any lessee under*  
18           *a lease described under subparagraph (A) re-*  
19           *mains in possession of a leasehold interest under*  
20           *clause (ii) of such subparagraph—*

21                   “(i) *the lessee—*

22                   “(I) *shall continue to pay the con-*  
23                   *tractual rent pursuant to the terms of*  
24                   *the lease after the date of the repudi-*  
25                   *ation of such lease; and*

1           “(II) may offset against any rent  
2           payment which accrues after the date  
3           of the repudiation of the lease, and any  
4           damages which accrue after such date  
5           due to the nonperformance of any obli-  
6           gation of the regulated entity under the  
7           lease after such date; and

8           “(ii) the conservator or receiver shall  
9           not be liable to the lessee for any damages  
10          arising after such date as a result of the re-  
11          pudiation other than the amount of any off-  
12          set allowed under clause (i)(II).

13           “(6) *CONTRACTS FOR THE SALE OF REAL PROP-*  
14          *ERTY.—*

15           “(A) *IN GENERAL.—*If the conservator or re-  
16          ceiver repudiates any contract for the sale of real  
17          property and the purchaser of such real property  
18          under such contract is in possession, and is not,  
19          as of the date of such repudiation, in default,  
20          such purchaser may either—

21           “(i) treat the contract as terminated by  
22          such repudiation; or

23           “(ii) remain in possession of such real  
24          property.

1           “(B) *PROVISIONS APPLICABLE TO PUR-*  
2           *CHASER REMAINING IN POSSESSION.—If any*  
3           *purchaser of real property under any contract*  
4           *described under subparagraph (A) remains in*  
5           *possession of such property under clause (i) of*  
6           *such subparagraph—*

7                   “(i) *the purchaser—*

8                           “(I) *shall continue to make all*  
9                           *payments due under the contract after*  
10                           *the date of the repudiation of the con-*  
11                           *tract; and*

12                           “(II) *may offset against any such*  
13                           *payments any damages which accrue*  
14                           *after such date due to the nonperform-*  
15                           *ance (after such date) of any obligation*  
16                           *of the regulated entity under the con-*  
17                           *tract; and*

18                           “(ii) *the conservator or receiver shall—*

19                                   “(I) *not be liable to the purchaser*  
20                                   *for any damages arising after such*  
21                                   *date as a result of the repudiation*  
22                                   *other than the amount of any offset al-*  
23                                   *lowed under clause (i)(II);*

1           “(II) deliver title to the purchaser  
2           in accordance with the provisions of  
3           the contract; and

4           “(III) have no obligation under  
5           the contract other than the performance  
6           required under subclause (II).

7           “(C) ASSIGNMENT AND SALE ALLOWED.—

8           “(i) IN GENERAL.—No provision of  
9           this paragraph shall be construed as lim-  
10          iting the right of the conservator or receiver  
11          to assign the contract described under sub-  
12          paragraph (A), and sell the property subject  
13          to the contract and the provisions of this  
14          paragraph.

15          “(ii) NO LIABILITY AFTER ASSIGNMENT  
16          AND SALE.—If an assignment and sale de-  
17          scribed under clause (i) is consummated, the  
18          conservator or receiver shall have no further  
19          liability under the contract described under  
20          subparagraph (A), or with respect to the  
21          real property which was the subject of such  
22          contract.

23          “(7) PROVISIONS APPLICABLE TO SERVICE CON-  
24          TRACTS.—

1           “(A) *SERVICES PERFORMED BEFORE AP-*  
2           *POINTMENT.—In the case of any contract for*  
3           *services between any person and any regulated*  
4           *entity for which the Agency has been appointed*  
5           *conservator or receiver, any claim of such person*  
6           *for services performed before the appointment of*  
7           *the conservator or the receiver shall be—*

8                     “(i) *a claim to be paid in accordance*  
9                     *with subsections (b) and (e); and*

10                    “(ii) *deemed to have arisen as of the*  
11                    *date the conservator or receiver was ap-*  
12                    *pointed.*

13           “(B) *SERVICES PERFORMED AFTER AP-*  
14           *POINTMENT AND PRIOR TO REPUDIATION.—If, in*  
15           *the case of any contract for services described*  
16           *under subparagraph (A), the conservator or re-*  
17           *ceiver accepts performance by the other person*  
18           *before the conservator or receiver makes any de-*  
19           *termination to exercise the right of repudiation*  
20           *of such contract under this section—*

21                    “(i) *the other party shall be paid*  
22                    *under the terms of the contract for the serv-*  
23                    *ices performed; and*



1                   “(i) the amount of such payment shall  
2                   be treated as an administrative expense of  
3                   the conservatorship or receivership.

4                   “(C) ACCEPTANCE OF PERFORMANCE NO  
5                   BAR TO SUBSEQUENT REPUDIATION.—The ac-  
6                   ceptance by any conservator or receiver of serv-  
7                   ices referred to under subparagraph (B) in con-  
8                   nection with a contract described in such sub-  
9                   paragraph shall not affect the right of the conser-  
10                  vator or receiver to repudiate such contract  
11                  under this section at any time after such per-  
12                  formance.

13                  “(8) CERTAIN QUALIFIED FINANCIAL CON-  
14                  TRACTS.—

15                  “(A) RIGHTS OF PARTIES TO CONTRACTS.—  
16                  Subject to paragraphs (9) and (10) and notwith-  
17                  standing any other provision of this Act, any  
18                  other Federal law, or the law of any State, no  
19                  person shall be stayed or prohibited from exer-  
20                  cising—

21                  “(i) any right such person has to cause  
22                  the termination, liquidation, or acceleration  
23                  of any qualified financial contract with a  
24                  regulated entity that arises upon the ap-  
25                  pointment of the Agency as receiver for such

1           *regulated entity at any time after such ap-*  
2           *pointment;*

3           “(ii) *any right under any security*  
4           *agreement or arrangement or other credit*  
5           *enhancement relating to one or more quali-*  
6           *fied financial contracts described in clause*  
7           *(i); or*

8           “(iii) *any right to offset or net out any*  
9           *termination value, payment amount, or*  
10          *other transfer obligation arising under or in*  
11          *connection with 1 or more contracts and*  
12          *agreements described in clause (i), includ-*  
13          *ing any master agreement for such con-*  
14          *tracts or agreements.*

15          “(B) *APPLICABILITY OF OTHER PROVI-*  
16          *SIONS.—Paragraph (10) of subsection (b) shall*  
17          *apply in the case of any judicial action or pro-*  
18          *ceeding brought against any receiver referred to*  
19          *under subparagraph (A), or the regulated entity*  
20          *for which such receiver was appointed, by any*  
21          *party to a contract or agreement described under*  
22          *subparagraph (A)(i) with such regulated entity.*

23          “(C) *CERTAIN TRANSFERS NOT AVOID-*  
24          *ABLE.—*

1           “(i) *IN GENERAL.*—Notwithstanding  
2           *paragraph (11) or any other Federal or*  
3           *State laws relating to the avoidance of pref-*  
4           *erential or fraudulent transfers, the Agency,*  
5           *whether acting as such or as conservator or*  
6           *receiver of a regulated entity, may not*  
7           *avoid any transfer of money or other prop-*  
8           *erty in connection with any qualified finan-*  
9           *cial contract with a regulated entity.*

10           “(ii) *EXCEPTION FOR CERTAIN TRANS-*  
11           *FERS.*—*Clause (i) shall not apply to any*  
12           *transfer of money or other property in con-*  
13           *nection with any qualified financial con-*  
14           *tract with a regulated entity if the Agency*  
15           *determines that the transferee had actual*  
16           *intent to hinder, delay, or defraud such reg-*  
17           *ulated entity, the creditors of such regulated*  
18           *entity, or any conservator or receiver ap-*  
19           *pointed for such regulated entity.*

20           “(D) *CERTAIN CONTRACTS AND AGREE-*  
21           *MENTS DEFINED.*—*In this subsection:*

22           “(i) *QUALIFIED FINANCIAL CON-*  
23           *TRACT.*—*The term ‘qualified financial con-*  
24           *tract’ means any securities contract, com-*  
25           *modity contract, forward contract, repur-*

1            *chase agreement, swap agreement, and any*  
2            *similar agreement that the Agency deter-*  
3            *mines by regulation, resolution, or order to*  
4            *be a qualified financial contract for pur-*  
5            *poses of this paragraph.*

6            “(ii) *SECURITIES CONTRACT.*—*The*  
7            *term ‘securities contract’—*

8                    *“(I) means a contract for the pur-*  
9                    *chase, sale, or loan of a security, a cer-*  
10                   *tificate of deposit, a mortgage loan, or*  
11                   *any interest in a mortgage loan, a*  
12                   *group or index of securities, certificates*  
13                   *of deposit, or mortgage loans or inter-*  
14                   *ests therein (including any interest*  
15                   *therein or based on the value thereof)*  
16                   *or any option on any of the foregoing,*  
17                   *including any option to purchase or*  
18                   *sell any such security, certificate of de-*  
19                   *posit, mortgage loan, interest, group or*  
20                   *index, or option, and including any re-*  
21                   *purchase or reverse repurchase trans-*  
22                   *action on any such security, certificate*  
23                   *of deposit, mortgage loan, interest,*  
24                   *group or index, or option;*

1           “(II) does not include any pur-  
2           chase, sale, or repurchase obligation  
3           under a participation in a commercial  
4           mortgage loan unless the Agency deter-  
5           mines by regulation, resolution, or  
6           order to include any such agreement  
7           within the meaning of such term;

8           “(III) means any option entered  
9           into on a national securities exchange  
10          relating to foreign currencies;

11          “(IV) means the guarantee by or  
12          to any securities clearing agency of  
13          any settlement of cash, securities, cer-  
14          tificates of deposit, mortgage loans or  
15          interests therein, group or index of se-  
16          curities, certificates of deposit, or mort-  
17          gage loans or interests therein (includ-  
18          ing any interest therein or based on  
19          the value thereof) or option on any of  
20          the foregoing, including any option to  
21          purchase or sell any such security, cer-  
22          tificate of deposit, mortgage loan, in-  
23          terest, group or index, or option;

24          “(V) means any margin loan;

1           “(VI) means any other agreement  
2 or transaction that is similar to any  
3 agreement or transaction referred to in  
4 this clause;

5           “(VII) means any combination of  
6 the agreements or transactions referred  
7 to in this clause;

8           “(VIII) means any option to enter  
9 into any agreement or transaction re-  
10 ferred to in this clause;

11           “(IX) means a master agreement  
12 that provides for an agreement or  
13 transaction referred to in subclause (I),  
14 (III), (IV), (V), (VI), (VII), or (VIII),  
15 together with all supplements to any  
16 such master agreement, without regard  
17 to whether the master agreement pro-  
18 vides for an agreement or transaction  
19 that is not a securities contract under  
20 this clause, except that the master  
21 agreement shall be considered to be a  
22 securities contract under this clause  
23 only with respect to each agreement or  
24 transaction under the master agree-  
25 ment that is referred to in subclause

1 (I), (III), (IV), (V), (VI), (VII), or  
2 (VIII); and

3 “(X) means any security agree-  
4 ment or arrangement or other credit  
5 enhancement related to any agreement  
6 or transaction referred to in this  
7 clause, including any guarantee or re-  
8 imbursement obligation in connection  
9 with any agreement or transaction re-  
10 ferred to in this clause.

11 “(iii) COMMODITY CONTRACT.—The  
12 term ‘commodity contract’ means—

13 “(I) with respect to a futures com-  
14 mission merchant, a contract for the  
15 purchase or sale of a commodity for fu-  
16 ture delivery on, or subject to the rules  
17 of, a contract market or board of trade;

18 “(II) with respect to a foreign fu-  
19 tures commission merchant, a foreign  
20 future;

21 “(III) with respect to a leverage  
22 transaction merchant, a leverage trans-  
23 action;

24 “(IV) with respect to a clearing  
25 organization, a contract for the pur-

1           *chase or sale of a commodity for future*  
2           *delivery on, or subject to the rules of,*  
3           *a contract market or board of trade*  
4           *that is cleared by such clearing organi-*  
5           *zation, or commodity option traded on,*  
6           *or subject to the rules of, a contract*  
7           *market or board of trade that is*  
8           *cleared by such clearing organization;*

9                     *“(V) with respect to a commodity*  
10                    *options dealer, a commodity option;*

11                    *“(VI) any other agreement or*  
12                    *transaction that is similar to any*  
13                    *agreement or transaction referred to in*  
14                    *this clause;*

15                    *“(VII) any combination of the*  
16                    *agreements or transactions referred to*  
17                    *in this clause;*

18                    *“(VIII) any option to enter into*  
19                    *any agreement or transaction referred*  
20                    *to in this clause;*

21                    *“(IX) a master agreement that*  
22                    *provides for an agreement or trans-*  
23                    *action referred to in subclause (I), (II),*  
24                    *(III), (IV), (V), (VI), (VII), or (VIII),*  
25                    *together with all supplements to any*



1            *such master agreement, without regard*  
2            *to whether the master agreement pro-*  
3            *vides for an agreement or transaction*  
4            *that is not a commodity contract*  
5            *under this clause, except that the mas-*  
6            *ter agreement shall be considered to be*  
7            *a commodity contract under this clause*  
8            *only with respect to each agreement or*  
9            *transaction under the master agree-*  
10           *ment that is referred to in subclause*  
11           *(I), (II), (III), (IV), (V), (VI), (VII), or*  
12           *(VIII); or*

13           *“(X) any security agreement or*  
14           *arrangement or other credit enhance-*  
15           *ment related to any agreement or*  
16           *transaction referred to in this clause,*  
17           *including any guarantee or reimburse-*  
18           *ment obligation in connection with*  
19           *any agreement or transaction referred*  
20           *to in this clause.*

21           *“(iv) FORWARD CONTRACT.—The term*  
22           *‘forward contract’ means—*

23           *“(I) a contract (other than a com-*  
24           *modity contract) for the purchase, sale,*  
25           *or transfer of a commodity or any*

1           *similar good, article, service, right, or*  
2           *interest which is presently or in the fu-*  
3           *ture becomes the subject of dealing in*  
4           *the forward contract trade, or product*  
5           *or byproduct thereof, with a maturity*  
6           *date more than 2 days after the date*  
7           *the contract is entered into, including,*  
8           *a repurchase transaction, reverse re-*  
9           *purchase transaction, consignment,*  
10          *lease, swap, hedge transaction, deposit,*  
11          *loan, option, allocated transaction,*  
12          *unallocated transaction, or any other*  
13          *similar agreement;*

14            “(II) *any combination of agree-*  
15            *ments or transactions referred to in*  
16            *subclauses (I) and (III);*

17            “(III) *any option to enter into*  
18            *any agreement or transaction referred*  
19            *to in subclause (I) or (II);*

20            “(IV) *a master agreement that*  
21            *provides for an agreement or trans-*  
22            *action referred to in subclauses (I),*  
23            *(II), or (III), together with all supple-*  
24            *ments to any such master agreement,*  
25            *without regard to whether the master*

1           *agreement provides for an agreement*  
2           *or transaction that is not a forward*  
3           *contract under this clause, except that*  
4           *the master agreement shall be consid-*  
5           *ered to be a forward contract under*  
6           *this clause only with respect to each*  
7           *agreement or transaction under the*  
8           *master agreement that is referred to in*  
9           *subclause (I), (II), or (III); or*

10           *“(V) any security agreement or*  
11           *arrangement or other credit enhance-*  
12           *ment related to any agreement or*  
13           *transaction referred to in subclause (I),*  
14           *(II), (III), or (IV), including any*  
15           *guarantee or reimbursement obligation*  
16           *in connection with any agreement or*  
17           *transaction referred to in any such*  
18           *subclause.*

19           *“(v) REPURCHASE AGREEMENT.—The*  
20           *term ‘repurchase agreement’ (which defini-*  
21           *tion also applies to a reverse repurchase*  
22           *agreement)—*

23           *“(I) means an agreement, includ-*  
24           *ing related terms, which provides for*  
25           *the transfer of one or more certificates*

1           *of deposit, mortgage-related securities*  
2           *(as such term is defined in the Securi-*  
3           *ties Exchange Act of 1934), mortgage*  
4           *loans, interests in mortgage-related se-*  
5           *curities or mortgage loans, eligible*  
6           *bankers' acceptances, qualified foreign*  
7           *government securities or securities that*  
8           *are direct obligations of, or that are*  
9           *fully guaranteed by, the United States*  
10           *or any agency of the United States*  
11           *against the transfer of funds by the*  
12           *transferee of such certificates of de-*  
13           *posit, eligible bankers' acceptances, se-*  
14           *curities, mortgage loans, or interests*  
15           *with a simultaneous agreement by such*  
16           *transferee to transfer to the transferor*  
17           *thereof certificates of deposit, eligible*  
18           *bankers' acceptances, securities, mort-*  
19           *gage loans, or interests as described*  
20           *above, at a date certain not later than*  
21           *1 year after such transfers or on de-*  
22           *mand, against the transfer of funds, or*  
23           *any other similar agreement;*

24                   *“(II) does not include any repur-*  
25                   *chase obligation under a participation*

1            *in a commercial mortgage loan unless*  
2            *the Agency determines by regulation,*  
3            *resolution, or order to include any such*  
4            *participation within the meaning of*  
5            *such term;*

6            *“(III) means any combination of*  
7            *agreements or transactions referred to*  
8            *in subclauses (I) and (IV);*

9            *“(IV) means any option to enter*  
10           *into any agreement or transaction re-*  
11           *ferred to in subclause (I) or (III);*

12           *“(V) means a master agreement*  
13           *that provides for an agreement or*  
14           *transaction referred to in subclause (I),*  
15           *(III), or (IV), together with all supple-*  
16           *ments to any such master agreement,*  
17           *without regard to whether the master*  
18           *agreement provides for an agreement*  
19           *or transaction that is not a repurchase*  
20           *agreement under this clause, except*  
21           *that the master agreement shall be con-*  
22           *sidered to be a repurchase agreement*  
23           *under this subclause only with respect*  
24           *to each agreement or transaction under*

1           *the master agreement that is referred to*  
2           *in subclause (I), (III), or (IV); and*

3           “(VI) means any security agree-  
4           ment or arrangement or other credit  
5           enhancement related to any agreement  
6           or transaction referred to in subclause  
7           (I), (III), (IV), or (V), including any  
8           guarantee or reimbursement obligation  
9           in connection with any agreement or  
10          transaction referred to in any such  
11          subclause.

12          *For purposes of this clause, the term ‘quali-*  
13          *fied foreign government security’ means a*  
14          *security that is a direct obligation of, or*  
15          *that is fully guaranteed by, the central gov-*  
16          *ernment of a member of the Organization*  
17          *for Economic Cooperation and Development*  
18          *(as determined by regulation or order*  
19          *adopted by the appropriate Federal banking*  
20          *authority).*

21          “(vi) SWAP AGREEMENT.—*The term*  
22          *‘swap agreement’ means—*

23                 “(I) *any agreement, including the*  
24                 *terms and conditions incorporated by*  
25                 *reference in any such agreement, which*

1                    *is an interest rate swap, option, future,*  
2                    *or forward agreement, including a rate*  
3                    *floor, rate cap, rate collar, cross-cur-*  
4                    *rency rate swap, and basis swap; a*  
5                    *spot, same day-tomorrow, tomorrow-*  
6                    *next, forward, or other foreign ex-*  
7                    *change or precious metals agreement; a*  
8                    *currency swap, option, future, or for-*  
9                    *ward agreement; an equity index or eq-*  
10                   *uity swap, option, future, or forward*  
11                   *agreement; a debt index or debt swap,*  
12                   *option, future, or forward agreement; a*  
13                   *total return, credit spread or credit*  
14                   *swap, option, future, or forward agree-*  
15                   *ment; a commodity index or com-*  
16                   *modity swap, option, future, or for-*  
17                   *ward agreement; or a weather swap,*  
18                   *weather derivative, or weather option;*

19                    *“(II) any agreement or trans-*  
20                    *action that is similar to any other*  
21                    *agreement or transaction referred to in*  
22                    *this clause and that is of a type that*  
23                    *has been, is presently, or in the future*  
24                    *becomes, the subject of recurrent deal-*  
25                    *ings in the swap markets (including*

1            *terms and conditions incorporated by*  
2            *reference in such agreement) and that*  
3            *is a forward, swap, future, or option*  
4            *on one or more rates, currencies, com-*  
5            *modities, equity securities or other eq-*  
6            *uity instruments, debt securities or*  
7            *other debt instruments, quantitative*  
8            *measures associated with an occur-*  
9            *rence, extent of an occurrence, or con-*  
10           *tingency associated with a financial,*  
11           *commercial, or economic consequence,*  
12           *or economic or financial indices or*  
13           *measures of economic or financial risk*  
14           *or value;*

15           *“(III) any combination of agree-*  
16           *ments or transactions referred to in*  
17           *this clause;*

18           *“(IV) any option to enter into*  
19           *any agreement or transaction referred*  
20           *to in this clause;*

21           *“(V) a master agreement that pro-*  
22           *vides for an agreement or transaction*  
23           *referred to in subclause (I), (II), (III),*  
24           *or (IV), together with all supplements*  
25           *to any such master agreement, without*



1           *regard to whether the master agreement*  
2           *contains an agreement or transaction*  
3           *that is not a swap agreement under*  
4           *this clause, except that the master*  
5           *agreement shall be considered to be a*  
6           *swap agreement under this clause only*  
7           *with respect to each agreement or*  
8           *transaction under the master agree-*  
9           *ment that is referred to in subclause*  
10          *(I), (II), (III), or (IV); and*

11           *“(VI) any security agreement or*  
12           *arrangement or other credit enhance-*  
13           *ment related to any agreements or*  
14           *transactions referred to in subclause*  
15           *(I), (II), (III), (IV), or (V), including*  
16           *any guarantee or reimbursement obli-*  
17           *gation in connection with any agree-*  
18           *ment or transaction referred to in any*  
19           *such subclause.*

20           *Such term is applicable for purposes of this*  
21           *subsection only and shall not be construed*  
22           *or applied so as to challenge or affect the*  
23           *characterization, definition, or treatment of*  
24           *any swap agreement under any other stat-*  
25           *ute, regulation, or rule, including the Secu-*

1            *urities Act of 1933, the Securities Exchange*  
2            *Act of 1934, the Public Utility Holding*  
3            *Company Act of 1935, the Trust Indenture*  
4            *Act of 1939, the Investment Company Act of*  
5            *1940, the Investment Advisers Act of 1940,*  
6            *the Securities Investor Protection Act of*  
7            *1970, the Commodity Exchange Act, the*  
8            *Gramm-Leach-Bliley Act, and the Legal*  
9            *Certainty for Bank Products Act of 2000.*

10            “(vii) *TREATMENT OF MASTER AGREE-*  
11            *MENT AS ONE AGREEMENT.—Any master*  
12            *agreement for any contract or agreement de-*  
13            *scribed in any preceding clause of this sub-*  
14            *paragraph (or any master agreement for*  
15            *such master agreement or agreements), to-*  
16            *gether with all supplements to such master*  
17            *agreement, shall be treated as a single*  
18            *agreement and a single qualified financial*  
19            *contract. If a master agreement contains*  
20            *provisions relating to agreements or trans-*  
21            *actions that are not themselves qualified fi-*  
22            *nancial contracts, the master agreement*  
23            *shall be deemed to be a qualified financial*  
24            *contract only with respect to those trans-*

1           actions that are themselves qualified finan-  
2           cial contracts.

3           “(viii) *TRANSFER*.—The term ‘trans-  
4           fer’ means every mode, direct or indirect,  
5           absolute or conditional, voluntary or invol-  
6           untary, of disposing of or parting with  
7           property or with an interest in property,  
8           including retention of title as a security in-  
9           terest and foreclosure of the regulated enti-  
10          ty’s equity of redemption.

11          “(E) *CERTAIN PROTECTIONS IN EVENT OF*  
12          *APPOINTMENT OF CONSERVATOR*.—Notwith-  
13          standing any other provision of this Act (other  
14          than paragraph (13) of this subsection), any  
15          other Federal law, or the law of any State, no  
16          person shall be stayed or prohibited from exer-  
17          cising—

18                 “(i) any right such person has to cause  
19                 the termination, liquidation, or acceleration  
20                 of any qualified financial contract with a  
21                 regulated entity in a conservatorship based  
22                 upon a default under such financial con-  
23                 tract which is enforceable under applicable  
24                 noninsolvency law;

1           “(ii) any right under any security  
2           agreement or arrangement or other credit  
3           enhancement relating to one or more such  
4           qualified financial contracts; or

5           “(iii) any right to offset or net out any  
6           termination values, payment amounts, or  
7           other transfer obligations arising under or  
8           in connection with such qualified financial  
9           contracts.

10          “(F) CLARIFICATION.—No provision of law  
11          shall be construed as limiting the right or power  
12          of the Agency, or authorizing any court or agen-  
13          cy to limit or delay, in any manner, the right  
14          or power of the Agency to transfer any qualified  
15          financial contract in accordance with para-  
16          graphs (9) and (10) of this subsection or to dis-  
17          affirm or repudiate any such contract in accord-  
18          ance with subsection (d)(1) of this section.

19          “(G) WALKAWAY CLAUSES NOT EFFEC-  
20          TIVE.—

21          “(i) IN GENERAL.—Notwithstanding  
22          the provisions of subparagraphs (A) and  
23          (E), and sections 403 and 404 of the Fed-  
24          eral Deposit Insurance Corporation Im-  
25          provement Act of 1991, no walkaway clause

1           *shall be enforceable in a qualified financial*  
2           *contract of a regulated entity in default.*

3           “(ii) *WALKAWAY CLAUSE DEFINED.*—

4           *For purposes of this subparagraph, the term*  
5           *‘walkaway clause’ means a provision in a*  
6           *qualified financial contract that, after cal-*  
7           *culatation of a value of a party’s position or*  
8           *an amount due to or from 1 of the parties*  
9           *in accordance with its terms upon termi-*  
10           *nation, liquidation, or acceleration of the*  
11           *qualified financial contract, either does not*  
12           *create a payment obligation of a party or*  
13           *extinguishes a payment obligation of a*  
14           *party in whole or in part solely because of*  
15           *such party’s status as a nondefaulting*  
16           *party.*

17           “(9) *TRANSFER OF QUALIFIED FINANCIAL CON-*  
18           *TRACTS.*—*In making any transfer of assets or liabil-*  
19           *ities of a regulated entity in default which includes*  
20           *any qualified financial contract, the conservator or*  
21           *receiver for such regulated entity shall either—*

22           “(A) *transfer to 1 person—*

23           “(i) *all qualified financial contracts*  
24           *between any person (or any affiliate of such*  
25           *person) and the regulated entity in default;*

1           “(ii) all claims of such person (or any  
2           affiliate of such person) against such regu-  
3           lated entity under any such contract (other  
4           than any claim which, under the terms of  
5           any such contract, is subordinated to the  
6           claims of general unsecured creditors of such  
7           regulated entity);

8           “(iii) all claims of such regulated enti-  
9           ty against such person (or any affiliate of  
10          such person) under any such contract; and

11          “(iv) all property securing or any  
12          other credit enhancement for any contract  
13          described in clause (i) or any claim de-  
14          scribed in clause (ii) or (iii) under any  
15          such contract; or

16          “(B) transfer none of the financial con-  
17          tracts, claims, or property referred to under sub-  
18          paragraph (A) (with respect to such person and  
19          any affiliate of such person).

20          “(10) NOTIFICATION OF TRANSFER.—

21                 “(A) IN GENERAL.—If—

22                         “(i) the conservator or receiver for a  
23                         regulated entity in default makes any trans-  
24                         fer of the assets and liabilities of such regu-  
25                         lated entity, and

1                   “(ii) *the transfer includes any quali-*  
2                   *fied financial contract,*  
3                   *the conservator or receiver shall notify any per-*  
4                   *son who is a party to any such contract of such*  
5                   *transfer by 5:00 p.m. (eastern time) on the busi-*  
6                   *ness day following the date of the appointment*  
7                   *of the receiver in the case of a receivership, or the*  
8                   *business day following such transfer in the case*  
9                   *of a conservatorship.*

10                   “(B) *CERTAIN RIGHTS NOT ENFORCE-*  
11                   *ABLE.—*

12                   “(i) *RECEIVERSHIP.—A person who is*  
13                   *a party to a qualified financial contract*  
14                   *with a regulated entity may not exercise*  
15                   *any right that such person has to terminate,*  
16                   *liquidate, or net such contract under para-*  
17                   *graph (8)(A) of this subsection or section*  
18                   *403 or 404 of the Federal Deposit Insurance*  
19                   *Corporation Improvement Act of 1991, sole-*  
20                   *ly by reason of or incidental to the appoint-*  
21                   *ment of a receiver for the regulated entity*  
22                   *(or the insolvency or financial condition of*  
23                   *the regulated entity for which the receiver*  
24                   *has been appointed)—*

1                   “(I) until 5:00 p.m. (eastern time)  
2                   on the business day following the date  
3                   of the appointment of the receiver; or

4                   “(II) after the person has received  
5                   notice that the contract has been trans-  
6                   ferred pursuant to paragraph (9)(A).

7                   “(ii) CONSERVATORSHIP.—A person  
8                   who is a party to a qualified financial con-  
9                   tract with a regulated entity may not exer-  
10                  cise any right that such person has to ter-  
11                  minate, liquidate, or net such contract  
12                  under paragraph (8)(E) of this subsection  
13                  or section 403 or 404 of the Federal Deposit  
14                  Insurance Corporation Improvement Act of  
15                  1991, solely by reason of or incidental to the  
16                  appointment of a conservator for the regu-  
17                  lated entity (or the insolvency or financial  
18                  condition of the regulated entity for which  
19                  the conservator has been appointed).

20                  “(iii) NOTICE.—For purposes of this  
21                  paragraph, the Agency as receiver or conser-  
22                  vator of a regulated entity shall be deemed  
23                  to have notified a person who is a party to  
24                  a qualified financial contract with such reg-  
25                  ulated entity if the Agency has taken steps



1           *reasonably calculated to provide notice to*  
2           *such person by the time specified in sub-*  
3           *paragraph (A).*

4           “(C) *BUSINESS DAY DEFINED.*—*For pur-*  
5           *poses of this paragraph, the term ‘business day’*  
6           *means any day other than any Saturday, Sun-*  
7           *day, or any day on which either the New York*  
8           *Stock Exchange or the Federal Reserve Bank of*  
9           *New York is closed.*

10          “(11) *DISAFFIRMANCE OR REPUDIATION OF*  
11          *QUALIFIED FINANCIAL CONTRACTS.*—*In exercising the*  
12          *rights of disaffirmance or repudiation of a conser-*  
13          *vator or receiver with respect to any qualified finan-*  
14          *cial contract to which a regulated entity is a party,*  
15          *the conservator or receiver for such institution shall*  
16          *either—*

17                 “(A) *disaffirm or repudiate all qualified fi-*  
18                 *nancial contracts between—*

19                         “(i) *any person or any affiliate of such*  
20                         *person; and*

21                         “(ii) *the regulated entity in default; or*

22                 “(B) *disaffirm or repudiate none of the*  
23                 *qualified financial contracts referred to in sub-*  
24                 *paragraph (A) (with respect to such person or*  
25                 *any affiliate of such person).*

1           “(12) *CERTAIN SECURITY INTERESTS NOT AVOID-*  
2           *ABLE.*—No provision of this subsection shall be con-  
3           *strued as permitting the avoidance of any legally en-*  
4           *forceable or perfected security interest in any of the*  
5           *assets of any regulated entity, except where such an*  
6           *interest is taken in contemplation of the insolvency of*  
7           *the regulated entity, or with the intent to hinder,*  
8           *delay, or defraud the regulated entity or the creditors*  
9           *of such regulated entity.*

10           “(13) *AUTHORITY TO ENFORCE CONTRACTS.*—

11           “(A) *IN GENERAL.*—Notwithstanding any  
12           *provision of a contract providing for termi-*  
13           *nation, default, acceleration, or exercise of rights*  
14           *upon, or solely by reason of, insolvency or the*  
15           *appointment of a conservator or receiver, the*  
16           *conservator or receiver may enforce any contract*  
17           *or regulated entity bond entered into by the regu-*  
18           *lated entity.*

19           “(B) *CERTAIN RIGHTS NOT AFFECTED.*—No  
20           *provision of this paragraph may be construed as*  
21           *impairing or affecting any right of the conser-*  
22           *vator or receiver to enforce or recover under a di-*  
23           *rector’s or officer’s liability insurance contract or*  
24           *surety bond under other applicable law.*

25           “(C) *CONSENT REQUIREMENT.*—

1           “(i) *IN GENERAL.*—*Except as otherwise*  
2           *provided under this section, no person may*  
3           *exercise any right or power to terminate,*  
4           *accelerate, or declare a default under any*  
5           *contract to which a regulated entity is a*  
6           *party, or to obtain possession of or exercise*  
7           *control over any property of the regulated*  
8           *entity, or affect any contractual rights of*  
9           *the regulated entity, without the consent of*  
10           *the conservator or receiver, as appropriate,*  
11           *for a period of—*

12                   “(I) *45 days after the date of ap-*  
13                   *pointment of a conservator; or*

14                   “(II) *90 days after the date of ap-*  
15                   *pointment of a receiver.*

16           “(ii) *EXCEPTIONS.*—*This paragraph*  
17           *shall—*

18                   “(I) *not apply to a director’s or*  
19                   *officer’s liability insurance contract;*

20                   “(II) *not apply to the rights of*  
21                   *parties to any qualified financial con-*  
22                   *tracts under subsection (d)(8); and*

23                   “(III) *not be construed as permit-*  
24                   *ting the conservator or receiver to fail*

1                   to comply with otherwise enforceable  
2                   provisions of such contracts.

3                   “(14) SAVINGS CLAUSE.—The meanings of terms  
4                   used in this subsection are applicable for purposes of  
5                   this subsection only, and shall not be construed or ap-  
6                   plied so as to challenge or affect the characterization,  
7                   definition, or treatment of any similar terms under  
8                   any other statute, regulation, or rule, including the  
9                   Gramm-Leach-Bliley Act, the Legal Certainty for  
10                  Bank Products Act of 2000, the securities laws (as  
11                  that term is defined in section 3(a)(47) of the Securi-  
12                  ties Exchange Act of 1934), and the Commodity Ex-  
13                  change Act.

14                  “(15) EXCEPTION FOR FEDERAL RESERVE AND  
15                  FEDERAL HOME LOAN BANKS.—No provision of this  
16                  subsection shall apply with respect to—

17                         “(A) any extension of credit from any Fed-  
18                         eral home loan bank or Federal Reserve Bank to  
19                         any regulated entity; or

20                         “(B) any security interest in the assets of  
21                         the regulated entity securing any such extension  
22                         of credit.

23                  “(e) VALUATION OF CLAIMS IN DEFAULT.—

24                         “(1) IN GENERAL.—Notwithstanding any other  
25                         provision of Federal law or the law of any State, and

1       *regardless of the method which the Agency determines*  
2       *to utilize with respect to a regulated entity in default*  
3       *or in danger of default, including transactions au-*  
4       *thorized under subsection (i), this subsection shall*  
5       *govern the rights of the creditors of such regulated en-*  
6       *tity.*

7               “(2) *MAXIMUM LIABILITY.—The maximum li-*  
8       *ability of the Agency, acting as receiver or in any*  
9       *other capacity, to any person having a claim against*  
10       *the receiver or the regulated entity for which such re-*  
11       *ceiver is appointed shall equal the lesser of—*

12               “(A) *the amount such claimant would have*  
13       *received if the Agency had liquidated the assets*  
14       *and liabilities of such regulated entity without*  
15       *exercising the authority of the Agency under sub-*  
16       *section (i) of this section; or*

17               “(B) *the amount of proceeds realized from*  
18       *the performance of contracts or sale of the assets*  
19       *of the regulated entity.*

20               “(f) *LIMITATION ON COURT ACTION.—Except as pro-*  
21       *vided in this section or at the request of the Director, no*  
22       *court may take any action to restrain or affect the exercise*  
23       *of powers or functions of the Agency as a conservator or*  
24       *a receiver.*

25               “(g) *LIABILITY OF DIRECTORS AND OFFICERS.—*

1           “(1) *IN GENERAL.*—A director or officer of a reg-  
2           ulated entity may be held personally liable for mone-  
3           tary damages in any civil action by, on behalf of, or  
4           at the request or direction of the Agency, which action  
5           is prosecuted wholly or partially for the benefit of the  
6           Agency—

7                   “(A) acting as conservator or receiver of  
8                   such regulated entity, or

9                   “(B) acting based upon a suit, claim, or  
10                  cause of action purchased from, assigned by, or  
11                  otherwise conveyed by such receiver or conser-  
12                  vator,

13           for gross negligence, including any similar conduct or  
14           conduct that demonstrates a greater disregard of a  
15           duty of care (than gross negligence) including inten-  
16           tional tortious conduct, as such terms are defined and  
17           determined under applicable State law.

18           “(2) *NO LIMITATION.*—Nothing in this para-  
19           graph shall impair or affect any right of the Agency  
20           under other applicable law.

21           “(h) *DAMAGES.*—In any proceeding related to any  
22           claim against a director, officer, employee, agent, attorney,  
23           accountant, appraiser, or any other party employed by or  
24           providing services to a regulated entity, recoverable dam-  
25           ages determined to result from the improvident or otherwise

1 *improper use or investment of any assets of the regulated*  
2 *entity shall include principal losses and appropriate inter-*  
3 *est.*

4 “(i) *LIMITED-LIFE REGULATED ENTITIES.*—

5 “(1) *ORGANIZATION.*—

6 “(A) *PURPOSE.*—*If a regulated entity is in*  
7 *default, or if the Agency anticipates that a regu-*  
8 *lated entity will default, the Agency may orga-*  
9 *nize a limited-life regulated entity with those*  
10 *powers and attributes of the regulated entity in*  
11 *default or in danger of default that the Director*  
12 *determines necessary, subject to the provisions of*  
13 *this subsection. The Director shall grant a tem-*  
14 *porary charter to the limited-life regulated enti-*  
15 *ty, and the limited-life regulated entity shall op-*  
16 *erate subject to that charter.*

17 “(B) *AUTHORITIES.*—*Upon the creation of*  
18 *a limited-life regulated entity under subpara-*  
19 *graph (A), the limited-life regulated entity*  
20 *may—*

21 “(i) *assume such liabilities of the regu-*  
22 *lated entity that is in default or in danger*  
23 *of default as the Agency may, in its discre-*  
24 *tion, determine to be appropriate, provided*  
25 *that the liabilities assumed shall not exceed*

1           *the amount of assets of the limited-life regu-*  
2           *lated entity;*

3           “(ii) *purchase such assets of the regu-*  
4           *lated entity that is in default, or in danger*  
5           *of default, as the Agency may, in its discre-*  
6           *tion, determine to be appropriate; and*

7           “(iii) *perform any other temporary*  
8           *function which the Agency may, in its dis-*  
9           *cretion, prescribe in accordance with this*  
10          *section.*

11          “(2) *CHARTER.—*

12           “(A) *CONDITIONS.—The Agency may grant*  
13           *a temporary charter if the Agency determines*  
14           *that the continued operation of the regulated en-*  
15           *tity in default or in danger of default is in the*  
16           *best interest of the national economy and the*  
17           *housing markets.*

18           “(B) *TREATMENT AS BEING IN DEFAULT*  
19           *FOR CERTAIN PURPOSES.—A limited-life regu-*  
20           *lated entity shall be treated as a regulated entity*  
21           *in default at such times and for such purposes*  
22           *as the Agency may, in its discretion, determine.*

23           “(C) *MANAGEMENT.—A limited-life regu-*  
24           *lated entity, upon the granting of its charter,*  
25           *shall be under the management of a board of di-*



1           *rectors consisting of not fewer than 5 nor more*  
2           *than 10 members appointed by the Agency.*

3           “(D) *BYLAWS.*—*The board of directors of a*  
4           *limited-life regulated entity shall adopt such by-*  
5           *laws as may be approved by the Agency.*

6           “(3) *CAPITAL STOCK.*—*No capital stock need be*  
7           *paid into a limited-life regulated entity by the Agen-*  
8           *cy.*

9           “(4) *INVESTMENTS.*—*Funds of a limited-life reg-*  
10          *ulated entity shall be kept on hand in cash, invested*  
11          *in obligations of the United States or obligations*  
12          *guaranteed as to principal and interest by the United*  
13          *States, or deposited with the Agency, or any Federal*  
14          *Reserve bank.*

15          “(5) *EXEMPT STATUS.*—*Notwithstanding any*  
16          *other provision of Federal or State law, the limited-*  
17          *life regulated entity, its franchise, property, and in-*  
18          *come shall be exempt from all taxation now or here-*  
19          *after imposed by the United States, by any territory,*  
20          *dependency, or possession thereof, or by any State,*  
21          *county, municipality, or local taxing authority.*

22          “(6) *WINDING UP.*—

23                 “(A) *IN GENERAL.*—*Subject to subpara-*  
24                 *graph (B), unless Congress authorizes the sale of*  
25                 *the capital stock of the limited-life regulated en-*

1            *tity, not later than 2 years after the date of its*  
2            *organization, the Agency shall wind up the af-*  
3            *fairs of the limited-life regulated entity.*

4            “(B) *EXTENSION.*—*The Director may, in*  
5            *the discretion of the Director, extend the status*  
6            *of the limited-life regulated entity for 3 addi-*  
7            *tional 1-year periods.*

8            “(7) *TRANSFER OF ASSETS AND LIABILITIES.*—

9            “(A) *IN GENERAL.*—

10            “(i) *TRANSFER OF ASSETS AND LIABIL-*  
11            *ITIES.*—*The Agency, as receiver, may trans-*  
12            *fer any assets and liabilities of a regulated*  
13            *entity in default, or in danger of default, to*  
14            *the limited-life regulated entity in accord-*  
15            *ance with paragraph (1).*

16            “(ii) *SUBSEQUENT TRANSFERS.*—*At*  
17            *any time after a charter is transferred to a*  
18            *limited-life regulated entity, the Agency, as*  
19            *receiver, may transfer any assets and liabil-*  
20            *ities of such regulated entity in default, or*  
21            *in danger in default, as the Agency may, in*  
22            *its discretion, determine to be appropriate*  
23            *in accordance with paragraph (1).*

24            “(iii) *EFFECTIVE WITHOUT AP-*  
25            *PROVAL.*—*The transfer of any assets or li-*

1           abilities of a regulated entity in default, or  
2           in danger of default, transferred to a lim-  
3           ited-life regulated entity shall be effective  
4           without any further approval under Federal  
5           or State law, assignment, or consent with  
6           respect thereto.

7           “(8) *PROCEEDS*.—To the extent that available  
8           proceeds from the limited-life regulated entity exceed  
9           amounts required to pay obligations, such proceeds  
10          may be paid to the regulated entity in default, or in  
11          danger of default.

12          “(9) *POWERS*.—

13                 “(A) *IN GENERAL*.—Each limited-life regu-  
14                 lated entity created under this subsection shall  
15                 have all corporate powers of, and be subject to  
16                 the same provisions of law as, the regulated enti-  
17                 ty in default or in danger of default to which it  
18                 relates, except that—

19                         “(i) the Agency may—

20                                 “(I) remove the directors of a lim-  
21                                 ited-life regulated entity; and

22                                 “(II) fix the compensation of  
23                                 members of the board of directors and  
24                                 senior management, as determined by

1           *the Agency in its discretion, of a lim-*  
2           *ited-life regulated entity;*

3           “(ii) *the Agency may indemnify the*  
4           *representatives for purposes of paragraph*  
5           *(1)(B), and the directors, officers, employ-*  
6           *ees, and agents of a limited-life regulated*  
7           *entity on such terms as the Agency deter-*  
8           *mines to be appropriate; and*

9           “(iii) *the board of directors of a lim-*  
10          *ited-life regulated entity—*

11           “(I) *shall elect a chairperson who*  
12          *may also serve in the position of chief*  
13          *executive officer, except that such per-*  
14          *son shall not serve either as chair-*  
15          *person or as chief executive officer*  
16          *without the prior approval of the Agen-*  
17          *cy; and*

18           “(II) *may appoint a chief execu-*  
19          *tive officer who is not also the chair-*  
20          *person, except that such person shall*  
21          *not serve as chief executive officer with-*  
22          *out the prior approval of the Agency.*

23          “(B) *STAY OF JUDICIAL ACTION.—Any judi-*  
24          *cial action to which a limited-life regulated enti-*  
25          *ty becomes a party by virtue of its acquisition*

1           *of any assets or assumption of any liabilities of*  
2           *a regulated entity in default shall be stayed from*  
3           *further proceedings for a period of up to 45 days*  
4           *at the request of the limited-life regulated entity.*  
5           *Such period may be modified upon the consent*  
6           *of all parties.*

7           “(10) *OBTAINING OF CREDIT AND INCURRING OF*  
8           *DEBT.—*

9                   “(A) *IN GENERAL.—The limited-life regu-*  
10           *lated entity may obtain unsecured credit and*  
11           *incur unsecured debt in the ordinary course of*  
12           *business.*

13                   “(B) *INABILITY TO OBTAIN CREDIT.—If the*  
14           *limited-life regulated entity is unable to obtain*  
15           *unsecured credit the Director may authorize the*  
16           *obtaining of credit or the incurring of debt—*

17                           “(i) *with priority over any or all ad-*  
18                   *ministrative expenses;*

19                           “(ii) *secured by a lien on property that*  
20                   *is not otherwise subject to a lien; or*

21                           “(iii) *secured by a junior lien on prop-*  
22                   *erty that is subject to a lien.*

23                   “(C) *LIMITATIONS.—*

24                           “(i) *IN GENERAL.—The Director, after*  
25                   *notice and a hearing, may authorize the ob-*

1            *taining of credit or the incurring of debt se-*  
2            *cured by a senior or equal lien on property*  
3            *that is subject to a lien (other than mort-*  
4            *gages that collateralize the mortgage-backed*  
5            *securities issued or guaranteed by the regu-*  
6            *lated entity) only if—*

7                    *“(I) the limited-life regulated en-*  
8                    *tity is unable to obtain such credit oth-*  
9                    *erwise; and*

10                   *“(II) there is adequate protection*  
11                   *of the interest of the holder of the lien*  
12                   *on the property which such senior or*  
13                   *equal lien is proposed to be granted.*

14                   *“(ii) BURDEN OF PROOF.—In any*  
15                   *hearing under this subsection, the Director*  
16                   *has the burden of proof on the issue of ade-*  
17                   *quate protection.*

18                   *“(D) EFFECT ON DEBTS AND LIENS.—The*  
19                   *reversal or modification on appeal of an author-*  
20                   *ization under this paragraph to obtain credit or*  
21                   *incur debt, or of a grant under this section of a*  
22                   *priority or a lien, does not affect the validity of*  
23                   *any debt so incurred, or any priority or lien so*  
24                   *granted, to an entity that extended such credit in*  
25                   *good faith, whether or not such entity knew of*

1           *the pendency of the appeal, unless such author-*  
2           *ization and the incurring of such debt, or the*  
3           *granting of such priority or lien, were stayed*  
4           *pending appeal.*

5           “(11) *ISSUANCE OF PREFERRED DEBT.*—*A lim-*  
6           *ited-life regulated entity may, subject to the approval*  
7           *of the Director and subject to such terms and condi-*  
8           *tions as the Director may prescribe, issue notes,*  
9           *bonds, or other debt obligations of a class to which all*  
10          *other debt obligations of the limited-life regulated en-*  
11          *tity shall be subordinate in right and payment.*

12          “(12) *NO FEDERAL STATUS.*—

13                 “(A) *AGENCY STATUS.*—*A limited-life regu-*  
14                 *lated entity is not an agency, establishment, or*  
15                 *instrumentality of the United States.*

16                 “(B) *EMPLOYEE STATUS.*—*Representatives*  
17                 *for purposes of paragraph (1)(B), interim direc-*  
18                 *tors, directors, officers, employees, or agents of a*  
19                 *limited-life regulated entity are not, solely by*  
20                 *virtue of service in any such capacity, officers or*  
21                 *employees of the United States. Any employee of*  
22                 *the Agency or of any Federal instrumentality*  
23                 *who serves at the request of the Agency as a rep-*  
24                 *resentative for purposes of paragraph (1)(B), in-*  
25                 *terim director, director, officer, employee, or*

1           *agent of a limited-life regulated entity shall*  
2           *not—*

3                     “(i) *solely by virtue of service in any*  
4                     *such capacity lose any existing status as an*  
5                     *officer or employee of the United States for*  
6                     *purposes of title 5, United States Code, or*  
7                     *any other provision of law; or*

8                     “(ii) *receive any salary or benefits for*  
9                     *service in any such capacity with respect to*  
10                    *a limited-life regulated entity in addition to*  
11                    *such salary or benefits as are obtained*  
12                    *through employment with the Agency or*  
13                    *such Federal instrumentality.*

14                   “(13) *ADDITIONAL POWERS.—In addition to any*  
15                    *other powers granted under this subsection, a limited-*  
16                    *life regulated entity may—*

17                             “(A) *extend a maturity date or change in*  
18                             *an interest rate or other term of outstanding se-*  
19                             *curities;*

20                             “(B) *issue securities of the limited-life regu-*  
21                             *lated entity, for cash, for property, for existing*  
22                             *securities, or in exchange for claims or interests,*  
23                             *or for any other appropriate purposes; and*

24                             “(C) *take any other action not inconsistent*  
25                             *with this section.*



1       “(j) *OTHER EXEMPTIONS.*—When acting as a receiver,  
2 *the following provisions shall apply with respect to the*  
3 *Agency:*

4               “(1) *EXEMPTION FROM TAXATION.*—The Agency,  
5 *including its franchise, its capital, reserves, and sur-*  
6 *plus, and its income, shall be exempt from all tax-*  
7 *ation imposed by any State, country, municipality,*  
8 *or local taxing authority, except that any real prop-*  
9 *erty of the Agency shall be subject to State, territorial,*  
10 *county, municipal, or local taxation to the same ex-*  
11 *tent according to its value as other real property is*  
12 *taxed, except that, notwithstanding the failure of any*  
13 *person to challenge an assessment under State law of*  
14 *the value of such property, and the tax thereon, shall*  
15 *be determined as of the period for which such tax is*  
16 *imposed.*

17               “(2) *EXEMPTION FROM ATTACHMENT AND*  
18 *LIENS.*—No property of the Agency shall be subject to  
19 *levy, attachment, garnishment, foreclosure, or sale*  
20 *without the consent of the Agency, nor shall any in-*  
21 *voluntary lien attach to the property of the Agency.*

22               “(3) *EXEMPTION FROM PENALTIES AND FINES.*—  
23 *The Agency shall not be liable for any amounts in the*  
24 *nature of penalties or fines, including those arising*  
25 *from the failure of any person to pay any real prop-*

1       erty, personal property, probate, or recording tax or  
2       any recording or filing fees when due.

3       “(k) *PROHIBITION OF CHARTER REVOCATION.*—In no  
4       case may a receiver appointed pursuant to this section re-  
5       voke, annul, or terminate the charter of a regulated entity.”.

6       (b) *CONFORMING AMENDMENTS.*—

7               (1) *HOUSING AND COMMUNITY DEVELOPMENT*  
8       *ACT OF 1992.*—Subtitle B of title XIII of the Housing  
9       and Community Development Act of 1992 is amended  
10       by striking sections 1369 (12 U.S.C. 4619), 1369A  
11       (12 U.S.C. 4620), and 1369B (12 U.S.C. 4621).

12              (2) *FEDERAL HOME LOAN BANKS.*—Section 25 of  
13       the Federal Home Loan Bank Act (12 U.S.C. 1445)  
14       is amended to read as follows:

15       **“SEC. 25. SUCCESSION OF FEDERAL HOME LOAN BANKS.**

16       “Each Federal Home Loan Bank shall have succession  
17       until it is voluntarily merged with another Bank under this  
18       Act, or until it is merged, reorganized, rehabilitated, liq-  
19       uidated, or otherwise wound up by the Director in accord-  
20       ance with the provisions of section 1367 of the Housing and  
21       Community Development Act of 1992, or by further Act of  
22       Congress.”.

1 **SEC. 155. CONFORMING AMENDMENTS.**

2 *Title XIII of the Housing and Community Develop-*  
3 *ment Act of 1992, as amended by the preceding provisions*  
4 *of this Act, is further amended—*

5 *(1) in sections 1365 (12 U.S.C. 4615) through*  
6 *1369D (12 U.S.C. 4623), but not including section*  
7 *1367 (12 U.S.C. 4617) as amended by section 154 of*  
8 *this Act—*

9 *(A) by striking “An enterprise” each place*  
10 *such term appears and inserting “A regulated*  
11 *entity”;*

12 *(B) by striking “an enterprise” each place*  
13 *such term appears and inserting “a regulated*  
14 *entity”;* and

15 *(C) by striking “the enterprise” each place*  
16 *such term appears and inserting “the regulated*  
17 *entity”;*

18 *(2) in section 1366 (12 U.S.C. 4616)—*

19 *(A) in subsection (b)(7), by striking “section*  
20 *1369 (excluding subsection (a)(1) and (2))” and*  
21 *inserting “section 1367”;* and

22 *(B) in subsection (d), by striking “the en-*  
23 *terprises” and inserting “the regulated entities”;*

24 *(3) in section 1368(d) (12 U.S.C. 4618(d)), by*  
25 *striking “Committee on Banking, Finance and Urban*

1     *Affairs*” and inserting “Committee on Financial  
2     *Services*”;

3             (4) in section 1369C (12 U.S.C. 4622)—

4                     (A) in subsection (a)(4), by striking “*activi-*  
5                     *ties (including existing and new programs)*” and  
6                     inserting “*activities, services, undertakings, and*  
7                     *offerings (including existing and new products*  
8                     *(as such term is defined in section 1321(f))*”;  
9                     and

10                    (B) in subsection (c), by striking “*any en-*  
11                    *terprise*” and inserting “*any regulated entity*”;  
12                    and

13             (5) in subsections (a) and (d) of section 1369D,  
14     by striking “*section 1366 or 1367 or action under sec-*  
15     *tion 1369)*” each place such phrase appears and in-  
16     serting “*section 1367)*”.

## 17     ***Subtitle D—Enforcement Actions***

### 18     ***SEC. 161. CEASE-AND-DESIST PROCEEDINGS.***

19             Section 1371 of the Housing and Community Develop-  
20     ment Act of 1992 (12 U.S.C. 4631) is amended—

21                     (1) by striking subsections (a) and (b) and in-  
22                     serting the following new subsections:

23                     “(a) *ISSUANCE FOR UNSAFE OR UNSOUND PRACTICES*  
24     *AND VIOLATIONS OF RULES OR LAWS.—If, in the opinion*  
25     *of the Director, a regulated entity or any regulated entity-*

1 *affiliated party is engaging or has engaged, or the Director*  
2 *has reasonable cause to believe that the regulated entity or*  
3 *any regulated entity-affiliated party is about to engage, in*  
4 *an unsafe or unsound practice in conducting the business*  
5 *of the regulated entity or is violating or has violated, or*  
6 *the Director has reasonable cause to believe that the regu-*  
7 *lated entity or any regulated entity-affiliated party is about*  
8 *to violate, a law, rule, or regulation, or any condition im-*  
9 *posed in writing by the Director in connection with the*  
10 *granting of any application or other request by the regu-*  
11 *lated entity or any written agreement entered into with the*  
12 *Director, the Director may issue and serve upon the regu-*  
13 *lated entity or such party a notice of charges in respect*  
14 *thereof. The Director may not, pursuant to this section, en-*  
15 *force compliance with any housing goal established under*  
16 *subpart B of part 2 of subtitle A of this title, with section*  
17 *1336 or 1337 of this title, with subsection (m) or (n) of*  
18 *section 309 of the Federal National Mortgage Association*  
19 *Charter Act (12 U.S.C. 1723a(m), (n)), with subsection (e)*  
20 *or (f) of section 307 of the Federal Home Loan Mortgage*  
21 *Corporation Act (12 U.S.C. 1456(e), (f)), or with paragraph*  
22 *(5) of section 10(j) of the Federal Home Loan Bank Act*  
23 *(12 U.S.C. 1430(j)).*

24       “(b) *ISSUANCE FOR UNSATISFACTORY RATING.—If a*  
25 *regulated entity receives, in its most recent report of exam-*

1 *ination, a less-than-satisfactory rating for asset quality,*  
2 *management, earnings, or liquidity, the Director may (if*  
3 *the deficiency is not corrected) deem the regulated entity*  
4 *to be engaging in an unsafe or unsound practice for pur-*  
5 *poses of this subsection.”;*

6           (2) *in subsection (c)(2), by striking “enterprise,*  
7 *executive officer, or director” and inserting “regulated*  
8 *entity or regulated entity-affiliated party”;* and

9           (3) *in subsection (d)—*

10           (A) *in the matter preceding paragraph (1),*  
11 *by striking “enterprise, executive officer, or di-*  
12 *rector” and inserting “regulated entity or regu-*  
13 *lated entity-affiliated party”;*

14           (B) *in paragraph (1)—*

15           (i) *by striking “an executive officer or*  
16 *a director” and inserting “a regulated enti-*  
17 *ty affiliated party”;* and

18           (ii) *by inserting “(including reim-*  
19 *bursement of compensation under section*  
20 *1318)” after “reimbursement”;*

21           (C) *in paragraph (6), by striking “and” at*  
22 *the end;*

23           (D) *by redesignating paragraph (7) as*  
24 *paragraph (8); and*

1                   (E) by inserting after paragraph (6) the fol-  
2                   lowing new paragraph:

3                   “(7) to effect an attachment on a regulated enti-  
4                   ty or regulated entity-affiliated party subject to an  
5                   order under this section or section 1372; and”.

6 **SEC. 162. TEMPORARY CEASE-AND-DESIST PROCEEDINGS.**

7                   Section 1372 of the Housing and Community Develop-  
8                   ment Act of 1992 (12 U.S.C. 4632) is amended—

9                   (1) by striking subsection (a) and inserting the  
10                  following new subsection:

11               “(a) *GROUNDS FOR ISSUANCE.*—Whenever the Direc-  
12               tor determines that the violation or threatened violation or  
13               the unsafe or unsound practice or practices specified in the  
14               notice of charges served upon the regulated entity or any  
15               regulated entity-affiliated party pursuant to section  
16               1371(a), or the continuation thereof, is likely to cause insol-  
17               vency or significant dissipation of assets or earnings of the  
18               regulated entity, or is likely to weaken the condition of the  
19               regulated entity prior to the completion of the proceedings  
20               conducted pursuant to sections 1371 and 1373, the Director  
21               may issue a temporary order requiring the regulated entity  
22               or such party to cease and desist from any such violation  
23               or practice and to take affirmative action to prevent or rem-  
24               edy such insolvency, dissipation, condition, or prejudice  
25               pending completion of such proceedings. Such order may

1 *include any requirement authorized under section*  
2 *1371(d).”;*

3 *(2) in subsection (b), by striking “enterprise, ex-*  
4 *ecutive officer, or director” and inserting “regulated*  
5 *entity or regulated entity-affiliated party”;*

6 *(3) in subsection (d)—*

7 *(A) by striking “An enterprise, executive of-*  
8 *ficer, or director” and inserting “A regulated en-*  
9 *tity or regulated entity-affiliated party”; and*

10 *(B) by striking “the enterprise, executive of-*  
11 *ficer, or director” and inserting “the regulated*  
12 *entity or regulated entity-affiliated party”; and*

13 *(4) by striking subsection (e) and in inserting*  
14 *the following new subsection:*

15 *“(e) ENFORCEMENT.—In the case of violation or*  
16 *threatened violation of, or failure to obey, a temporary*  
17 *cease-and-desist order issued pursuant to this section, the*  
18 *Director may apply to the United States District Court for*  
19 *the District of Columbia or the United States district court*  
20 *within the jurisdiction of which the headquarters of the reg-*  
21 *ulated entity is located, for an injunction to enforce such*  
22 *order, and, if the court determines that there has been such*  
23 *violation or threatened violation or failure to obey, it shall*  
24 *be the duty of the court to issue such injunction.”.*



1 **SEC. 163. PREJUDGMENT ATTACHMENT.**

2 *The Housing and Community Development Act of*  
3 *1992 is amended by inserting after section 1375 (12 U.S.C.*  
4 *4635) the following new section:*

5 **“SEC. 1375A. PREJUDGMENT ATTACHMENT.**

6 *“(a) IN GENERAL.—In any action brought pursuant*  
7 *to this title, or in actions brought in aid of, or to enforce*  
8 *an order in, any administrative or other civil action for*  
9 *money damages, restitution, or civil money penalties*  
10 *brought pursuant to this title, the court may, upon applica-*  
11 *tion of the Director or Attorney General, as applicable,*  
12 *issue a restraining order that—*

13 *“(1) prohibits any person subject to the pro-*  
14 *ceeding from withdrawing, transferring, removing,*  
15 *dissipating, or disposing of any funds, assets or other*  
16 *property; and*

17 *“(2) appoints a person on a temporary basis to*  
18 *administer the restraining order.*

19 *“(b) STANDARD.—*

20 *“(1) SHOWING.—Rule 65 of the Federal Rules of*  
21 *Civil Procedure shall apply with respect to any pro-*  
22 *ceeding under subsection (a) without regard to the re-*  
23 *quirement of such rule that the applicant show that*  
24 *the injury, loss, or damage is irreparable and imme-*  
25 *diante.*

1           “(2) *STATE PROCEEDING.*—If, in the case of any  
2           *proceeding in a State court, the court determines that*  
3           *rules of civil procedure available under the laws of*  
4           *such State provide substantially similar protections*  
5           *to a party’s right to due process as Rule 65 (as modi-*  
6           *fied with respect to such proceeding by paragraph*  
7           *(1)), the relief sought under subsection (a) may be re-*  
8           *quested under the laws of such State.”.*

9   **SEC. 164. ENFORCEMENT AND JURISDICTION.**

10          *Section 1375 of the Housing and Community Develop-*  
11          *ment Act of 1992 (12 U.S.C. 4635) is amended—*

12                 *(1) by striking subsection (a) and inserting the*  
13                 *following new subsection:*

14                 “(a) *ENFORCEMENT.*—*The Director may, in the dis-*  
15                 *cretion of the Director, apply to the United States District*  
16                 *Court for the District of Columbia, or the United States*  
17                 *district court within the jurisdiction of which the head-*  
18                 *quarters of the regulated entity is located, for the enforce-*  
19                 *ment of any effective and outstanding notice or order issued*  
20                 *under this subtitle or subtitle B, or request that the Attorney*  
21                 *General of the United States bring such an action. Such*  
22                 *court shall have jurisdiction and power to order and require*  
23                 *compliance with such notice or order.”; and*

24                 *(2) in subsection (b), by striking “or 1376” and*  
25                 *inserting “1376, or 1377”.*

1 **SEC. 165. CIVIL MONEY PENALTIES.**

2 *Section 1376 of the Housing and Community Develop-*  
3 *ment Act of 1992 (12 U.S.C. 4636) is amended—*

4 *(1) in subsection (a)—*

5 *(A) in the matter preceding paragraph (1),*  
6 *by striking “, or any executive officer or direc-*  
7 *tor” and inserting “or any regulated-entity af-*  
8 *filiated party”; and*

9 *(B) in paragraph (1)—*

10 *(i) by striking “the Federal National*  
11 *Mortgage Association Charter Act, the Fed-*  
12 *eral Home Loan Mortgage Corporation Act”*  
13 *and inserting “any provision of any of the*  
14 *authorizing statutes”;*

15 *(ii) by striking “or Act” and inserting*  
16 *“or statute”;*

17 *(iii) by striking “or subsection” and*  
18 *inserting “, subsection”; and*

19 *(iv) by inserting “, or paragraph (5)*  
20 *or (12) of section 10(j) of the Federal Home*  
21 *Loan Bank Act” before the semicolon at the*  
22 *end;*

23 *(2) by striking subsection (b) and inserting the*  
24 *following new subsection:*

25 *“(b) AMOUNT OF PENALTY.—*

1           “(1) *FIRST TIER.*—Any regulated entity which,  
2           or any regulated entity-affiliated party who—

3           “(A) violates any provision of this title, any  
4           provision of any of the authorizing statutes, or  
5           any order, condition, rule, or regulation under  
6           any such title or statute, except that the Director  
7           may not, pursuant to this section, enforce com-  
8           pliance with any housing goal established under  
9           subpart B of part 2 of subtitle A of this title,  
10          with section 1336 or 1337 of this title, with sub-  
11          section (m) or (n) of section 309 of the Federal  
12          National Mortgage Association Charter Act (12  
13          U.S.C. 1723a(m), (n)), with subsection (e) or (f)  
14          of section 307 of the Federal Home Loan Mort-  
15          gage Corporation Act (12 U.S.C. 1456(e), (f)), or  
16          with paragraph (5) or (12) of section 10(j) of the  
17          Federal Home Loan Bank Act;

18          “(B) violates any final or temporary order  
19          or notice issued pursuant to this title;

20          “(C) violates any condition imposed in  
21          writing by the Director in connection with the  
22          grant of any application or other request by such  
23          regulated entity; or

24          “(D) violates any written agreement be-  
25          tween the regulated entity and the Director,

1 shall forfeit and pay a civil money penalty of not  
2 more than \$10,000 for each day during which such  
3 violation continues.

4 “(2) *SECOND TIER.*—Notwithstanding paragraph  
5 (1)—

6 “(A) if a regulated entity, or a regulated  
7 entity-affiliated party—

8 “(i) commits any violation described  
9 in any subparagraph of paragraph (1);

10 “(ii) recklessly engages in an unsafe or  
11 unsound practice in conducting the affairs  
12 of such regulated entity; or

13 “(iii) breaches any fiduciary duty; and

14 “(B) the violation, practice, or breach—

15 “(i) is part of a pattern of misconduct;

16 “(ii) causes or is likely to cause more  
17 than a minimal loss to such regulated enti-  
18 ty; or

19 “(iii) results in pecuniary gain or  
20 other benefit to such party,

21 the regulated entity or regulated entity-affiliated  
22 party shall forfeit and pay a civil penalty of not  
23 more than \$50,000 for each day during which such  
24 violation, practice, or breach continues.

1           “(3) *THIRD TIER.*—Notwithstanding paragraphs  
2           (1) and (2), any regulated entity which, or any regu-  
3           lated entity-affiliated party who—

4                   “(A) knowingly—

5                           “(i) commits any violation or engages  
6                           in any conduct described in any subpara-  
7                           graph of paragraph (1);

8                           “(ii) engages in any unsafe or unsound  
9                           practice in conducting the affairs of such  
10                          regulated entity; or

11                          “(iii) breaches any fiduciary duty; and

12                          “(B) knowingly or recklessly causes a sub-  
13                          stantial loss to such regulated entity or a sub-  
14                          stantial pecuniary gain or other benefit to such  
15                          party by reason of such violation, practice, or  
16                          breach,

17           shall forfeit and pay a civil penalty in an amount  
18           not to exceed the applicable maximum amount deter-  
19           mined under paragraph (4) for each day during  
20           which such violation, practice, or breach continues.

21                   “(4) *MAXIMUM AMOUNTS OF PENALTIES FOR ANY*  
22                   *VIOLATION DESCRIBED IN PARAGRAPH (3).*—The max-  
23                   imum daily amount of any civil penalty which may  
24                   be assessed pursuant to paragraph (3) for any viola-

1        *tion, practice, or breach described in such paragraph*  
2        *is—*

3                *“(A) in the case of any person other than*  
4                *a regulated entity, an amount not to exceed*  
5                *\$2,000,000; and*

6                *“(B) in the case of any regulated entity,*  
7                *\$2,000,000.”;*

8                *(3) in subsection (c)(1)(B), by striking “enter-*  
9                *prise, executive officer, or director” and inserting*  
10               *“regulated entity or regulated entity-affiliated party”;*

11               *(4) in subsection (d), by striking the first sen-*  
12               *tence and inserting the following: “If a regulated enti-*  
13               *ty or regulated entity-affiliated party fails to comply*  
14               *with an order of the Director imposing a civil money*  
15               *penalty under this section, after the order is no longer*  
16               *subject to review as provided under subsection (c)(1)*  
17               *and section 1374, the Director may, in the discretion*  
18               *of the Director, bring an action in the United States*  
19               *District Court for the District of Columbia, or the*  
20               *United States district court within the jurisdiction of*  
21               *which the headquarters of the regulated entity is lo-*  
22               *cated, to obtain a monetary judgment against the reg-*  
23               *ulated entity or regulated entity affiliated party and*  
24               *such other relief as may be available, or request that*

1 *the Attorney General of the United States bring such*  
2 *an action.”; and*

3 *(5) in subsection (g), by striking “subsection*  
4 *(b)(3)” and inserting “this section, unless authorized*  
5 *by the Director by rule, regulation, or order”.*

6 **SEC. 166. REMOVAL AND PROHIBITION AUTHORITY.**

7 *(a) IN GENERAL.—Subtitle C of title XIII of the Hous-*  
8 *ing and Community Development Act of 1992 is amend-*  
9 *ed—*

10 *(1) by redesignating sections 1377, 1378, 1379,*  
11 *1379A, and 1379B (12 U.S.C. 4637–41) as sections*  
12 *1379, 1379A, 1379B, 1379C, and 1379D, respectively;*  
13 *and*

14 *(2) by inserting after section 1376 (12 U.S.C.*  
15 *4636) the following new section:*

16 **“SEC. 1377. REMOVAL AND PROHIBITION AUTHORITY.**

17 *“(a) AUTHORITY TO ISSUE ORDER.—Whenever the*  
18 *Director determines that—*

19 *“(1) any regulated entity-affiliated party has,*  
20 *directly or indirectly—*

21 *“(A) violated—*

22 *“(i) any law or regulation;*

23 *“(ii) any cease-and-desist order which*  
24 *has become final;*



1           “(iii) any condition imposed in writ-  
2           ing by the Director in connection with the  
3           grant of any application or other request by  
4           such regulated entity; or

5           “(iv) any written agreement between  
6           such regulated entity and the Director;

7           “(B) engaged or participated in any unsafe  
8           or unsound practice in connection with any reg-  
9           ulated entity; or

10          “(C) committed or engaged in any act,  
11          omission, or practice which constitutes a breach  
12          of such party’s fiduciary duty;

13          “(2) by reason of the violation, practice, or  
14          breach described in any subparagraph of paragraph  
15          (1)—

16                 “(A) such regulated entity has suffered or  
17                 will probably suffer financial loss or other dam-  
18                 age; or

19                 “(B) such party has received financial gain  
20                 or other benefit by reason of such violation, prac-  
21                 tice, or breach; and

22          “(3) such violation, practice, or breach—

23                 “(A) involves personal dishonesty on the  
24                 part of such party; or

1           “(B) demonstrates willful or continuing dis-  
2 regard by such party for the safety or soundness  
3 of such regulated entity, the Director may serve  
4 upon such party a written notice of the Direc-  
5 tor’s intention to remove such party from office  
6 or to prohibit any further participation by such  
7 party, in any manner, in the conduct of the af-  
8 fairs of any regulated entity.

9           “(b) *SUSPENSION ORDER.*—

10           “(1) *SUSPENSION OR PROHIBITION AUTHOR-*  
11 *ITY.*—If the Director serves written notice under sub-  
12 section (a) to any regulated entity-affiliated party of  
13 the Director’s intention to issue an order under such  
14 subsection, the Director may—

15           “(A) suspend such party from office or pro-  
16 hibit such party from further participation in  
17 any manner in the conduct of the affairs of the  
18 regulated entity, if the Director—

19           “(i) determines that such action is nec-  
20 essary for the protection of the regulated en-  
21 tity; and

22           “(ii) serves such party with written  
23 notice of the suspension order; and

24           “(B) prohibit the regulated entity from re-  
25 leasing to or on behalf of the regulated entity-af-

1        *filiated party any compensation or other pay-*  
2        *ment of money or other thing of current or po-*  
3        *tential value in connection with any resignation,*  
4        *removal, retirement, or other termination of em-*  
5        *ployment or office of the party.*

6        *“(2) EFFECTIVE PERIOD.—Any suspension order*  
7        *issued under this subsection—*

8                *“(A) shall become effective upon service; and*

9                *“(B) unless a court issues a stay of such*  
10        *order under subsection (g) of this section, shall*  
11        *remain in effect and enforceable until—*

12                *“(i) the date the Director dismisses the*  
13        *charges contained in the notice served under*  
14        *subsection (a) with respect to such party; or*

15                *“(ii) the effective date of an order*  
16        *issued by the Director to such party under*  
17        *subsection (a).*

18        *“(3) COPY OF ORDER.—If the Director issues a*  
19        *suspension order under this subsection to any regu-*  
20        *lated entity-affiliated party, the Director shall serve a*  
21        *copy of such order on any regulated entity with which*  
22        *such party is affiliated at the time such order is*  
23        *issued.*

24        *“(c) NOTICE, HEARING, AND ORDER.—A notice of in-*  
25        *tention to remove a regulated entity-affiliated party from*

1 office or to prohibit such party from participating in the  
2 conduct of the affairs of a regulated entity shall contain  
3 a statement of the facts constituting grounds for such ac-  
4 tion, and shall fix a time and place at which a hearing  
5 will be held on such action. Such hearing shall be fixed for  
6 a date not earlier than 30 days nor later than 60 days after  
7 the date of service of such notice, unless an earlier or a  
8 later date is set by the Director at the request of (1) such  
9 party, and for good cause shown, or (2) the Attorney Gen-  
10 eral of the United States. Unless such party shall appear  
11 at the hearing in person or by a duly authorized representa-  
12 tive, such party shall be deemed to have consented to the  
13 issuance of an order of such removal or prohibition. In the  
14 event of such consent, or if upon the record made at any  
15 such hearing the Director shall find that any of the grounds  
16 specified in such notice have been established, the Director  
17 may issue such orders of suspension or removal from office,  
18 or prohibition from participation in the conduct of the af-  
19 fairs of the regulated entity, as it may deem appropriate,  
20 together with an order prohibiting compensation described  
21 in subsection (b)(1)(B). Any such order shall become effec-  
22 tive at the expiration of 30 days after service upon such  
23 regulated entity and such party (except in the case of an  
24 order issued upon consent, which shall become effective at  
25 the time specified therein). Such order shall remain effective

1 *and enforceable except to such extent as it is stayed, modi-*  
2 *fied, terminated, or set aside by action of the Director or*  
3 *a reviewing court.*

4       “(d) *PROHIBITION OF CERTAIN SPECIFIC ACTIVITIES.—Any person subject to an order issued under this sec-*  
5 *tion shall not—*

7               “(1) *participate in any manner in the conduct*  
8 *of the affairs of any regulated entity;*

9               “(2) *solicit, procure, transfer, attempt to trans-*  
10 *fer, vote, or attempt to vote any proxy, consent, or au-*  
11 *thorization with respect to any voting rights in any*  
12 *regulated entity;*

13               “(3) *violate any voting agreement previously ap-*  
14 *proved by the Director; or*

15               “(4) *vote for a director, or serve or act as a regu-*  
16 *lated entity-affiliated party.*

17       “(e) *INDUSTRY-WIDE PROHIBITION.—*

18               “(1) *IN GENERAL.—Except as provided in para-*  
19 *graph (2), any person who, pursuant to an order*  
20 *issued under this section, has been removed or sus-*  
21 *sended from office in a regulated entity or prohibited*  
22 *from participating in the conduct of the affairs of a*  
23 *regulated entity may not, while such order is in effect,*  
24 *continue or commence to hold any office in, or par-*

1        *ticipate in any manner in the conduct of the affairs*  
2        *of, any regulated entity.*

3            “(2) *EXCEPTION IF DIRECTOR PROVIDES WRIT-*  
4        *TEN CONSENT.—If, on or after the date an order is*  
5        *issued under this section which removes or suspends*  
6        *from office any regulated entity-affiliated party or*  
7        *prohibits such party from participating in the con-*  
8        *duct of the affairs of a regulated entity, such party*  
9        *receives the written consent of the Director, the order*  
10       *shall, to the extent of such consent, cease to apply to*  
11       *such party with respect to the regulated entity de-*  
12       *scribed in the written consent. If the Director grants*  
13       *such a written consent, it shall publicly disclose such*  
14       *consent.*

15            “(3) *VIOLATION OF PARAGRAPH (1) TREATED AS*  
16        *VIOLATION OF ORDER.—Any violation of paragraph*  
17        *(1) by any person who is subject to an order described*  
18        *in such subsection shall be treated as a violation of*  
19        *the order.*

20            “(f) *APPLICABILITY.—This section shall only apply to*  
21        *a person who is an individual, unless the Director specifi-*  
22        *cally finds that it should apply to a corporation, firm, or*  
23        *other business enterprise.*

24            “(g) *STAY OF SUSPENSION AND PROHIBITION OF REG-*  
25        *ULATED ENTITY-AFFILIATED PARTY.—Within 10 days*

1 *after any regulated entity-affiliated party has been sus-*  
2 *pending from office and/or prohibited from participation in*  
3 *the conduct of the affairs of a regulated entity under this*  
4 *section, such party may apply to the United States District*  
5 *Court for the District of Columbia, or the United States*  
6 *district court for the judicial district in which the head-*  
7 *quarters of the regulated entity is located, for a stay of such*  
8 *suspension and/or prohibition and any prohibition under*  
9 *subsection (b)(1)(B) pending the completion of the adminis-*  
10 *trative proceedings pursuant to the notice served upon such*  
11 *party under this section, and such court shall have jurisdic-*  
12 *tion to stay such suspension and/or prohibition.*

13       “(h) *SUSPENSION OR REMOVAL OF REGULATED ENTI-*  
14 *TY-AFFILIATED PARTY CHARGED WITH FELONY.—*

15               “(1) *SUSPENSION OR PROHIBITION.—*

16                       “(A) *IN GENERAL.—Whenever any regu-*  
17 *lated entity-affiliated party is charged in any*  
18 *information, indictment, or complaint, with the*  
19 *commission of or participation in a crime in-*  
20 *volving dishonesty or breach of trust which is*  
21 *punishable by imprisonment for a term exceed-*  
22 *ing one year under State or Federal law, the Di-*  
23 *rector may, if continued service or participation*  
24 *by such party may pose a threat to the regulated*  
25 *entity or impair public confidence in the regu-*

1           *lated entity, by written notice served upon such*  
2           *party—*

3                   “(i) *suspend such party from office or*  
4                   *prohibit such party from further participa-*  
5                   *tion in any manner in the conduct of the*  
6                   *affairs of any regulated entity; and*

7                   “(ii) *prohibit the regulated entity from*  
8                   *releasing to or on behalf of the regulated en-*  
9                   *tity-affiliated party any compensation or*  
10                   *other payment of money or other thing of*  
11                   *current or potential value in connection*  
12                   *with the period of any such suspension or*  
13                   *with any resignation, removal, retirement,*  
14                   *or other termination of employment or of-*  
15                   *fice of the party.*

16                   “(B) *PROVISIONS APPLICABLE TO NO-*  
17                   *TICE.—*

18                   “(i) *COPY.—A copy of any notice*  
19                   *under paragraph (1)(A) shall also be served*  
20                   *upon the regulated entity.*

21                   “(ii) *EFFECTIVE PERIOD.—A suspen-*  
22                   *sion or prohibition under subparagraph (A)*  
23                   *shall remain in effect until the information,*  
24                   *indictment, or complaint referred to in such*



1            *subparagraph is finally disposed of or until*  
2            *terminated by the Director.*

3            “(2) *REMOVAL OR PROHIBITION.—*

4            “(A) *IN GENERAL.—If a judgment of con-*  
5            *viction or an agreement to enter a pretrial diver-*  
6            *sion or other similar program is entered against*  
7            *a regulated entity-affiliated party in connection*  
8            *with a crime described in paragraph (1)(A), at*  
9            *such time as such judgment is not subject to fur-*  
10           *ther appellate review, the Director may, if con-*  
11           *tinued service or participation by such party*  
12           *may pose a threat to the regulated entity or im-*  
13           *pair public confidence in the regulated entity,*  
14           *issue and serve upon such party an order that—*

15           “(i) *removes such party from office or*  
16           *prohibits such party from further participa-*  
17           *tion in any manner in the conduct of the*  
18           *affairs of the regulated entity without the*  
19           *prior written consent of the Director; and*

20           “(ii) *prohibits the regulated entity*  
21           *from releasing to or on behalf of the regu-*  
22           *lated entity-affiliated party any compensa-*  
23           *tion or other payment of money or other*  
24           *thing of current or potential value in con-*

1            *nection with the termination of employment*  
2            *or office of the party.*

3            “(B) *PROVISIONS APPLICABLE TO ORDER.*—

4                   “(i) *COPY.*—*A copy of any order under*  
5            *paragraph (2)(A) shall also be served upon*  
6            *the regulated entity, whereupon the regu-*  
7            *lated entity-affiliated party who is subject*  
8            *to the order (if a director or an officer)*  
9            *shall cease to be a director or officer of such*  
10           *regulated entity.*

11                  “(ii) *EFFECT OF ACQUITTAL.*—*A find-*  
12           *ing of not guilty or other disposition of the*  
13           *charge shall not preclude the Director from*  
14           *instituting proceedings after such finding or*  
15           *disposition to remove such party from office*  
16           *or to prohibit further participation in regu-*  
17           *lated entity affairs, and to prohibit com-*  
18           *ensation or other payment of money or*  
19           *other thing of current or potential value in*  
20           *connection with any resignation, removal,*  
21           *retirement, or other termination of employ-*  
22           *ment or office of the party, pursuant to sub-*  
23           *sections (a), (d), or (e) of this section.*

24                  “(iii) *EFFECTIVE PERIOD.*—*Any notice*  
25           *of suspension or order of removal issued*

1           *under this subsection shall remain effective*  
2           *and outstanding until the completion of any*  
3           *hearing or appeal authorized under para-*  
4           *graph (4) unless terminated by the Director.*

5           “(3) *AUTHORITY OF REMAINING BOARD MEM-*  
6           *BERS.—If at any time, because of the suspension of*  
7           *one or more directors pursuant to this section, there*  
8           *shall be on the board of directors of a regulated entity*  
9           *less than a quorum of directors not so suspended, all*  
10           *powers and functions vested in or exercisable by such*  
11           *board shall vest in and be exercisable by the director*  
12           *or directors on the board not so suspended, until such*  
13           *time as there shall be a quorum of the board of direc-*  
14           *tors. In the event all of the directors of a regulated*  
15           *entity are suspended pursuant to this section, the Di-*  
16           *rector shall appoint persons to serve temporarily as*  
17           *directors in their place and stead pending the termi-*  
18           *nation of such suspensions, or until such time as*  
19           *those who have been suspended cease to be directors of*  
20           *the regulated entity and their respective successors*  
21           *take office.*

22           “(4) *HEARING REGARDING CONTINUED PARTICI-*  
23           *PATION.—Within 30 days from service of any notice*  
24           *of suspension or order of removal issued pursuant to*  
25           *paragraph (1) or (2) of this subsection, the regulated*

1 *entity-affiliated party concerned may request in writ-*  
2 *ing an opportunity to appear before the Director to*  
3 *show that the continued service to or participation in*  
4 *the conduct of the affairs of the regulated entity by*  
5 *such party does not, or is not likely to, pose a threat*  
6 *to the interests of the regulated entity or threaten to*  
7 *impair public confidence in the regulated entity.*  
8 *Upon receipt of any such request, the Director shall*  
9 *fix a time (not more than 30 days after receipt of*  
10 *such request, unless extended at the request of such*  
11 *party) and place at which such party may appear,*  
12 *personally or through counsel, before one or more*  
13 *members of the Director or designated employees of*  
14 *the Director to submit written materials (or, at the*  
15 *discretion of the Director, oral testimony) and oral*  
16 *argument. Within 60 days of such hearing, the Direc-*  
17 *tor shall notify such party whether the suspension or*  
18 *prohibition from participation in any manner in the*  
19 *conduct of the affairs of the regulated entity will be*  
20 *continued, terminated, or otherwise modified, or*  
21 *whether the order removing such party from office or*  
22 *prohibiting such party from further participation in*  
23 *any manner in the conduct of the affairs of the regu-*  
24 *lated entity, and prohibiting compensation in connec-*  
25 *tion with termination will be rescinded or otherwise*

1       *modified. Such notification shall contain a statement*  
2       *of the basis for the Director's decision, if adverse to*  
3       *such party. The Director is authorized to prescribe*  
4       *such rules as may be necessary to effectuate the pur-*  
5       *poses of this subsection.*

6       “(i) *HEARINGS AND JUDICIAL REVIEW.—*

7               “(1) *VENUE AND PROCEDURE.—Any hearing*  
8       *provided for in this section shall be held in the Dis-*  
9       *trict of Columbia or in the Federal judicial district*  
10       *in which the headquarters of the regulated entity is*  
11       *located, unless the party afforded the hearing consents*  
12       *to another place, and shall be conducted in accord-*  
13       *ance with the provisions of chapter 5 of title 5,*  
14       *United States Code. After such hearing, and within*  
15       *90 days after the Director has notified the parties*  
16       *that the case has been submitted to it for final deci-*  
17       *sion, it shall render its decision (which shall include*  
18       *findings of fact upon which its decision is predicated)*  
19       *and shall issue and serve upon each party to the pro-*  
20       *ceeding an order or orders consistent with the provi-*  
21       *sions of this section. Judicial review of any such*  
22       *order shall be exclusively as provided in this sub-*  
23       *section. Unless a petition for review is timely filed in*  
24       *a court of appeals of the United States, as provided*  
25       *in paragraph (2), and thereafter until the record in*

1        *the proceeding has been filed as so provided, the Di-*  
2        *rector may at any time, upon such notice and in such*  
3        *manner as it shall deem proper, modify, terminate, or*  
4        *set aside any such order. Upon such filing of the*  
5        *record, the Director may modify, terminate, or set*  
6        *aside any such order with permission of the court.*

7            *“(2) REVIEW OF ORDER.—Any party to any*  
8        *proceeding under paragraph (1) may obtain a review*  
9        *of any order served pursuant to paragraph (1) (other*  
10       *than an order issued with the consent of the regulated*  
11       *entity or the regulated entity-affiliated party con-*  
12       *cerned, or an order issued under subsection (h) of this*  
13       *section) by the filing in the United States Court of*  
14       *Appeals for the District of Columbia Circuit or court*  
15       *of appeals of the United States for the circuit in*  
16       *which the headquarters of the regulated entity is lo-*  
17       *cated, within 30 days after the date of service of such*  
18       *order, a written petition praying that the order of the*  
19       *Director be modified, terminated, or set aside. A copy*  
20       *of such petition shall be forthwith transmitted by the*  
21       *clerk of the court to the Director, and thereupon the*  
22       *Director shall file in the court the record in the pro-*  
23       *ceeding, as provided in section 2112 of title 28,*  
24       *United States Code. Upon the filing of such petition,*  
25       *such court shall have jurisdiction, which upon the fil-*

1     *ing of the record shall (except as provided in the last*  
2     *sentence of paragraph (1)) be exclusive, to affirm,*  
3     *modify, terminate, or set aside, in whole or in part,*  
4     *the order of the Director. Review of such proceedings*  
5     *shall be had as provided in chapter 7 of title 5,*  
6     *United States Code. The judgment and decree of the*  
7     *court shall be final, except that the same shall be sub-*  
8     *ject to review by the Supreme Court upon certiorari,*  
9     *as provided in section 1254 of title 28, United States*  
10    *Code.*

11           “(3) *PROCEEDINGS NOT TREATED AS STAY.*—*The*  
12    *commencement of proceedings for judicial review*  
13    *under paragraph (2) shall not, unless specifically or-*  
14    *dered by the court, operate as a stay of any order*  
15    *issued by the Director.”.*

16    **(b) CONFORMING AMENDMENTS.**—

17           (1) *1992 ACT.*—*Section 1317(f) of the Housing*  
18    *and Community Development Act of 1992 (12 U.S.C.*  
19    *4517(f)) is amended by striking “section 1379B” and*  
20    *inserting “section 1379D”.*

21           (2) *FANNIE MAE CHARTER ACT.*—*The second sen-*  
22    *tence of subsection (b) of section 308 of the Federal*  
23    *National Mortgage Association Charter Act (12*  
24    *U.S.C. 1723(b)) is amended by striking “The” and*  
25    *inserting “Except to the extent that action under sec-*

1        *tion 1377 of the Housing and Community Develop-*  
2        *ment Act of 1992 temporarily results in a lesser num-*  
3        *ber, the”.*

4                (3) *FREDDIE MAC ACT.*—*The second sentence of*  
5        *subparagraph (A) of section 303(a)(2) of the Federal*  
6        *Home Loan Mortgage Corporation Act (12 U.S.C.*  
7        *1452(a)(2)(A)) is amended by striking “The” and in-*  
8        *serting “Except to the extent that action under section*  
9        *1377 of the Housing and Community Development*  
10        *Act of 1992 temporarily results in a lesser number,*  
11        *the”.*

12        **SEC. 167. CRIMINAL PENALTY.**

13        *Subtitle C of title XIII of the Housing and Community*  
14        *Development Act of 1992 (12 U.S.C. 4631 et seq.) is amend-*  
15        *ed by inserting after section 1377 (as added by the pre-*  
16        *ceding provisions of this Act) the following new section:*

17        **“SEC. 1378. CRIMINAL PENALTY.**

18        *“Whoever, being subject to an order in effect under sec-*  
19        *tion 1377, without the prior written approval of the Direc-*  
20        *tor, knowingly participates, directly or indirectly, in any*  
21        *manner (including by engaging in an activity specifically*  
22        *prohibited in such an order) in the conduct of the affairs*  
23        *of any regulated entity shall, notwithstanding section 3571*  
24        *of title 18, be fined not more than \$1,000,000, imprisoned*  
25        *for not more than 5 years, or both.”.*



1 **SEC. 168. SUBPOENA AUTHORITY.**

2 *Section 1379D(c) of the Housing and Community De-*  
3 *velopment Act of 1992 (12 U.S.C. 4641(c)), as so redesign-*  
4 *ated by section 166(a)(1) of this Act, is further amended—*

5 *(1) by striking “request the Attorney General of*  
6 *the United States to” and inserting “, in the discre-*  
7 *tion of the Director,”;*

8 *(2) by inserting “or request that the Attorney*  
9 *General of the United States bring such an action,”*  
10 *after “District of Columbia,”; and*

11 *(3) by striking “or may, under the direction and*  
12 *control of the Attorney General, bring such an ac-*  
13 *tion”.*

14 **SEC. 169. CONFORMING AMENDMENTS.**

15 *Subtitle C of title XIII of the Housing and Community*  
16 *Development Act of 1992 (12 U.S.C. 4631 et seq.), as*  
17 *amended by the preceding provisions of this Act, is amend-*  
18 *ed—*

19 *(1) in section 1372(c)(1) (12 U.S.C. 4632(c)), by*  
20 *striking “that enterprise” and inserting “that regu-*  
21 *lated entity”;*

22 *(2) in section 1379 (12 U.S.C. 4637), as so redesign-*  
23 *ated by section 166(a)(1) of this Act—*

24 *(A) by inserting “, or of a regulated entity-*  
25 *affiliated party,” before “shall not affect”; and*

1           (B) by striking “such director or executive  
2           officer” each place such term appears and insert-  
3           ing “such director, executive officer, or regulated  
4           entity-affiliated party”;

5           (3) in section 1379A (12 U.S.C. 4638), as so re-  
6           designated by section 166(a)(1) of this Act, by insert-  
7           ing “or against a regulated entity-affiliated party,”  
8           before “or impair”;

9           (4) by striking “An enterprise” each place such  
10          term appears in such subtitle and inserting “A regu-  
11          lated entity”;

12          (5) by striking “an enterprise” each place such  
13          term appears in such subtitle and inserting “a regu-  
14          lated entity”;

15          (6) by striking “the enterprise” each place such  
16          term appears in such subtitle and inserting “the regu-  
17          lated entity”; and

18          (7) by striking “any enterprise” each place such  
19          term appears in such subtitle and inserting “any regu-  
20          lated entity”.

## 21           **Subtitle E—General Provisions**

### 22   **SEC. 181. BOARDS OF ENTERPRISES.**

23          (a) *FANNIE MAE*.—

1           (1) *IN GENERAL.*—Section 308(b) of the Federal  
2           *National Mortgage Association Charter Act* (12  
3           *U.S.C. 1723(b)*) is amended—

4                   (A) *in the first sentence, by striking “eight-*  
5                   *een persons, five of whom shall be appointed an-*  
6                   *nually by the President of the United States, and*  
7                   *the remainder of whom” and inserting “13 per-*  
8                   *sons, or such other number that the Director de-*  
9                   *termines appropriate, who”;*

10                   (B) *in the second sentence, by striking “ap-*  
11                   *pointed by the President”;*

12                   (C) *in the third sentence—*

13                           (i) *by striking “appointed or”;* and

14                           (ii) *by striking “, except that any such*  
15                           *appointed member may be removed from of-*  
16                           *fice by the President for good cause”;*

17                   (D) *in the fourth sentence, by striking “elec-*  
18                   *tive”;* and

19                   (E) *by striking the fifth sentence.*

20           (2) *TRANSITIONAL PROVISION.*—*The amendments*  
21           *made by paragraph (1) shall not apply to any ap-*  
22           *pointed position of the board of directors of the Fed-*  
23           *eral National Mortgage Association until the expira-*  
24           *tion of the annual term for such position during*  
25           *which the effective date under Section 185 occurs.*

1       (b) *FREDDIE MAC.*—

2               (1) *IN GENERAL.*—Section 303(a)(2) of the Fed-  
3       *eral Home Loan Mortgage Corporation Act* (12  
4       *U.S.C. 1452(a)(2)) is amended—*

5               (A) *in subparagraph (A)—*

6                       (i) *in the first sentence, by striking*  
7                       *“18 persons, 5 of whom shall be appointed*  
8                       *annually by the President of the United*  
9                       *States and the remainder of whom” and in-*  
10                      *serting “13 persons, or such other number*  
11                      *as the Director determines appropriate,*  
12                      *who”; and*

13                     (ii) *in the second sentence, by striking*  
14                     *“appointed by the President of the United*  
15                     *States”;*

16               (B) *in subparagraph (B)—*

17                     (i) *by striking “such or”; and*

18                     (ii) *by striking “, except that any ap-*  
19                     *pointed member may be removed from office*  
20                     *by the President for good cause”; and*

21               (C) *in subparagraph (C)—*

22                     (i) *by striking the first sentence; and*

23                     (ii) *by striking “elective”.*

24               (2) *TRANSITIONAL PROVISION.*—*The amendments*  
25       *made by paragraph (1) shall not apply to any ap-*

1        *pointed position of the board of directors of the Fed-*  
2        *eral Home Loan Mortgage Corporation until the expi-*  
3        *ration of the annual term for such position during*  
4        *which the effective date under Section 185 occurs.*

5        **SEC. 182. REPORT ON PORTFOLIO OPERATIONS, SAFETY**  
6                                **AND SOUNDNESS, AND MISSION OF ENTER-**  
7                                **PRISES.**

8        *Not later than the expiration of the 12-month period*  
9        *beginning on the effective date under section 185, the Direc-*  
10        *tor of the Federal Housing Finance Agency shall submit*  
11        *a report to the Congress which shall include—*

12                (1) *a description of the portfolio holdings of the*  
13        *enterprises (as such term is defined in section 1303*  
14        *of the Housing and Community Development Act of*  
15        *1992 (12 U.S.C. 4502) in mortgages (including whole*  
16        *loans and mortgage-backed securities), non-mortgages,*  
17        *and other assets;*

18                (2) *a description of the risk implications for the*  
19        *enterprises of such holdings and the consequent risk*  
20        *management undertaken by the enterprises (including*  
21        *the use of derivatives for hedging purposes), compared*  
22        *with off-balance sheet liabilities of the enterprises (in-*  
23        *cluding mortgage-backed securities guaranteed by the*  
24        *enterprises);*

1           (3) *an analysis of portfolio holdings for safety*  
2           *and soundness purposes;*

3           (4) *an assessment of whether portfolio holdings*  
4           *fulfill the mission purposes of the enterprises under*  
5           *the Federal National Mortgage Association Charter*  
6           *Act and the Federal Home Loan Mortgage Corpora-*  
7           *tion Act; and*

8           (5) *an analysis of the potential systemic risk im-*  
9           *plications for the enterprises, the housing and capital*  
10          *markets, and the financial system of portfolio hold-*  
11          *ings, and whether such holdings should be limited or*  
12          *reduced over time.*

13 **SEC. 183. CONFORMING AND TECHNICAL AMENDMENTS.**

14          (a) *1992 ACT.—Title XIII of the Housing and Com-*  
15          *munity Development Act of 1992 is amended by striking*  
16          *section 1383 (12 U.S.C. 1451 note).*

17          (b) *TITLE 18, UNITED STATES CODE.—Section 1905*  
18          *of title 18, United States Code, is amended by striking “Of-*  
19          *fice of Federal Housing Enterprise Oversight” and insert-*  
20          *ing “Federal Housing Finance Agency”.*

21          (c) *FLOOD DISASTER PROTECTION ACT OF 1973.—*  
22          *Section 102(f)(3)(A) of the Flood Disaster Protection Act*  
23          *of 1973 (42 U.S.C. 4012a(f)(3)(A)) is amended by striking*  
24          *“Director of the Office of Federal Housing Enterprise Over-*  
25          *sight of the Department of Housing and Urban Develop-*

1 *ment*” and inserting “*Director of the Federal Housing Fi-*  
2 *nance Agency*”.

3 (d) *DEPARTMENT OF HOUSING AND URBAN DEVELOP-*  
4 *MENT ACT.*—Section 5 of the Department of Housing and  
5 *Urban Development Act (42 U.S.C. 3534)* is amended by  
6 *striking subsection (d).*

7 (e) *TITLE 5, UNITED STATES CODE.*—

8 (1) *DIRECTOR’S PAY RATE.*—Section 5313 of  
9 *title 5, United States Code, is amended by striking*  
10 *the item relating to the Director of the Office of Fed-*  
11 *eral Housing Enterprise Oversight, Department of*  
12 *Housing and Urban Development and inserting the*  
13 *following new item:*

14 “*Director of the Federal Housing Finance Agen-*  
15 *cy.*”.

16 (2) *EXCLUSION FROM SENIOR EXECUTIVE SERV-*  
17 *ICE.*—Section 3132(a)(1)(D) of title 5, United States  
18 *Code, is amended—*

19 (A) *by striking “the Federal Housing Fi-*  
20 *nance Board,”; and*

21 (B) *by striking “the Office of Federal Hous-*  
22 *ing Enterprise Oversight of the Department of*  
23 *Housing and Urban Development” and inserting*  
24 *“the Federal Housing Finance Agency”.*

1       (f) *INSPECTOR GENERAL ACT OF 1978*.—Section  
2 8G(a)(2) of the *Inspector General Act of 1978* (5 U.S.C.  
3 App.) is amended by striking “*Federal Housing Finance*  
4 *Board*” and inserting “*Federal Housing Finance Agency*”.

5       (g) *FEDERAL DEPOSIT INSURANCE ACT*.—Section  
6 11(t)(2)(A) of the *Federal Deposit Insurance Act* (12  
7 U.S.C.1821(t)(2)(A)) is amended by adding at the end the  
8 following new clause:

9                               “(vii) *The Federal Housing Finance*  
10                               *Agency*.”

11       (h) *1997 EMERGENCY SUPPLEMENTAL APPROPRIA-*  
12 *TIONS ACT*.—Section 10001 of the *1997 Emergency Supple-*  
13 *mental Appropriations Act for Recovery From Natural Dis-*  
14 *asters, and for Overseas Peacekeeping Efforts, Including*  
15 *Those In Bosnia* (42 U.S.C. 3548) is amended—

16               (1) by striking “*the Government National Mort-*  
17 *gage Association, and the Office of Federal Housing*  
18 *Enterprise Oversight*” and inserting “*and the Govern-*  
19 *ment National Mortgage Association*”; and

20               (2) by striking “*, the Government National*  
21 *Mortgage Association, or the Office of Federal Hous-*  
22 *ing Enterprise Oversight*” and inserting “*or the Gov-*  
23 *ernment National Mortgage Association*”.

24       (i) *NATIONAL HOMEOWNERSHIP TRUST ACT*.—Section  
25 302(b)(4) of the *Cranston-Gonzalez National Affordable*



1 *Housing Act (42 U.S.C. 12851(b)(4)) is amended by strik-*  
2 *ing “the chairperson of the Federal Housing Finance*  
3 *Board” and inserting “the Director of the Federal Housing*  
4 *Finance Agency”.*

5 **SEC. 184. STUDY OF ALTERNATIVE SECONDARY MARKET**  
6 **SYSTEMS.**

7 (a) *IN GENERAL.*—*The Director of the Federal Hous-*  
8 *ing Finance Agency, in consultation with the Board of Gov-*  
9 *ernors of the Federal Reserve System, the Secretary of the*  
10 *Treasury, and the Secretary of Housing and Urban Devel-*  
11 *opment, shall conduct a comprehensive study of the effects*  
12 *on financial and housing finance markets of alternatives*  
13 *to the current secondary market system for housing finance,*  
14 *taking into consideration changes in the structure of finan-*  
15 *cial and housing finance markets and institutions since the*  
16 *creation of the Federal National Mortgage Association and*  
17 *the Federal Home Loan Mortgage Corporation.*

18 (b) *CONTENTS.*—*The study under this section shall—*

19 (1) *include, among the alternatives to the current*  
20 *secondary market system analyzed—*

21 (A) *repeal of the chartering Acts for the*  
22 *Federal National Mortgage Association and the*  
23 *Federal Home Loan Mortgage Corporation;*

1           (B) establishing bank-like mechanisms for  
2           granting new charters for limited purposed  
3           mortgage securitization entities;

4           (C) permitting the Director of the Federal  
5           Housing Finance Agency to grant new charters  
6           for limited purpose mortgage securitization enti-  
7           ties, which shall include analyzing the terms on  
8           which such charters should be granted, including  
9           whether such charters should be sold, or whether  
10          such charters and the charters for the Federal  
11          National Mortgage Association and the Federal  
12          Home Loan Mortgage Corporation should be  
13          taxed or otherwise assessed a monetary price;  
14          and

15          (D) such other alternatives as the Director  
16          considers appropriate;

17          (2) examine all of the issues involved in making  
18          the transition to a completely private secondary mort-  
19          gage market system;

20          (3) examine the technological advancements the  
21          private sector has made in providing liquidity in the  
22          secondary mortgage market and how such advance-  
23          ments have affected liquidity in the secondary mort-  
24          gage market; and

1           (4) *examine how taxpayers would be impacted*  
2           *by each alternative system, including the complete*  
3           *privatization of the Federal National Mortgage Asso-*  
4           *ciation and the Federal Home Loan Mortgage Cor-*  
5           *poration.*

6           (c) *REPORT.—The Director of the Federal Housing Fi-*  
7           *nance Agency shall submit a report to the Congress on the*  
8           *study not later than the expiration of the 24-month period*  
9           *beginning on the effective date under section 185.*

10        ***TITLE II—FEDERAL HOME LOAN***  
11                                    ***BANKS***

12        ***SEC. 201. DEFINITIONS.***

13           *Section 2 of the Federal Home Loan Bank Act (12*  
14        *U.S.C. 1422) is amended—*

15                   (1) *by striking paragraphs (1), (10), and (11);*

16                   (2) *by redesignating paragraphs (2) through (9)*  
17           *as paragraphs (1) through (8), respectively;*

18                   (3) *by redesignating paragraphs (12) and (13)*  
19           *as paragraphs (9) and (10), respectively; and*

20                   (4) *by adding at the end the following:*

21                   “(11) *DIRECTOR.—The term ‘Director’ means*  
22           *the Director of the Federal Housing Finance Agency.*

23                   “(12) *AGENCY.—The term ‘Agency’ means the*  
24           *Federal Housing Finance Agency.”.*

1 **SEC. 202. DIRECTORS.**

2 (a) *ELECTION.*—Section 7 of the *Federal Home Loan*  
3 *Bank Act (12 U.S.C. 1427)* is amended—

4 (1) *by striking subsection (a) and inserting the*  
5 *following:*

6 “(a) *NUMBER; ELECTION; QUALIFICATIONS; CON-*  
7 *FLICTS OF INTEREST.*—

8 “(1) *IN GENERAL.*—*The management of each*  
9 *Federal Home Loan Bank shall be vested in a board*  
10 *of 13 directors, or such other number as the Director*  
11 *determines appropriate, each of whom shall be a cit-*  
12 *izen of the United States. All directors of a Bank who*  
13 *are not independent directors pursuant to paragraph*  
14 *(3) shall be elected by the members.*

15 “(2) *MEMBER DIRECTORS.*—*A majority of the*  
16 *directors of each Bank shall be officers or directors of*  
17 *a member of such Bank that is located in the district*  
18 *in which such Bank is located.*

19 “(3) *INDEPENDENT DIRECTORS.*—*At least two-*  
20 *fifths of the directors of each Bank shall be inde-*  
21 *pendent directors, who shall be appointed by the Di-*  
22 *rector of the Federal Housing Finance Agency from*  
23 *a list of individuals recommended by the Federal*  
24 *Housing Enterprise Board, and shall meet the fol-*  
25 *lowing criteria:*

1           “(A) *IN GENERAL.*—*Each independent di-*  
2           *rector shall be a bona fide resident of the district*  
3           *in which such Bank is located.*

4           “(B) *PUBLIC INTEREST DIRECTORS.*—*At*  
5           *least 2 of the independent directors under this*  
6           *paragraph of each Bank shall be representatives*  
7           *chosen from organizations with more than a 2-*  
8           *year history of representing consumer or commu-*  
9           *nity interests on banking services, credit needs,*  
10           *housing, community development, economic de-*  
11           *velopment, or financial consumer protections.*

12           “(C) *OTHER DIRECTORS.*—

13           “(i) *QUALIFICATIONS.*—*Each inde-*  
14           *pendent director that is not a public inter-*  
15           *est director under subparagraph (B) shall*  
16           *have demonstrated knowledge of, or experi-*  
17           *ence in, financial management, auditing*  
18           *and accounting, risk management practices,*  
19           *derivatives, project development, or organi-*  
20           *zational management, or such other knowl-*  
21           *edge or expertise as the Director may pro-*  
22           *vide by regulation.*

23           “(ii) *CONSULTATION WITH BANKS.*—*In*  
24           *appointing other directors to serve on the*  
25           *board of a Federal home loan bank, the Di-*

1            *rector of the Federal Housing Finance*  
2            *Agency may consult with each Federal home*  
3            *loan bank about the knowledge, skills, and*  
4            *expertise needed to assist the board in better*  
5            *fulfilling its responsibilities.*

6            “(D) *CONFLICTS OF INTEREST.*—*Notwith-*  
7            *standing subsection (f)(2), an independent direc-*  
8            *tor under this paragraph of a Bank may not,*  
9            *during such director’s term of office, serve as an*  
10           *officer of any Federal Home Loan Bank or as a*  
11           *director or officer of any member of a Bank.*

12           “(E) *COMMUNITY DEMOGRAPHICS.*—*In ap-*  
13           *pointing independent directors of a Bank pursu-*  
14           *ant to this paragraph, the Director shall take*  
15           *into consideration the demographic makeup of*  
16           *the community most served by the Affordable*  
17           *Housing Program of the Bank pursuant to sec-*  
18           *tion 10(j).”;*

19           (2) *in the first sentence of subsection (b), by*  
20           *striking “elective directorship” and inserting “mem-*  
21           *ber directorship established pursuant to subsection*  
22           *(a)(2)”;*

23           (3) *in subsection (c)—*

24           (A) *by striking “elective” each place such*  
25           *term appears and inserting “member”, except—*

1                   (i) *in the second sentence, the second*  
2                   *place such term appears; and*

3                   (ii) *each place such term appears in*  
4                   *the fifth sentence; and*

5                   (B) *in the second sentence—*

6                   (i) *by inserting “(A) except as pro-*  
7                   *vided in clause (B) of this sentence,” before*  
8                   *“if at any time”; and*

9                   (ii) *by inserting before the period at*  
10                   *the end the following: “, and (B) clause (A)*  
11                   *of this sentence shall not apply to the direc-*  
12                   *torships of any Federal home loan bank re-*  
13                   *sulting from the merger of any two or more*  
14                   *such banks”; and*

15                   (4) *by striking “elective” each place such term*  
16                   *appears (except in subsections (c), (e), and (f)).*

17                   (b) *TERMS.—*

18                   (1) *IN GENERAL.—Section 7(d) of the Federal*  
19                   *Home Loan Bank Act (12 U.S.C. 1427(d)) is amend-*  
20                   *ed—*

21                   (A) *in the first sentence, by striking “3*  
22                   *years” and inserting “4 years”; and*

23                   (B) *in the second sentence—*

24                   (i) *by striking “Federal Home Loan*  
25                   *Bank System Modernization Act of 1999”*

1                   and inserting “Federal Housing Finance  
2                   Reform Act of 2007”; and

3                   (ii) by striking “1/3” and inserting “1/  
4                   4”.

5                   (2) SAVINGS PROVISION.—The amendments made  
6                   by paragraph (1) shall not apply to the term of office  
7                   of any director of a Federal home loan bank who is  
8                   serving as of the effective date of this title under sec-  
9                   tion 211, including any director elected to fill a va-  
10                  cancy in any such office.

11                  (c) CONTINUED SERVICE OF INDEPENDENT DIREC-  
12                  TORS AFTER EXPIRATION OF TERM.—Section 7(f)(2) of the  
13                  Federal Home Loan Bank Act (12 U.S.C. 1427(f)(2)) is  
14                  amended—

15                  (1) in the second sentence, by striking “or the  
16                  term of such office expires, whichever occurs first”;

17                  (2) by adding at the end the following new sen-  
18                  tence: “An independent Bank director may continue  
19                  to serve as a director after the expiration of the term  
20                  of such director until a successor is appointed.”;

21                  (3) in the paragraph heading, by striking “AP-  
22                  POINTED” and inserting “INDEPENDENT”; and

23                  (4) by striking “appointive” each place such  
24                  term appears and inserting “independent”.



1       (d) *CONFORMING AMENDMENTS.*—Section 7(f)(3) of  
2 *the Federal Home Loan Bank Act (12 U.S.C. 1427(f)(3))*  
3 *is amended—*

4           (1) *in the paragraph heading, by striking*  
5 *“ELECTED” and inserting “MEMBER”; and*

6           (2) *by striking “elective” each place such term*  
7 *appears in the first and third sentences and inserting*  
8 *“member”.*

9       (e) *COMPENSATION.*—Subsection (i) of section 7 of the  
10 *Federal Home Loan Bank Act (12 U.S.C. 1427(i)) is*  
11 *amended to read as follows:*

12       “(i) *DIRECTORS’ COMPENSATION.*—

13           “(1) *IN GENERAL.*—Each Federal home loan  
14 *bank may pay the directors on the board of directors*  
15 *for the bank reasonable and appropriate compensa-*  
16 *tion for the time required of such directors, and rea-*  
17 *sonable and appropriate expenses incurred by such*  
18 *directors, in connection with service on the board of*  
19 *directors, in accordance with resolutions adopted by*  
20 *the board of directors and subject to the approval of*  
21 *the Director.*

22           “(2) *ANNUAL REPORT BY THE BOARD.*—The Di-  
23 *rector shall include, in the annual report submitted to*  
24 *the Congress pursuant to section 1319B of the Federal*  
25 *Housing Enterprises Financial Safety and Soundness*



1           each place that term appears and inserting “reg-  
2           ulations of the Director”;

3           (3) in section 8 (12 U.S.C. 1428), in the section  
4           heading, by striking “BY THE BOARD”;

5           (4) in section 10(b) (12 U.S.C. 1430(b)), by  
6           striking “by formal resolution”;

7           (5) in section 10 (12 U.S.C. 1430), by adding at  
8           the end the following new subsection:

9           “(k) *MONITORING AND ENFORCING COMPLIANCE WITH*  
10 *AFFORDABLE HOUSING AND COMMUNITY INVESTMENT*  
11 *PROGRAM REQUIREMENTS.—The requirements under sub-*  
12 *section (i) and (j) that the Banks establish Community In-*  
13 *vestment and Affordable Housing Programs, respectively,*  
14 *and contribute to the Affordable Housing Program, shall*  
15 *be enforceable by the Director with respect to the Banks in*  
16 *the same manner and to the same extent as the housing*  
17 *goals under subpart B of part 2 of subtitle A of title XIII*  
18 *of the Housing and Community Development Act of 1992*  
19 *(12 U.S.C. 4561 et seq.) are enforceable under section 1336*  
20 *of such Act with respect to the Federal National Mortgage*  
21 *Association and the Federal Home Loan Mortgage Corpora-*  
22 *tion.”;*

23           (6) in section 11 (12 U.S.C. 1431)—

24                   (A) in subsection (b)—

25                           (i) in the first sentence—

1                   (I) by striking “The Board” and  
2                   inserting “The Office of Finance, as  
3                   agent for the Banks,”; and

4                   (II) by striking “the Board” and  
5                   inserting “such Office”; and

6                   (ii) in the second and fourth sentences,  
7                   by striking “the Board” each place such  
8                   term appears and inserting “the Office of  
9                   Finance”;

10                  (B) in subsection (c)—

11                   (i) by striking “the Board” the first  
12                   place such term appears and inserting “the  
13                   Office of Finance, as agent for the Banks,”;  
14                   and

15                   (ii) by striking “the Board” the second  
16                   place such term appears and inserting  
17                   “such Office”; and

18                  (C) in subsection (f)—

19                   (i) by striking the two commas after  
20                   “permit” and inserting “or”; and

21                   (ii) by striking the comma after “re-  
22                   quire”;

23                  (7) in section 15 (12 U.S.C. 1435), by inserting  
24                  “or the Director” after “the Board”;

1           (8) *in section 18 (12 U.S.C. 1438), by striking*  
2 *subsection (b);*

3           (9) *in section 21 (12 U.S.C. 1441)—*

4                 (A) *in subsection (b)—*

5                     (i) *in paragraph (5), by striking*  
6 *“Chairperson of the Federal Housing Fi-*  
7 *nance Board” and inserting “Director”;*  
8 *and*

9                     (ii) *in the heading for paragraph (8),*  
10 *by striking “FEDERAL HOUSING FINANCE*  
11 *BOARD” and inserting “DIRECTOR”;* and

12                 (B) *in subsection (i), in the heading for*  
13 *paragraph (2), by striking “FEDERAL HOUSING*  
14 *FINANCE BOARD” and inserting “DIRECTOR”;*

15           (10) *in section 23 (12 U.S.C. 1443), by striking*  
16 *“Board of Directors of the Federal Housing Finance*  
17 *Board” and inserting “Director”;*

18           (11) *by striking “the Board” each place such*  
19 *term appears in such Act (except in section 15 (12*  
20 *U.S.C. 1435), section 21(f)(2) (12 U.S.C. 1441(f)(2)),*  
21 *subsections (a), (k)(2)(B)(i), and (n)(6)(C)(ii) of sec-*  
22 *tion 21A (12 U.S.C. 1441a), subsections (f)(2)(C),*  
23 *and (k)(7)(B)(ii) of section 21B (12 U.S.C. 1441b),*  
24 *and the first two places such term appears in section*  
25 *22 (12 U.S.C. 1442)) and inserting “the Director”;*

1           (12) by striking “The Board” each place such  
2 term appears in such Act (except in sections 7(e) (12  
3 U.S.C. 1427(e)), and 11(b) (12 U.S.C. 1431(b)) and  
4 inserting “The Director”;

5           (13) by striking “the Board’s” each place such  
6 term appears in such Act and inserting “the Direc-  
7 tor’s”;

8           (14) by striking “The Board’s” each place such  
9 term appears in such Act and inserting “The Direc-  
10 tor’s”;

11           (15) by striking “the Finance Board” each place  
12 such term appears in such Act and inserting “the Di-  
13 rector”;

14           (16) by striking “Federal Housing Finance  
15 Board” each place such term appears and inserting  
16 “Director”;

17           (17) in section 11(i) (12 U.S.C. 1431(i), by  
18 striking “the Chairperson of”; and

19           (18) in section 21(e)(9) (12 U.S.C. 1441(e)(9)),  
20 by striking “Chairperson of the”.

21 **SEC. 204. JOINT ACTIVITIES OF BANKS.**

22           Section 11 of the Federal Home Loan Bank Act (12  
23 U.S.C. 1431) is amended by adding at the end the following  
24 new subsection:



1 of enabling the recipient to evaluate the nature and extent  
2 of its joint and several liability.”.

3 (b) *REGULATIONS.*—The regulations required under  
4 the amendment made by subsection (a) shall be issued in  
5 final form not later than 6 months after the effective date  
6 under section 211 of this Act.

7 **SEC. 206. REORGANIZATION OF BANKS AND VOLUNTARY**  
8 **MERGER.**

9 Section 26 of the Federal Home Loan Bank Act (12  
10 U.S.C. 1446) is amended—

11 (1) by inserting “(a) *REORGANIZATION.*—” be-  
12 fore “Whenever”; and

13 (2) by striking “liquidated or” each place such  
14 phrase appears;

15 (3) by striking “liquidation or”; and

16 (4) by adding at the end the following new sub-  
17 section:

18 “(b) *VOLUNTARY MERGERS.*—Any two or more Banks  
19 may, with the approval of the Director, and the approval  
20 of the boards of directors of the Banks involved, merge. The  
21 Director shall promulgate regulations establishing the con-  
22 ditions and procedures for the consideration and approval  
23 of any such voluntary merger, including the procedures for  
24 Bank member approval.”.



1 **SEC. 207. SECURITIES AND EXCHANGE COMMISSION DIS-**  
2 **CLOSURE.**

3 (a) *IN GENERAL.*—*The Federal Home Loan Banks*  
4 *shall be exempt from compliance with—*

5 (1) *sections 13(e), 14(a), 14(c), and 17A of the*  
6 *Securities Exchange Act of 1934 and related Commis-*  
7 *sion regulations; and*

8 (2) *section 15 of that Act and related Securities*  
9 *and Exchange Commission regulations with respect to*  
10 *transactions in capital stock of the Banks.*

11 (b) *MEMBER EXEMPTION.*—*The members of the Fed-*  
12 *eral Home Loan Banks shall be exempt from compliance*  
13 *with sections 13(d), 13(f), 13(g), 14(d), and 16 of the Secu-*  
14 *rities Exchange Act of 1934 and related Securities and Ex-*  
15 *change Commission regulations with respect to their owner-*  
16 *ship of, or transactions in, capital stock of the Federal*  
17 *Home Loan Banks.*

18 (c) *EXEMPTED AND GOVERNMENT SECURITIES.*—

19 (1) *CAPITAL STOCK.*—*The capital stock issued by*  
20 *each of the Federal Home Loan Banks under section*  
21 *6 of the Federal Home Loan Bank Act are—*

22 (A) *exempted securities within the meaning*  
23 *of section 3(a)(2) of the Securities Act of 1933;*  
24 *and*

1           (B) “*exempted securities*” within the mean-  
2           ing of section 3(a)(12)(A) of the *Securities Ex-*  
3           change Act of 1934.

4           (2) *OTHER OBLIGATIONS.*—*The debentures,*  
5           *bonds, and other obligations issued under section 11*  
6           *of the Federal Home Loan Bank Act are—*

7                   (A) *exempted securities within the meaning*  
8                   of section 3(a)(2) of the *Securities Act of 1933;*

9                   (B) “*government securities*” within the  
10                  meaning of section 3(a)(42) of the *Securities Ex-*  
11                  change Act of 1934;

12                  (C) *excluded from the definition of “govern-*  
13                  *ment securities broker” within section 3(a)(43)*  
14                  *of the Securities Exchange Act of 1934;*

15                  (D) *excluded from the definition of “govern-*  
16                  *ment securities dealer” within section 3(a)(44) of*  
17                  *the Securities Exchange Act of 1934; and*

18                  (E) “*government securities*” within the  
19                  meaning of section 2(a)(16) of the *Investment*  
20                  *Company Act of 1940.*

21           (d) *EXEMPTION FROM REPORTING REQUIREMENTS.*—  
22           *The Federal Home Loan Banks shall be exempt from peri-*  
23           *odic reporting requirements pertaining to—*

1           (1) *the disclosure of related party transactions*  
2           *that occur in the ordinary course of business of the*  
3           *Banks with their members; and*

4           (2) *the disclosure of unregistered sales of equity*  
5           *securities.*

6           (e) *TENDER OFFERS.—The Securities and Exchange*  
7           *Commission’s rules relating to tender offers shall not apply*  
8           *in connection with transactions in capital stock of the Fed-*  
9           *eral Home Loan Banks.*

10          (f) *REGULATIONS.—In issuing any final regulations*  
11          *to implement provisions of this section, the Securities and*  
12          *Exchange Commission shall consider the distinctive charac-*  
13          *teristics of the Federal Home Loan Banks when evaluating*  
14          *the accounting treatment with respect to the payment to*  
15          *Resolution Funding Corporation, the role of the combined*  
16          *financial statements of the twelve Banks, the accounting*  
17          *classification of redeemable capital stock, and the account-*  
18          *ing treatment related to the joint and several nature of the*  
19          *obligations of the Banks.*

20          **SEC. 208. COMMUNITY FINANCIAL INSTITUTION MEMBERS.**

21          (a) *TOTAL ASSET REQUIREMENT.—Paragraph (10) of*  
22          *section 2 of the Federal Home Loan Bank Act (12 U.S.C.*  
23          *1422(10)), as so redesignated by section 201(3) of this Act,*  
24          *is amended by striking “\$500,000,000” each place such*  
25          *term appears and inserting “\$1,000,000,000”.*

1           (b) *USE OF ADVANCES FOR COMMUNITY DEVELOP-*  
2 *MENT ACTIVITIES.*—Section 10(a) of the Federal Home  
3 *Loan Bank Act (12 U.S.C. 1430(a)) is amended—*

4                   (1) *in paragraph (2)(B)—*

5                           (A) *by striking “and”; and*

6                           (B) *by inserting “, and community develop-*  
7 *ment activities” before the period at the end;*

8                   (2) *in paragraph (3)(E), by inserting “or com-*  
9 *munity development activities” after “agriculture,”;*  
10 *and*

11                   (3) *in paragraph (6)—*

12                           (A) *by striking “and”; and*

13                           (B) *by inserting “, and ‘community devel-*  
14 *opment activities’” before “shall”.*

15 **SEC. 209. TECHNICAL AND CONFORMING AMENDMENTS.**

16           (a) *RIGHT TO FINANCIAL PRIVACY ACT OF 1978.*—Sec-  
17 *tion 1113(o) of the Right to Financial Privacy Act of 1978*  
18 *(12 U.S.C. 3413(o)) is amended—*

19                   (1) *by striking “Federal Housing Finance*  
20 *Board” and inserting “Federal Housing Finance*  
21 *Agency”; and*

22                   (2) *by striking “Federal Housing Finance*  
23 *Board’s” and inserting “Federal Housing Finance*  
24 *Agency’s”.*

1           (b) *RIEGLE COMMUNITY DEVELOPMENT AND REGU-*  
2 *LATORY IMPROVEMENT ACT OF 1994.*—Section 117(e) of the  
3 *Riegle Community Development and Regulatory Improve-*  
4 *ment Act of 1994 (12 U.S.C. 4716(e)) is amended by strik-*  
5 *ing “Federal Housing Finance Board” and inserting “Fed-*  
6 *eral Housing Finance Agency”.*

7           (c) *TITLE 18, UNITED STATES CODE.*—Title 18,  
8 *United States Code, is amended by striking “Federal Hous-*  
9 *ing Finance Board” each place such term appears in each*  
10 *of sections 212, 657, 1006, 1014, and inserting “Federal*  
11 *Housing Finance Agency”.*

12           (d) *MAHRA ACT OF 1997.*—Section 517(b)(4) of the  
13 *Multifamily Assisted Housing Reform and Affordability*  
14 *Act of 1997 (42 U.S.C. 1437f note) is amended by striking*  
15 *“Federal Housing Finance Board” and inserting “Federal*  
16 *Housing Finance Agency”.*

17           (e) *TITLE 44, UNITED STATES CODE.*—Section  
18 *3502(5) of title 44, United States Code, is amended by strik-*  
19 *ing “Federal Housing Finance Board” and inserting “Fed-*  
20 *eral Housing Finance Agency”.*

21           (f) *ACCESS TO LOCAL TV ACT OF 2000.*—Section  
22 *1004(d)(2)(D)(iii) of the Launching Our Communities’ Ac-*  
23 *cess to Local Television Act of 2000 (47 U.S.C.*  
24 *1103(d)(2)(D)(iii)) is amended by striking “Office of Fed-*  
25 *eral Housing Enterprise Oversight, the Federal Housing Fi-*

1 nance Board” and inserting “Federal Housing Finance  
2 Agency”.

3 (g) *SARBANES-OXLEY ACT OF 2002.*—Section  
4 105(b)(5)(B)(ii)(II) of the Sarbanes-Oxley Act of 2002 (15  
5 U.S.C. 7215(B)(5)(b)(ii)(II)) is amended by inserting “and  
6 the Director of the Federal Housing Finance Agency” after  
7 “Commission,”.

8 **SEC. 210. STUDY OF AFFORDABLE HOUSING PROGRAM USE**  
9 **FOR LONG-TERM CARE FACILITIES.**

10 *The Comptroller General shall conduct a study of the*  
11 *use of affordable housing programs of the Federal home loan*  
12 *banks under section 10(j) of the Federal Home Loan Bank*  
13 *Act to determine how and the extent to which such programs*  
14 *are used to assist long-term care facilities for low- and mod-*  
15 *erate-income individuals, and the effectiveness and ade-*  
16 *quacy of such assistance in meeting the needs of affected*  
17 *communities. The study shall examine the applicability of*  
18 *such use to the affordable housing programs required to be*  
19 *established by the enterprises pursuant to the amendment*  
20 *made by section 139 of this Act. The Comptroller General*  
21 *shall submit a report to the Director of the Federal Housing*  
22 *Finance Agency and the Congress regarding the results of*  
23 *the study not later than the expiration of the 1-year period*  
24 *beginning on the date of the enactment of this Act. This*

1 *section shall take effect on the date of the enactment of this*  
2 *Act.*

3 **SEC. 211. EFFECTIVE DATE.**

4 *Except as specifically provided otherwise in this title,*  
5 *this title shall take effect on and the amendments made by*  
6 *this title shall take effect on, and shall apply beginning on,*  
7 *the expiration of the 6-month period beginning on the date*  
8 *of the enactment of this Act.*

9 **TITLE III—TRANSFER OF FUNC-**  
10 **TIONS, PERSONNEL, AND**  
11 **PROPERTY OF OFFICE OF**  
12 **FEDERAL HOUSING ENTER-**  
13 **PRISE OVERSIGHT, FEDERAL**  
14 **HOUSING FINANCE BOARD,**  
15 **AND DEPARTMENT OF HOUS-**  
16 **ING AND URBAN DEVELOP-**  
17 **MENT**

18 **Subtitle A—Office of Federal**  
19 **Housing Enterprise Oversight**

20 **SEC. 301. ABOLISHMENT OF OFHEO.**

21 *(a) IN GENERAL.—Effective at the end of the 6-month*  
22 *period beginning on the date of the enactment of this Act,*  
23 *the Office of Federal Housing Enterprise Oversight of the*  
24 *Department of Housing and Urban Development and the*

1 *positions of the Director and Deputy Director of such Office*  
2 *are abolished.*

3       **(b) DISPOSITION OF AFFAIRS.**—*During the 6-month*  
4 *period beginning on the date of the enactment of this Act,*  
5 *the Director of the Office of Federal Housing Enterprise*  
6 *Oversight shall, for the purpose of winding up the affairs*  
7 *of the Office of Federal Housing Enterprise Oversight and*  
8 *in addition to carrying out its other responsibilities under*  
9 *law—*

10           (1) *manage the employees of such Office and pro-*  
11 *vide for the payment of the compensation and benefits*  
12 *of any such employee which accrue before the effective*  
13 *date of the transfer of such employee pursuant to sec-*  
14 *tion 303; and*

15           (2) *may take any other action necessary for the*  
16 *purpose of winding up the affairs of the Office.*

17       **(c) STATUS OF EMPLOYEES BEFORE TRANSFER.**—*The*  
18 *amendments made by title I and the abolishment of the Of-*  
19 *fice of Federal Housing Enterprise Oversight under sub-*  
20 *section (a) of this section may not be construed to affect*  
21 *the status of any employee of such Office as employees of*  
22 *an agency of the United States for purposes of any other*  
23 *provision of law before the effective date of the transfer of*  
24 *any such employee pursuant to section 303.*

25       **(d) USE OF PROPERTY AND SERVICES.**—



1           (1) *PROPERTY.*—*The Director of the Federal*  
2           *Housing Finance Agency may use the property of the*  
3           *Office of Federal Housing Enterprise Oversight to*  
4           *perform functions which have been transferred to the*  
5           *Director of the Federal Housing Finance Agency for*  
6           *such time as is reasonable to facilitate the orderly*  
7           *transfer of functions transferred pursuant to any*  
8           *other provision of this Act or any amendment made*  
9           *by this Act to any other provision of law.*

10           (2) *AGENCY SERVICES.*—*Any agency, depart-*  
11           *ment, or other instrumentality of the United States,*  
12           *and any successor to any such agency, department, or*  
13           *instrumentality, which was providing supporting*  
14           *services to the Office of Federal Housing Enterprise*  
15           *Oversight before the expiration of the period under*  
16           *subsection (a) in connection with functions that are*  
17           *transferred to the Director of the Federal Housing Fi-*  
18           *nance Agency shall—*

19                   (A) *continue to provide such services, on a*  
20                   *reimbursable basis, until the transfer of such*  
21                   *functions is complete; and*

22                   (B) *consult with any such agency to coordi-*  
23                   *nate and facilitate a prompt and reasonable*  
24                   *transition.*

25           (e) *SAVINGS PROVISIONS.*—

1           (1) *EXISTING RIGHTS, DUTIES, AND OBLIGA-*  
2           *TIONS NOT AFFECTED.*—*Subsection (a) shall not affect*  
3           *the validity of any right, duty, or obligation of the*  
4           *United States, the Director of the Office of Federal*  
5           *Housing Enterprise Oversight, or any other person,*  
6           *which—*

7                     *(A) arises under or pursuant to the title*  
8                     *XIII of the Housing and Community Develop-*  
9                     *ment Act of 1992, the Federal National Mortgage*  
10                    *Association Charter Act, the Federal Home Loan*  
11                    *Mortgage Corporation Act, or any other provi-*  
12                    *sion of law applicable with respect to such Of-*  
13                    *fice; and*

14                    *(B) existed on the day before the abolish-*  
15                    *ment under subsection (a) of this section.*

16           (2) *CONTINUATION OF SUITS.*—*No action or*  
17           *other proceeding commenced by or against the Direc-*  
18           *tor of the Office of Federal Housing Enterprise Over-*  
19           *sight in connection with functions that are trans-*  
20           *ferred to the Director of the Federal Housing Finance*  
21           *Agency shall abate by reason of the enactment of this*  
22           *Act, except that the Director of the Federal Housing*  
23           *Finance Agency shall be substituted for the Director*  
24           *of the Office of Federal Housing Enterprise Oversight*  
25           *as a party to any such action or proceeding.*

1 **SEC. 302. CONTINUATION AND COORDINATION OF CERTAIN**  
2 **REGULATIONS.**

3 *All regulations, orders, determinations, and resolutions*  
4 *that—*

5 *(1) were issued, made, prescribed, or allowed to*  
6 *become effective by—*

7 *(A) the Office of Federal Housing Enter-*  
8 *prise Oversight; or*

9 *(B) a court of competent jurisdiction and*  
10 *that relate to functions transferred by this sub-*  
11 *title; and*

12 *(2) are in effect on the date of the abolishment*  
13 *under section 301(a) of this Act, shall remain in effect*  
14 *according to the terms of such regulations, orders, de-*  
15 *terminations, and resolutions, and shall be enforceable*  
16 *by or against the Director of the Federal Housing Fi-*  
17 *nance Agency until modified, terminated, set aside, or*  
18 *superseded in accordance with applicable law by such*  
19 *Director, as the case may be, any court of competent*  
20 *jurisdiction, or operation of law.*

21 **SEC. 303. TRANSFER AND RIGHTS OF EMPLOYEES OF**  
22 **OFHEO.**

23 *(a) TRANSFER.—Each employee of the Office of Fed-*  
24 *eral Housing Enterprise Oversight shall be transferred to*  
25 *the Federal Housing Finance Agency for employment no*  
26 *later than the date of the abolishment under section 301(a)*

1 *of this Act and such transfer shall be deemed a transfer*  
2 *of function for purposes of section 3503 of title 5, United*  
3 *States Code.*

4       **(b) GUARANTEED POSITIONS.**—*Each employee trans-*  
5 *ferred under subsection (a) shall be guaranteed a position*  
6 *with the same status, tenure, grade, and pay as that held*  
7 *on the day immediately preceding the transfer. Each such*  
8 *employee holding a permanent position shall not be invol-*  
9 *untarily separated or reduced in grade or compensation for*  
10 *12 months after the date of transfer, except for cause or,*  
11 *if the employee is a temporary employee, separated in ac-*  
12 *cordance with the terms of the appointment.*

13       **(c) APPOINTMENT AUTHORITY FOR EXCEPTED SERV-**  
14 **ICE EMPLOYEES.**—

15           **(1) IN GENERAL.**—*In the case of employees occu-*  
16 *pying positions in the excepted service, any appoint-*  
17 *ment authority established pursuant to law or regula-*  
18 *tions of the Office of Personnel Management for filling*  
19 *such positions shall be transferred, subject to para-*  
20 *graph (2).*

21           **(2) DECLINE OF TRANSFER.**—*The Director of the*  
22 *Federal Housing Finance Agency may decline a*  
23 *transfer of authority under paragraph (1) (and the*  
24 *employees appointed pursuant thereto) to the extent*  
25 *that such authority relates to positions excepted from*

1        *the competitive service because of their confidential,*  
2        *policy-making, policy-determining, or policy-advocating*  
3        *character.*

4        *(d) REORGANIZATION.—If the Director of the Federal*  
5        *Housing Finance Agency determines, after the end of the*  
6        *1-year period beginning on the date of the abolishment*  
7        *under section 301(a), that a reorganization of the combined*  
8        *work force is required, that reorganization shall be deemed*  
9        *a major reorganization for purposes of affording affected*  
10       *employees retirement under section 8336(d)(2) or*  
11       *8414(b)(1)(B) of title 5, United States Code.*

12       *(e) EMPLOYEE BENEFIT PROGRAMS.—Any employee*  
13       *of the Office of Federal Housing Enterprise Oversight ac-*  
14       *cepting employment with the Director of the Federal Hous-*  
15       *ing Finance Agency as a result of a transfer under sub-*  
16       *section (a) may retain for 12 months after the date such*  
17       *transfer occurs membership in any employee benefit pro-*  
18       *gram of the Federal Housing Finance Agency or the Office*  
19       *of Federal Housing Enterprise Oversight, as applicable, in-*  
20       *cluding insurance, to which such employee belongs on the*  
21       *date of the abolishment under section 301(a) if—*

22                *(1) the employee does not elect to give up the*  
23                *benefit or membership in the program; and*

24                *(2) the benefit or program is continued by the*  
25                *Director of the Federal Housing Finance Agency,*

1 *The difference in the costs between the benefits which would*  
2 *have been provided by such agency and those provided by*  
3 *this section shall be paid by the Director of the Federal*  
4 *Housing Finance Agency. If any employee elects to give up*  
5 *membership in a health insurance program or the health*  
6 *insurance program is not continued by such Director, the*  
7 *employee shall be permitted to select an alternate Federal*  
8 *health insurance program within 30 days of such election*  
9 *or notice, without regard to any other regularly scheduled*  
10 *open season.*

11 **SEC. 304. TRANSFER OF PROPERTY AND FACILITIES.**

12 *Upon the abolishment under section 301(a), all prop-*  
13 *erty of the Office of Federal Housing Enterprise Oversight*  
14 *shall transfer to the Director of the Federal Housing Fi-*  
15 *nance Agency.*

16 ***Subtitle B—Federal Housing***  
17 ***Finance Board***

18 **SEC. 321. ABOLISHMENT OF THE FEDERAL HOUSING FI-**  
19 **NANCE BOARD.**

20 *(a) IN GENERAL.—Effective at the end of the 6-month*  
21 *period beginning on the date of enactment of this Act, the*  
22 *Federal Housing Finance Board (in this title referred to*  
23 *as the “Board”) is abolished.*

24 *(b) DISPOSITION OF AFFAIRS.—During the 6-month*  
25 *period beginning on the date of enactment of this Act, the*

1 *Board, for the purpose of winding up the affairs of the*  
2 *Board and in addition to carrying out its other responsibil-*  
3 *ities under law—*

4           (1) *shall manage the employees of such Board*  
5 *and provide for the payment of the compensation and*  
6 *benefits of any such employee which accrue before the*  
7 *effective date of the transfer of such employee under*  
8 *section 323; and*

9           (2) *may take any other action necessary for the*  
10 *purpose of winding up the affairs of the Board.*

11       (c) *STATUS OF EMPLOYEES BEFORE TRANSFER.—The*  
12 *amendments made by titles I and II and the abolishment*  
13 *of the Board under subsection (a) may not be construed to*  
14 *affect the status of any employee of such Board as employees*  
15 *of an agency of the United States for purposes of any other*  
16 *provision of law before the effective date of the transfer of*  
17 *any such employee under section 323.*

18       (d) *USE OF PROPERTY AND SERVICES.—*

19           (1) *PROPERTY.—The Director of the Federal*  
20 *Housing Finance Agency may use the property of the*  
21 *Board to perform functions which have been trans-*  
22 *ferred to the Director of the Federal Housing Finance*  
23 *Agency for such time as is reasonable to facilitate the*  
24 *orderly transfer of functions transferred under any*

1 *other provision of this Act or any amendment made*  
2 *by this Act to any other provision of law.*

3 (2) *AGENCY SERVICES.—Any agency, depart-*  
4 *ment, or other instrumentality of the United States,*  
5 *and any successor to any such agency, department, or*  
6 *instrumentality, which was providing supporting*  
7 *services to the Board before the expiration of the pe-*  
8 *riod under subsection (a) in connection with func-*  
9 *tions that are transferred to the Director of the Fed-*  
10 *eral Housing Finance Agency shall—*

11 (A) *continue to provide such services, on a*  
12 *reimbursable basis, until the transfer of such*  
13 *functions is complete; and*

14 (B) *consult with any such agency to coordi-*  
15 *nate and facilitate a prompt and reasonable*  
16 *transition.*

17 (e) *SAVINGS PROVISIONS.—*

18 (1) *EXISTING RIGHTS, DUTIES, AND OBLIGA-*  
19 *TIONS NOT AFFECTED.—Subsection (a) shall not affect*  
20 *the validity of any right, duty, or obligation of the*  
21 *United States, a member of the Board, or any other*  
22 *person, which—*

23 (A) *arises under the Federal Home Loan*  
24 *Bank Act or any other provision of law applica-*  
25 *ble with respect to such Board; and*



1           (B) existed on the day before the effective  
2           date of the abolishment under subsection (a).

3           (2) *CONTINUATION OF SUITS.*—No action or  
4           other proceeding commenced by or against the Board  
5           in connection with functions that are transferred to  
6           the Director of the Federal Housing Finance Agency  
7           shall abate by reason of the enactment of this Act, ex-  
8           cept that the Director of the Federal Housing Finance  
9           Agency shall be substituted for the Board or any  
10          member thereof as a party to any such action or pro-  
11          ceeding.

12 **SEC. 322. CONTINUATION AND COORDINATION OF CERTAIN**  
13                                   **REGULATIONS.**

14          (a) *IN GENERAL.*—All regulations, orders, determina-  
15          tions, and resolutions described under subsection (b) shall  
16          remain in effect according to the terms of such regulations,  
17          orders, determinations, and resolutions, and shall be en-  
18          forceable by or against the Director of the Federal Housing  
19          Finance Agency until modified, terminated, set aside, or  
20          superseded in accordance with applicable law by such Di-  
21          rector, any court of competent jurisdiction, or operation of  
22          law.

23          (b) *APPLICABILITY.*—A regulation, order, determina-  
24          tion, or resolution is described under this subsection if it—

1           (1) was issued, made, prescribed, or allowed to  
2       become effective by—

3                   (A) the Board; or

4                   (B) a court of competent jurisdiction and  
5       relates to functions transferred by this subtitle;  
6       and

7           (2) is in effect on the effective date of the abolish-  
8       ment under section 321(a).

9   **SEC. 323. TRANSFER AND RIGHTS OF EMPLOYEES OF THE**  
10                                   **FEDERAL HOUSING FINANCE BOARD.**

11       (a) *TRANSFER.*—Each employee of the Board shall be  
12       transferred to the Federal Housing Finance Agency for em-  
13       ployment not later than the effective date of the abolishment  
14       under section 321(a), and such transfer shall be deemed a  
15       transfer of function for purposes of section 3503 of title 5,  
16       United States Code.

17       (b) *GUARANTEED POSITIONS.*—Each employee trans-  
18       ferred under subsection (a) shall be guaranteed a position  
19       with the same status, tenure, grade, and pay as that held  
20       on the day immediately preceding the transfer. Each such  
21       employee holding a permanent position shall not be invol-  
22       untarily separated or reduced in grade or compensation for  
23       12 months after the date of transfer, except for cause or,  
24       if the employee is a temporary employee, separated in ac-  
25       cordance with the terms of the appointment.

1           (c) *APPOINTMENT AUTHORITY FOR EXCEPTED AND*  
2 *SENIOR EXECUTIVE SERVICE EMPLOYEES.—*

3                   (1) *IN GENERAL.—In the case of employees occu-*  
4 *pying positions in the excepted service or the Senior*  
5 *Executive Service, any appointment authority estab-*  
6 *lished under law or by regulations of the Office of*  
7 *Personnel Management for filling such positions shall*  
8 *be transferred, subject to paragraph (2).*

9                   (2) *DECLINE OF TRANSFER.—The Director of the*  
10 *Federal Housing Finance Agency may decline a*  
11 *transfer of authority under paragraph (1) to the ex-*  
12 *tent that such authority relates to positions excepted*  
13 *from the competitive service because of their confiden-*  
14 *tial, policymaking, policy-determining, or policy-ad-*  
15 *vocating character, and noncareer positions in the*  
16 *Senior Executive Service (within the meaning of sec-*  
17 *tion 3132(a)(7) of title 5, United States Code).*

18           (d) *REORGANIZATION.—If the Director of the Federal*  
19 *Housing Finance Agency determines, after the end of the*  
20 *1-year period beginning on the effective date of the abolish-*  
21 *ment under section 321(a), that a reorganization of the*  
22 *combined workforce is required, that reorganization shall*  
23 *be deemed a major reorganization for purposes of affording*  
24 *affected employees retirement under section 8336(d)(2) or*  
25 *8414(b)(1)(B) of title 5, United States Code.*

1       (e) *EMPLOYEE BENEFIT PROGRAMS.*—

2               (1) *IN GENERAL.*—Any employee of the Board  
3       accepting employment with the Federal Housing Fi-  
4       nance Agency as a result of a transfer under sub-  
5       section (a) may retain for 12 months after the date  
6       on which such transfer occurs membership in any em-  
7       ployee benefit program of the Federal Housing Fi-  
8       nance Agency or the Board, as applicable, including  
9       insurance, to which such employee belongs on the ef-  
10      fective date of the abolishment under section 321(a)  
11      if—

12                   (A) the employee does not elect to give up  
13                  the benefit or membership in the program; and

14                   (B) the benefit or program is continued by  
15                  the Director of the Federal Housing Finance  
16                  Agency.

17               (2) *COST DIFFERENTIAL.*—The difference in the  
18      costs between the benefits which would have been pro-  
19      vided by the Board and those provided by this section  
20      shall be paid by the Director of the Federal Housing  
21      Finance Agency. If any employee elects to give up  
22      membership in a health insurance program or the  
23      health insurance program is not continued by such  
24      Director, the employee shall be permitted to select an  
25      alternate Federal health insurance program within 30



1            *nity Development Act of 1992, and any other*  
2            *provisions of law, as in effect before the date of*  
3            *the enactment of this Act, but not including any*  
4            *such functions, duties, and activities of the Di-*  
5            *rector of the Office of Federal Housing Enter-*  
6            *prise Oversight of the Department of Housing*  
7            *and Urban Development and such Office; and*

8            *(B) the employees of the Department of*  
9            *Housing and Urban Development necessary to*  
10           *perform such functions, duties, and activities.*

11           *(2) ENTERPRISE-RELATED FUNCTIONS.—For*  
12           *purposes of this subtitle, the term “enterprise-related*  
13           *functions of the Department” means the functions,*  
14           *duties, and activities of the Department of Housing*  
15           *and Urban Development determined under paragraph*  
16           *(1)(A).*

17           *(3) ENTERPRISE-RELATED EMPLOYEES.—For*  
18           *purposes of this subtitle, the term “enterprise-related*  
19           *employees of the Department” means the employees of*  
20           *the Department of Housing and Urban Development*  
21           *determined under paragraph (1)(B).*

22           *(c) DISPOSITION OF AFFAIRS.—During the 6-month*  
23           *period beginning on the date of enactment of this Act, the*  
24           *Secretary of Housing and Urban Development (in this title*  
25           *referred to as the “Secretary”), for the purpose of winding*

1 *up the affairs of the Secretary regarding the enterprise-re-*  
2 *lated functions of the Department of Housing and Urban*  
3 *Development (in this title referred to as the “Department”)*  
4 *and in addition to carrying out the Secretary’s other re-*  
5 *sponsibilities under law regarding such functions—*

6           (1) *shall manage the enterprise-related employees*  
7 *of the Department and provide for the payment of the*  
8 *compensation and benefits of any such employee*  
9 *which accrue before the effective date of the transfer*  
10 *of any such employee under section 343; and*

11           (2) *may take any other action necessary for the*  
12 *purpose of winding up the enterprise-related functions*  
13 *of the Department.*

14           (d) *STATUS OF EMPLOYEES BEFORE TRANSFER.—The*  
15 *amendments made by titles I and II and the termination*  
16 *of the enterprise-related functions of the Department under*  
17 *subsection (b) may not be construed to affect the status of*  
18 *any employee of the Department as employees of an agency*  
19 *of the United States for purposes of any other provision*  
20 *of law before the effective date of the transfer of any such*  
21 *employee under section 343.*

22           (e) *USE OF PROPERTY AND SERVICES.—*

23           (1) *PROPERTY.—The Director of the Federal*  
24 *Housing Finance Agency may use the property of the*  
25 *Secretary to perform functions which have been trans-*

1       ferred to the Director of the Federal Housing Finance  
2       Agency for such time as is reasonable to facilitate the  
3       orderly transfer of functions transferred under any  
4       other provision of this Act or any amendment made  
5       by this Act to any other provision of law.

6               (2) *AGENCY SERVICES.*—Any agency, depart-  
7       ment, or other instrumentality of the United States,  
8       and any successor to any such agency, department, or  
9       instrumentality, which was providing supporting  
10      services to the Secretary regarding enterprise-related  
11      functions of the Department before the termination  
12      date under subsection (a) in connection with such  
13      functions that are transferred to the Director of the  
14      Federal Housing Finance Agency shall—

15               (A) continue to provide such services, on a  
16      reimbursable basis, until the transfer of such  
17      functions is complete; and

18               (B) consult with any such agency to coordi-  
19      nate and facilitate a prompt and reasonable  
20      transition.

21      (f) *SAVINGS PROVISIONS.*—

22               (1) *EXISTING RIGHTS, DUTIES, AND OBLIGA-*  
23      *TIONS NOT AFFECTED.*—Subsection (a) shall not affect  
24      the validity of any right, duty, or obligation of the



1 *United States, the Secretary, or any other person,*  
2 *which—*

3 *(A) arises under the authorizing statutes,*  
4 *title XIII of the Housing and Community Devel-*  
5 *opment Act of 1992, or any other provision of*  
6 *law applicable with respect to the Secretary, in*  
7 *connection with the enterprise-related functions*  
8 *of the Department; and*

9 *(B) existed on the day before the termi-*  
10 *nation date under subsection (a).*

11 *(2) CONTINUATION OF SUITS.—No action or*  
12 *other proceeding commenced by or against the Sec-*  
13 *retary in connection with the enterprise-related func-*  
14 *tions of the Department shall abate by reason of the*  
15 *enactment of this Act, except that the Director of the*  
16 *Federal Housing Finance Agency shall be substituted*  
17 *for the Secretary or any member thereof as a party*  
18 *to any such action or proceeding.*

19 **SEC. 342. CONTINUATION AND COORDINATION OF CERTAIN**  
20 **REGULATIONS.**

21 *(a) IN GENERAL.—All regulations, orders, and deter-*  
22 *minations described in subsection (b) shall remain in effect*  
23 *according to the terms of such regulations, orders, deter-*  
24 *minations, and resolutions, and shall be enforceable by or*  
25 *against the Director of the Federal Housing Finance Agen-*

1 *cy until modified, terminated, set aside, or superseded in*  
2 *accordance with applicable law by such Director, any court*  
3 *of competent jurisdiction, or operation of law.*

4 (b) *APPLICABILITY.—A regulation, order, or deter-*  
5 *mination is described under this subsection if it—*

6 (1) *was issued, made, prescribed, or allowed to*  
7 *become effective by—*

8 (A) *the Secretary; or*

9 (B) *a court of competent jurisdiction and*  
10 *that relate to the enterprise-related functions of*  
11 *the Department; and*

12 (2) *is in effect on the termination date under*  
13 *section 341(a).*

14 **SEC. 343. TRANSFER AND RIGHTS OF EMPLOYEES OF DE-**  
15 **PARTMENT OF HOUSING AND URBAN DEVEL-**  
16 **OPMENT.**

17 (a) *TRANSFER.—*

18 (1) *IN GENERAL.—Except as provided in para-*  
19 *graph (2), each enterprise-related employee of the De-*  
20 *partment shall be transferred to the Federal Housing*  
21 *Finance Agency for employment not later than the*  
22 *termination date under section 341(a) and such*  
23 *transfer shall be deemed a transfer of function for*  
24 *purposes of section 3503 of title 5, United States*  
25 *Code.*

1           (2) *AUTHORITY TO DECLINE.*—*An enterprise-re-*  
2           *lated employee of the Department may, in the discre-*  
3           *tion of the employee, decline transfer under para-*  
4           *graph (1) to a position in the Federal Housing Fi-*  
5           *nance Agency and shall be guaranteed a position in*  
6           *the Department with the same status, tenure, grade,*  
7           *and pay as that held on the day immediately pre-*  
8           *ceding the date that such declination was made. Each*  
9           *such employee holding a permanent position shall not*  
10          *be involuntarily separated or reduced in grade or*  
11          *compensation for 12 months after the date that the*  
12          *transfer would otherwise have occurred, except for*  
13          *cause or, if the employee is a temporary employee,*  
14          *separated in accordance with the terms of the ap-*  
15          *pointment.*

16          (b) *GUARANTEED POSITIONS.*—*Each enterprise-related*  
17          *employee of the Department transferred under subsection*  
18          (i) *shall be guaranteed a position with the same status,*  
19          *tenure, grade, and pay as that held on the day immediately*  
20          *preceding the transfer. Each such employee holding a per-*  
21          *manent position shall not be involuntarily separated or re-*  
22          *duced in grade or compensation for 12 months after the date*  
23          *of transfer, except for cause or, if the employee is a tem-*  
24          *porary employee, separated in accordance with the terms*  
25          *of the appointment.*

1           (c) *APPOINTMENT AUTHORITY FOR EXCEPTED AND*  
2 *SENIOR EXECUTIVE SERVICE EMPLOYEES.—*

3           (1) *IN GENERAL.—In the case of employees occu-*  
4 *pying positions in the excepted service or the Senior*  
5 *Executive Service, any appointment authority estab-*  
6 *lished under law or by regulations of the Office of*  
7 *Personnel Management for filling such positions shall*  
8 *be transferred, subject to paragraph (2).*

9           (2) *DECLINE OF TRANSFER.—The Director of the*  
10 *Federal Housing Finance Agency may decline a*  
11 *transfer of authority under paragraph (1) (and the*  
12 *employees appointed pursuant thereto) to the extent*  
13 *that such authority relates to positions excepted from*  
14 *the competitive service because of their confidential,*  
15 *policymaking, policy-determining, or policy-advoc-*  
16 *ating character, and noncareer positions in the Sen-*  
17 *ior Executive Service (within the meaning of section*  
18 *3132(a)(7) of title 5, United States Code).*

19           (d) *REORGANIZATION.—If the Director of the Federal*  
20 *Housing Finance Agency determines, after the end of the*  
21 *1-year period beginning on the termination date under sec-*  
22 *tion 341(a), that a reorganization of the combined work-*  
23 *force is required, that reorganization shall be deemed a*  
24 *major reorganization for purposes of affording affected em-*

1 *ployees retirement under section 8336(d)(2) or*  
2 *8414(b)(1)(B) of title 5, United States Code.*

3 *(e) EMPLOYEE BENEFIT PROGRAMS.—*

4 *(1) IN GENERAL.—Any enterprise-related em-*  
5 *ployee of the Department accepting employment with*  
6 *the Federal Housing Finance Agency as a result of a*  
7 *transfer under subsection (a) may retain for 12*  
8 *months after the date on which such transfer occurs*  
9 *membership in any employee benefit program of the*  
10 *Federal Housing Finance Agency or the Department,*  
11 *as applicable, including insurance, to which such em-*  
12 *ployee belongs on the termination date under section*  
13 *341(a) if—*

14 *(A) the employee does not elect to give up*  
15 *the benefit or membership in the program; and*

16 *(B) the benefit or program is continued by*  
17 *the Director of the Federal Housing Finance*  
18 *Agency.*

19 *(2) COST DIFFERENTIAL.—The difference in the*  
20 *costs between the benefits which would have been pro-*  
21 *vided by the Department and those provided by this*  
22 *section shall be paid by the Director of the Federal*  
23 *Housing Finance Agency. If any employee elects to*  
24 *give up membership in a health insurance program*  
25 *or the health insurance program is not continued by*





Union Calendar No. 84

110<sup>TH</sup> CONGRESS  
1<sup>ST</sup> Session

**H. R. 1427**

[Report No. 110-142]

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## **A BILL**

To reform the regulation of certain housing-related Government-sponsored enterprises, and for other purposes.

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MAY 9, 2007

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed