

109TH CONGRESS  
1ST SESSION

# H. R. 1461

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

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 5, 2005

Mr. BAKER (for himself, Mr. OXLEY, Mr. RYUN of Kansas, Mr. HENSARLING, Mr. JONES of North Carolina, Mr. DAVIS of Kentucky, Mr. FITZPATRICK of Pennsylvania, and Mr. SHAYS) introduced the following bill; which was referred to the Committee on Financial Services

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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,*

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

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Federal Housing Finance Reform Act of 2005”.

6 (b) TABLE OF CONTENTS.—The table of contents for  
7 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. Housing Finance Oversight Board.
- Sec. 104. Authority to require reports by regulated entities.
- Sec. 105. Assessments.
- Sec. 106. Examiners and accountants.
- Sec. 107. Prohibition and withholding of executive compensation.
- Sec. 108. Reviews of regulated entities.
- Sec. 109. Regulations and orders.
- Sec. 110. Risk-based capital requirements.
- Sec. 111. Minimum and critical capital levels.
- Sec. 112. Review of and authority over enterprise assets and obligations.
- Sec. 113. Corporate governance of enterprises.
- Sec. 114. Conforming amendments.

Subtitle B—Improvement of Mission Supervision

- Sec. 121. Transfer of program and activities approval and housing goal oversight.
- Sec. 122. Review by director of new programs and activities of enterprises.
- Sec. 123. Conforming loan limits.
- Sec. 124. Annual housing report regarding regulated entities.
- Sec. 125. Establishment of housing goals.
- Sec. 126. Home purchase goal and additions, modifications, and rescissions to goals.
- Sec. 127. Other requirements.
- Sec. 128. Monitoring and enforcing compliance with housing goals.
- Sec. 129. Enforcement.
- Sec. 130. Conforming amendments.

Subtitle C—Prompt Corrective Action

- Sec. 141. Capital classifications.
- Sec. 142. Supervisory actions applicable to undercapitalized regulated entities.
- Sec. 143. Supervisory actions applicable to significantly undercapitalized regulated entities.
- Sec. 144. Authority over critically undercapitalized regulated entities.
- Sec. 145. Conforming amendments.

Subtitle D—Enforcement Actions

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

Subtitle E—General Provisions

- Sec. 181. Presidentially appointed Directors of enterprises.
- Sec. 182. Report on portfolio operations, safety and soundness, and mission of enterprises.
- Sec. 183. Conforming and technical amendments.

Sec. 184. Effective date.

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. Debt issuing facility.

Sec. 205. Securities and Exchange Commission disclosure.

Sec. 206. Community financial institution members.

TITLE III—TRANSFER OF FUNCTIONS, PERSONNEL, AND PROPERTY OF OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT AND FEDERAL HOUSING FINANCE BOARD

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.

1 **SEC. 2. DEFINITIONS.**

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

4 (1) by striking “an enterprise” each place such  
5 term appears (except in paragraphs (4), (13)(A),  
6 and (18)) and inserting “a regulated entity”;

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

10 (3) in paragraph (5), by striking “Office of  
11 Federal Housing Enterprise Oversight of the De-

1 department of Housing and Urban Development” and  
2 inserting “Federal Housing Finance Agency”;

3 (4) in each of paragraphs (8), (9), (10), and  
4 (19), by striking “Secretary” each place that term  
5 appears and inserting “Director”;

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

8 (6) by redesignating paragraphs (16) through  
9 (19) as paragraphs (19) through (22), respectively;

10 (7) by striking paragraphs (14) and (15) and  
11 inserting the following new paragraphs:

12 “(17) REGULATED ENTITY.—The term ‘regu-  
13 lated entity’ means—

14 “(A) the Federal National Mortgage Asso-  
15 ciation and any affiliate thereof;

16 “(B) the Federal Home Loan Mortgage  
17 Corporation and any affiliate thereof; and

18 “(C) each Federal home loan bank.

19 “(18) REGULATED ENTITY-AFFILIATED  
20 PARTY.—The term ‘regulated entity-affiliated party’  
21 means—

22 “(A) any director, officer, employee, or  
23 controlling stockholder of, or agent for, a regu-  
24 lated entity;

1           “(B) any shareholder, affiliate, consultant,  
2           or joint venture partner of a regulated entity,  
3           and any other person, as determined by the Di-  
4           rector (by regulation or on a case-by-case basis)  
5           that participates in the conduct of the affairs of  
6           a regulated entity; and

7           “(C) any independent contractor for a reg-  
8           ulated entity (including any attorney, appraiser,  
9           or accountant), if—

10                   “(i) the independent contractor know-  
11                   ingly or recklessly participates in—

12                           “(I) any violation of any law or  
13                           regulation;

14                           “(II) any breach of fiduciary  
15                           duty; or

16                           “(III) any unsafe or unsound  
17                           practice; and

18                   “(ii) such violation, breach, or prac-  
19                   tice caused, or is likely to cause, more than  
20                   a minimal financial loss to, or a significant  
21                   adverse effect on, the regulated entity; and

22           “(D) any not-for-profit corporation that re-  
23           ceives its principal funding, on an ongoing  
24           basis, from any regulated entity.”;

1           (8) by redesignating paragraphs (2) through  
2           (13) as paragraphs (5) through (16), respectively;  
3           and

4           (9) by inserting after paragraph (1) the fol-  
5           lowing new paragraphs:

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

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

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

12           “(B) the Federal Home Loan Mortgage  
13           Corporation Act; and

14           “(C) the Federal Home Loan Bank Act.

15           “(4) BOARD.—The term ‘Board’ means the  
16           Housing Finance Oversight Board established under  
17           section 1313.”.

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 The Housing and Community Development Act of  
9 1992 (12 U.S.C. 4501 et seq.) is amended by striking sec-  
10 tions 1311 and 1312 and inserting the following:

11 **“SEC. 1311. ESTABLISHMENT OF THE FEDERAL HOUSING**  
12 **FINANCE AGENCY.**

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

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

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

21 “(2) AUTHORITY OVER FANNIE MAE AND  
22 FREDDIE MAC, FEDERAL HOME LOAN BANKS, AND  
23 FEDERAL HOME LOAN BANK FINANCE CORPORA-  
24 TION.—The Director of the Federal Housing Fi-  
25 nance Agency shall have general supervisory and

1 regulatory authority over each regulated entity and  
2 the Federal Home Loan Bank Finance Corporation,  
3 and shall exercise such general regulatory authority,  
4 including such duties and authorities set forth under  
5 section 1313 of this Act, to ensure that the purposes  
6 of this Act, the authorizing statutes, and any other  
7 applicable law are carried out.

8 “(c) SAVINGS PROVISION.—The authority of the Di-  
9 rector to take actions under subtitles B and C shall not  
10 in any way limit the general supervisory and regulatory  
11 authority granted to the Director under subsection (b).

12 **“SEC. 1312. DIRECTOR.**

13 “(a) ESTABLISHMENT OF POSITION.—There is estab-  
14 lished the position of the Director of the Federal Housing  
15 Finance Agency, who shall be the head of the Agency.

16 “(b) APPOINTMENT; TERM.—

17 “(1) APPOINTMENT.—The Director shall be ap-  
18 pointed by the President, by and with the advice and  
19 consent of the Senate, from among individuals who  
20 are citizens of the United States, have a dem-  
21 onstrated understanding of financial management or  
22 oversight, and have a demonstrated understanding  
23 of capital markets, including the mortgage securities  
24 markets and housing finance.



1           “(2) TERM.—The Director shall be appointed  
2 for a term of 5 years.

3           “(3) VACANCY.—A vacancy in the position of  
4 Director that occurs before the expiration of the  
5 term for which a Director was appointed shall be  
6 filled in the manner established under paragraph  
7 (1), and the Director appointed to fill such vacancy  
8 shall be appointed only for the remainder of such  
9 term.

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

14           “(5) TRANSITIONAL PROVISION.—Notwith-  
15 standing paragraphs (1) and (2), the person serving  
16 as the Director of the Office of Federal Housing En-  
17 terprise Oversight of the Department of Housing  
18 and Urban Development on the effective date under  
19 section 184 of the Federal Housing Finance Reform  
20 Act of 2005, shall serve as the Director until a suc-  
21 cessor has been appointed under paragraph (1).

22           “(c) DEPUTY DIRECTOR OF THE DIVISION OF EN-  
23 TERPRISE REGULATION.—

24           “(1) IN GENERAL.—The Agency shall have a  
25 Deputy Director of the Division of Enterprise Regu-

1 lation, who shall be designated by the Director from  
2 among individuals who are citizens of the United  
3 States, have a demonstrated understanding of finan-  
4 cial management or oversight, and have a dem-  
5 onstrated understanding of mortgage securities mar-  
6 kets and housing finance.

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

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 designated by  
17 the Director from among individuals who are citi-  
18 zens of the United States, have a demonstrated un-  
19 derstanding of financial management or oversight,  
20 and have a demonstrated understanding of the Fed-  
21 eral Home Loan Bank System and housing finance.

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

1       respect to the oversight of the Federal home loan  
2       banks 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 des-  
6       ignated by the Director from among individuals who  
7       are citizens of the United States, and have a dem-  
8       onstrated understanding of the housing markets and  
9       housing finance.

10              “(2) FUNCTIONS.—The Deputy Director for  
11       Housing shall have such functions, powers, and du-  
12       ties with respect to the oversight of the housing mis-  
13       sion and goals of the enterprises as the Director  
14       shall prescribe.

15       “(f) ACTING DIRECTOR.—In the event of the death,  
16       resignation, sickness, or absence of the Director, the  
17       Board shall, by a majority vote, designate either the Dep-  
18       uty Director of the Division of Enterprise Regulation, the  
19       Deputy Director of the Division of Federal Home Loan  
20       Bank Regulation, or the Deputy Director for Housing, to  
21       serve as acting Director until the return of the Director,  
22       or the appointment of a successor pursuant to subsection  
23       (b).

24       “(g) LIMITATIONS.—The Director and each of the  
25       Deputy Directors may not—

1           “(1) have any direct or indirect financial inter-  
2           est in any regulated entity or regulated entity-affili-  
3           ated party;

4           “(2) hold any office, position, or employment in  
5           any regulated entity or regulated entity-affiliated  
6           party; or

7           “(3) have served as an executive officer or di-  
8           rector of any regulated entity, or regulated entity-af-  
9           filiated party, at any time during the 3-year period  
10          ending on the date of appointment of such individual  
11          as Director or Deputy Director.”.

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

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

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

18          “(a) DUTIES.—

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

21                         “(A) to oversee the prudential operations  
22                         of each regulated entity, on a consolidated  
23                         basis; and

24                         “(B) to ensure that—

1           “(i) each regulated entity operates in  
2           a safe and sound manner, including main-  
3           tenance of adequate capital and internal  
4           controls;

5           “(ii) the operations and activities of  
6           each regulated entity foster liquid, effi-  
7           cient, competitive, and resilient national  
8           housing finance markets (including activi-  
9           ties relating to mortgages on housing for  
10          low- and moderate- income families involv-  
11          ing a reasonable economic return that may  
12          be less than the return earned on other ac-  
13          tivities);

14          “(iii) each regulated entity complies  
15          with this title and the rules, regulations,  
16          guidelines, and orders issued under this  
17          title and the authorizing statutes; and

18          “(iv) each regulated entity carries out  
19          its statutory mission only through activi-  
20          ties that are consistent with this title and  
21          the authorizing statutes.

22          “(2) SCOPE OF AUTHORITY.—The authority of  
23          the Director shall include the authority—

24                  “(A) to review and, if warranted based on  
25                  the principal duties described in paragraph (1),

1           reject any acquisition or transfer of a control-  
2           ling interest in an enterprise; and

3           “(B) to exercise such incidental powers as  
4           may be necessary or appropriate to fulfill the  
5           duties and responsibilities of the Director in the  
6           supervision and regulation of each regulated en-  
7           tity.

8           “(b) DELEGATION OF AUTHORITY.—The Director  
9           may delegate to officers and employees of the Agency any  
10          of the functions, powers, or duties of the Director, as the  
11          Director considers appropriate.

12          “(c) LITIGATION AUTHORITY.—

13                 “(1) IN GENERAL.—In enforcing any provision  
14                 of this title, any regulation or order prescribed under  
15                 this title, or any other provision of law, rule, regula-  
16                 tion, or order, or in any other action, suit, or pro-  
17                 ceeding to which the Director is a party or in which  
18                 the Director is interested, and in the administration  
19                 of conservatorships and receiverships, the Director  
20                 may act in the Director’s own name and through the  
21                 Director’s own attorneys.

22                 “(2) SUBJECT TO SUIT.—Except as otherwise  
23                 provided by law, the Director shall be subject to suit  
24                 (other than suits on claims for money damages) by  
25                 a regulated entity or director or officer thereof with

1 respect to any matter under this title or any other  
2 applicable provision of law, rule, order, or regulation  
3 under this title, in the United States district court  
4 for the judicial district in which the regulated entity  
5 has its principal place of business, or in the United  
6 States District Court for the District of Columbia,  
7 and the Director may be served with process in the  
8 manner prescribed by the Federal Rules of Civil  
9 Procedure.

10 **“SEC. 1313A. PRUDENTIAL MANAGEMENT AND OPERATIONS**  
11 **STANDARDS.**

12 “(a) STANDARDS.—The Director shall establish  
13 standards, by regulation, guideline, or order, for each reg-  
14 ulated entity relating to—

15 “(1) adequacy of internal controls and informa-  
16 tion systems taking into account the nature and  
17 scale of business operations;

18 “(2) independence and adequacy of internal  
19 audit systems;

20 “(3) management of credit and counterparty  
21 risk, including systems to identify concentrations of  
22 credit risk and prudential limits to restrict exposure  
23 of the regulated entity to a single counterparty or  
24 groups of related counterparties;

25 “(4) management of interest rate risk exposure;

1           “(5) management of market risk, including  
2 standards that provide for systems that accurately  
3 measure, monitor, and control market risks and, as  
4 warranted, that establish limitations on market risk;

5           “(6) adequacy and maintenance of liquidity and  
6 reserves;

7           “(7) management of any asset and investment  
8 portfolio;

9           “(8) investments and acquisitions by a regu-  
10 lated entity, to ensure that they are consistent with  
11 the purposes of this Act and the Federal National  
12 Mortgage Association Charter Act, the Federal  
13 Home Loan Mortgage Corporation Act, or the Fed-  
14 eral Home Loan Bank Act, as appropriate;

15           “(9) maintenance of adequate records, in ac-  
16 cordance with consistent accounting policies and  
17 practices that enable the Director to evaluate the fi-  
18 nancial condition of the regulated entity;

19           “(10) issuance of subordinated debt by that  
20 particular regulated entity, as the Director considers  
21 necessary;

22           “(11) overall risk management processes, in-  
23 cluding adequacy of oversight by senior management  
24 and the board of directors and of processes and poli-  
25 cies to identify, measure, monitor, and control mate-



1       rial risks, including reputational risks, and for ade-  
2       quate, well-tested business resumption plans for all  
3       major systems with remote site facilities to protect  
4       against disruptive events; and

5               “(12) such other operational and management  
6       standards as the Director determines to be appro-  
7       priate.

8       “(b) FAILURE TO MEET STANDARDS.—

9               “(1) PLAN REQUIREMENT.—

10               “(A) IN GENERAL.—If the Director deter-  
11       mines that a regulated entity fails to meet any  
12       standard established under subsection (a)—

13               “(i) if such standard is established by  
14       regulation, the Director shall require the  
15       regulated entity to submit an acceptable  
16       plan to the Director within the time al-  
17       lowed under subparagraph (C); and

18               “(ii) if such standard is established by  
19       guideline, the Director may require the  
20       regulated entity to submit a plan described  
21       in clause (i).

22               “(B) CONTENTS.—Any plan required  
23       under subparagraph (A) shall specify the ac-  
24       tions that the regulated entity will take to cor-  
25       rect the deficiency. If the regulated entity is

1           undercapitalized, the plan may be a part of the  
2           capital restoration plan for the regulated entity  
3           under section 1369C.

4           “(C) DEADLINES FOR SUBMISSION AND  
5           REVIEW.—The Director shall by regulation es-  
6           tablish deadlines that—

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

15                   “(ii) require the Director to act on  
16                   plans expeditiously, and generally not later  
17                   than 30 days after the plan is submitted.

18           “(2) REQUIRED ORDER UPON FAILURE TO SUB-  
19           MIT OR IMPLEMENT PLAN.—If a regulated entity  
20           fails to submit an acceptable plan within the time al-  
21           lowed under paragraph (1)(C), or fails in any mate-  
22           rial respect to implement a plan accepted by the Di-  
23           rector, the following shall apply:

1           “(A) REQUIRED CORRECTION OF DEFICIENCY.—The Director shall, by order, require  
2 the regulated entity to correct the deficiency.  
3

4           “(B) OTHER AUTHORITY.—The Director  
5 may, by order, take one or more of the following actions until the deficiency is corrected:  
6

7                   “(i) Prohibit the regulated entity from  
8 permitting its average total assets (as such  
9 term is defined in section 1316(b)) during  
10 any calendar quarter to exceed its average  
11 total assets during the preceding calendar  
12 quarter, or restrict the rate at which the  
13 average total assets of the entity may increase from one calendar quarter to another.  
14  
15

16                   “(ii) Require the regulated entity—

17                           “(I) in the case of an enterprise,  
18 to increase its ratio of core capital to  
19 assets.

20                           “(II) in the case of a Federal  
21 home loan bank, to increase its ratio  
22 of total capital (as such term is defined in section 6(a)(5) of the Federal  
23 Home Loan Bank Act (12 U.S.C.  
24 1426(a)(5)) to assets.  
25

1                   “(iii) Require the regulated entity to  
2                   take any other action that the Director de-  
3                   termines will better carry out the purposes  
4                   of subtitle C than any of the actions de-  
5                   scribed in this subparagraph

6                   “(3) MANDATORY RESTRICTIONS.—In com-  
7                   plying with paragraph (2), the Director shall take  
8                   one or more of the actions described in clauses (i)  
9                   through (iii) of paragraph (2)(B) if—

10                   “(A) the Director determines that the reg-  
11                   ulated entity fails to meet any standard pre-  
12                   scribed under subsection (a);

13                   “(B) the regulated entity has not corrected  
14                   the deficiency; and

15                   “(C) during the 18-month period before  
16                   the date on which the regulated entity first  
17                   failed to meet the standard, the entity under-  
18                   went extraordinary growth, as defined by the  
19                   Director.

20                   “(c) OTHER ENFORCEMENT AUTHORITY NOT AF-  
21                   FECTED.—The authority of the Director under this sec-  
22                   tion is in addition to any other authority of the Director.”.

23                   (b) INDEPENDENCE IN CONGRESSIONAL TESTIMONY  
24                   AND RECOMMENDATIONS.—Section 111 of Public Law  
25                   93–495 (12 U.S.C. 250) is amended by striking “the Fed-

1 eral Housing Finance Board” and inserting “the Director  
2 of the Federal Housing Finance Agency”.

3 **SEC. 103. HOUSING FINANCE OVERSIGHT BOARD.**

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

9 **“SEC. 1313B. HOUSING FINANCE OVERSIGHT BOARD.**

10 “(a) IN GENERAL.—There is established the Housing  
11 Finance Oversight Board.

12 “(b) DUTIES.—The Board shall advise the Director  
13 with respect to overall strategies and policies in carrying  
14 out the duties of the Director under this title. Except as  
15 otherwise provided under this Act, the Board shall not ex-  
16 ercise any executive authority.

17 “(c) COMPOSITION.—The Board shall be comprised  
18 of 5 members, as follows:

19 “(1) One member shall be the Director, who  
20 shall serve as the Chairperson of the Board.

21 “(2) One member shall be the Secretary of the  
22 Treasury or the designee of the Secretary.

23 “(3) One member shall be the Secretary of  
24 Housing and Urban Development or the designee of  
25 the Secretary.

1           “(4) Two members shall be appointed by the  
2           President, by and with the advice and consent of the  
3           Senate, who shall include—

4                   “(A) one individual who has extensive ex-  
5                   perience and expertise in the capital markets  
6                   (including debt markets), the secondary mort-  
7                   gage market, and mortgage-backed securities;  
8                   and

9                   “(B) one individual who has extensive ex-  
10                   perience and expertise in mortgage finance (in-  
11                   cluding single family and multifamily housing  
12                   mortgage finance), development of affordable  
13                   housing, and economic development and revital-  
14                   ization.

15           “(d) FULL-TIME MEMBERS AND STAFF.—

16                   “(1) FULL-TIME MEMBERS.—The members of  
17                   the Board pursuant to subsection (c)(4) shall serve  
18                   on a full-time basis.

19                   “(2) STAFF.—The Board may appoint and fix  
20                   the compensation of such staff as the Board con-  
21                   siders necessary to carry out the functions of the  
22                   Board.

23           “(e) MEETINGS.—

24                   “(1) IN GENERAL.—The Board shall meet upon  
25                   notice by the Director, but in no event shall the

1 Board meet less frequently than once every 3  
2 months.

3 “(2) SPECIAL MEETINGS.—Any member of the  
4 Board may, upon giving written notice to the Direc-  
5 tor, require a special meeting of the Board, which  
6 shall be convened by the Director within 30 days  
7 after such notice.

8 “(f) TESTIMONY.—On an annual basis, the Board  
9 shall testify before Congress regarding—

10 “(1) the safety and soundness of the regulated  
11 entities;

12 “(2) any material deficiencies in the conduct of  
13 the operations of the regulated entities;

14 “(3) the overall operational status of the regu-  
15 lated entities;

16 “(4) an evaluation of the performance of the  
17 regulated entities in carrying out their respective  
18 missions;

19 “(5) operations, resources, and performance of  
20 the Agency and the Board; and

21 “(6) such other matters relating to the Agency,  
22 the Board, and the regulated entities, and their ful-  
23 fillment of their missions, as the Board determines  
24 appropriate.

1       “(g) COSTS.—Costs of the Board, including staff,  
2 shall be paid by the Agency as a cost and expense of the  
3 Agency.”.

4       (b) ANNUAL REPORT OF THE DIRECTOR.—Section  
5 1319B(a) of the Housing and Community Development  
6 Act of 1992 (12 U.S.C. 4521 (a)) is amended—

7           (1) in paragraph (3), by striking “and” at the  
8 end; and

9           (2) by striking paragraph (4) and inserting the  
10 following new paragraphs:

11           “(4) an assessment of the Board with respect  
12 to—

13                   “(A) the safety and soundness of the regu-  
14 lated entities;

15                   “(B) any material deficiencies in the con-  
16 duct of the operations of the regulated entities;

17                   “(C) the overall operational status of the  
18 regulated entities;

19                   “(D) an evaluation of the performance of  
20 the regulated entities in carrying out their mis-  
21 sions, including compliance of the enterprises  
22 with the housing goals under subpart B of part  
23 2 of this subtitle and compliance of the Federal  
24 home loan banks with the community invest-  
25 ment and affordable housing programs under



1 subsections (i) and (j) of section 10 of the Fed-  
2 eral Home Loan Bank Act;

3 “(E) an evaluation of the performance of  
4 the Agency in fulfilling its duties and respon-  
5 sibilities under law; and

6 “(F) such other matters relating to the  
7 Board and the fulfillment of its duties as the  
8 Board considers appropriate;

9 “(5) operations, resources, and performance of  
10 the Agency; and

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

13 **SEC. 104. AUTHORITY TO REQUIRE REPORTS BY REGU-**  
14 **LATED ENTITIES.**

15 Section 1314 of the Housing and Community Devel-  
16 opment Act of 1992 (12 U.S.C. 4514) is amended—

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

19 and

20 (2) in subsection (a)—

21 (A) in the subsection heading, by striking  
22 “SPECIAL REPORTS AND REPORTS OF FINAN-  
23 CIAL CONDITION” and inserting “REGULAR  
24 AND SPECIAL REPORTS”;

25 (B) in paragraph (1)—

1 (i) in the paragraph heading, by strik-  
2 ing “FINANCIAL CONDITION” and inserting  
3 “REGULAR REPORTS”; and

4 (ii) by striking “reports of financial  
5 condition and operations” and inserting  
6 “regular reports on the condition (includ-  
7 ing financial condition), management, ac-  
8 tivities, or operations of the regulated enti-  
9 ty, as the Director considers appropriate”;  
10 and

11 (C) in paragraph (2), after “submit special  
12 reports” insert “on any of the topics specified  
13 in paragraph (1) or such other topics”.

14 **SEC. 105. ASSESSMENTS.**

15 Section 1316 of the Housing and Community Devel-  
16 opment Act of 1992 (12 U.S.C. 4516) is amended—

17 (1) by striking subsection (a) and inserting the  
18 following new subsection:

19 “(a) ANNUAL ASSESSMENTS.—The Director shall es-  
20 tablish and collect from the regulated entities annual as-  
21 sessments in an amount not exceeding the amount suffi-  
22 cient to provide for reasonable costs and expenses of the  
23 Agency, including—

1           “(1) the expenses of any examinations under  
2 section 1317 of this Act and under section 20 of the  
3 Federal Home Loan Bank Act;

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

6           “(3) such amounts in excess of actual expenses  
7 for any given year as deemed necessary by the Di-  
8 rector to maintain a working capital fund in accord-  
9 ance with subsection (e).”;

10           (2) in subsection (b)—

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

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

18           (C) in paragraph (1)—

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

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

23           (iii) by striking “both enterprises”  
24 and inserting “all of the regulated enti-  
25 ties”; and

1 (D) in paragraph (3)——

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

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

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

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

16 “(A) ENTERPRISES.—With respect to an  
17 enterprise, the sum of—”;

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

20 “(B) FEDERAL HOME LOAN BANKS.—With  
21 respect to a Federal home loan bank, the total  
22 assets of the Bank, as determined by the Direc-  
23 tor in accordance with generally accepted ac-  
24 counting principles.”.

1           (3) in subsection (c), by inserting after the pe-  
2           riod at the end the following: “The Director may ad-  
3           just the amounts of any semiannual assessments for  
4           an assessment under subsection (a) that are to be  
5           paid pursuant to subsection (b) by a regulated enti-  
6           ty, as necessary in the discretion of the Director, to  
7           ensure that the costs of enforcement activities under  
8           subtitles B and C for a regulated entity are borne  
9           only by that entity.”;

10           (4) in subsection (d), by striking “If” and in-  
11           serting “Except with respect to amounts collected  
12           pursuant 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  
20           of the amount the Director deems necessary to maintain  
21           a working capital fund.

22           “(f) TREATMENT OF ASSESSMENTS.—

23           “(1) DEPOSIT.—Amounts received by the Di-  
24           rector from assessments under this section may be  
25           deposited in the manner provided in section 5234 of

1 the Revised Statutes (12 U.S.C. 192) with respect  
2 to assessments 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.—Not-  
8 withstanding any other provision of law, the  
9 amounts received by the Director from any assess-  
10 ment under this section shall not be subject to ap-  
11 portionment for the purpose of chapter 15 of title  
12 31, United States Code, or under any other author-  
13 ity.

14 “(4) USE OF FUNDS.—The Director may use  
15 any amounts received by the Director from assess-  
16 ments under this section for compensation of the Di-  
17 rector and other employees of the Agency and for all  
18 other expenses of the Director and the Agency.

19 “(5) AVAILABILITY OF OVERSIGHT FUND  
20 AMOUNTS.—Notwithstanding any other provision of  
21 law, any amounts remaining in the Federal Housing  
22 Enterprises Oversight Fund established under this  
23 section (as in effect before the effective date under  
24 section 184 of the Federal Housing Finance Reform  
25 Act of 2005), and any amounts remaining from as-

1        assessments on the Federal Home Loan banks pursu-  
2        ant to section 18(b) of the Federal Home Loan  
3        Bank Act (12 U.S.C. 1438(b)), shall, upon such ef-  
4        fective date, be treated for purposes of this sub-  
5        section as amounts received from assessments under  
6        this section.

7        “(g) BUDGET AND FINANCIAL REPORTS.—

8                “(1) FINANCIAL OPERATING PLANS AND FORE-  
9        CASTS.—The Director shall provide to the Director  
10       of the Office of Management and Budget copies of  
11       the Director’s financial operating plans and fore-  
12       casts as prepared by the Director in the ordinary  
13       course of the Agency’s operations, and copies of the  
14       quarterly reports of the Agency’s financial condition  
15       and results of operations as prepared by the Direc-  
16       tor in the ordinary course of the Agency’s oper-  
17       ations.

18               “(2) RULE OF CONSTRUCTION.—This sub-  
19       section may not be construed as implying any obliga-  
20       tion on the part of the Director to consult with or  
21       obtain the consent or approval of the Director of the  
22       Office of Management and Budget with respect to  
23       any reports, plans, forecasts, or other information  
24       referred to in paragraph (1) or any jurisdiction or

1 oversight over the affairs or operations of the Agen-  
2 cy.

3 “(h) AUDIT OF AGENCY.—

4 “(1) IN GENERAL.—The financial transactions  
5 of the Agency shall be audited by the Government  
6 Accountability Office in accordance with the prin-  
7 ciples and procedures applicable to commercial cor-  
8 porate transactions and under such rules and regu-  
9 lations as may be prescribed by the Comptroller  
10 General of the United States. The audit shall be  
11 conducted at the place or places where accounts of  
12 the Agency are normally kept. The representatives of  
13 the Government Accountability Office shall have ac-  
14 cess to all books, accounts, records, reports, files,  
15 and all other papers, things, or property belonging  
16 to or in use by the Agency pertaining to its financial  
17 transactions and necessary to facilitate the audit,  
18 and they shall be afforded full facilities for verifying  
19 transactions with the balances or securities held by  
20 depositaries, fiscal agents, and custodians. All such  
21 books, accounts, records, reports, files, papers, and  
22 property of the Agency shall remain in possession  
23 and custody of the Agency. The Agency shall be au-  
24 dited at least once in every three years.



1           “(2) REPORT.—A report of each audit con-  
2           ducted under this subsection shall be made by the  
3           Comptroller General to the Congress not later than  
4           six and one-half months following the close of the  
5           last year covered by such audit. The report to the  
6           Congress shall set forth the scope of the audit and  
7           shall include a statement of assets and liabilities and  
8           surplus or deficit; a statement of surplus or deficit  
9           analysis; a statement of income and expenses; a  
10          statement of sources and application of funds and  
11          such comments and information as may be deemed  
12          necessary to inform Congress of the financial oper-  
13          ations and condition of the Agency, together with  
14          such recommendations with respect thereto as the  
15          Comptroller General may deem advisable. The report  
16          shall also show specifically any program, expendi-  
17          ture, or other financial transaction or undertaking  
18          observed in the course of the audit, which, in the  
19          opinion of the Comptroller General, has been carried  
20          on or made without authority of law. A copy of each  
21          report shall be furnished to the President and to the  
22          Agency at the time submitted to the Congress.

23           “(3) ASSISTANCE AND COSTS.—For the purpose  
24           of conducting an audit under this subsection, the  
25           Comptroller General may, in the discretion of the

1 Comptroller General, employ by contract, without re-  
2 gard to section 5 of title 41, professional services of  
3 firms and organizations of certified public account-  
4 ants, with the concurrence of the Agency, for tem-  
5 porary periods or for special purposes. The Agency  
6 shall reimburse the Government Accountability Of-  
7 fice for the cost of any such audit as billed therefor  
8 by the Comptroller General, and the Government  
9 Accountability Office shall deposit the sums so reim-  
10 bursed into the Treasury as miscellaneous receipts.”.

11 **SEC. 106. EXAMINERS AND ACCOUNTANTS.**

12 (a) EXAMINATIONS.—Section 1317 of the Housing  
13 and Community Development Act of 1992 (12 U.S.C.  
14 4517) is amended—

15 (1) in subsection (b)—

16 (A) by inserting “of a regulated entity”  
17 after “under this section”; and

18 (B) by striking “to determine the condition  
19 of an enterprise for the purpose of ensuring its  
20 financial safety and soundness” and inserting  
21 “or appropriate” ; and

22 (2) in subsection (c)—

23 (A) in the second sentence—

24 (i) by striking “The” and inserting  
25 “During the 3-year period that begins

1           upon the date of the enactment of the Fed-  
2           eral Housing Finance Reform Act of 2005,  
3           the”); and

4                   (ii) by inserting “to conduct examina-  
5           tions under this section” before the period;  
6           and

7                   (B) in the third sentence, by striking  
8           “from amounts available in the Federal Hous-  
9           ing Enterprises Oversight Fund”.

10       (b) ENHANCED AUTHORITY TO HIRE EXAMINERS  
11 AND ACCOUNTANTS.—Section 1317 of the Housing and  
12 Community Development Act of 1992 (12 U.S.C. 4517)  
13 is amended by adding at the end the following new sub-  
14 section:

15       “(g) APPOINTMENT OF ACCOUNTANTS, ECONOMISTS,  
16 AND EXAMINERS.—

17           “(1) APPLICABILITY.—This section applies with  
18       respect to any position of examiner, accountant, and  
19       economist at the Agency, with respect to supervision  
20       and regulation of the regulated entities, that is in  
21       the competitive service.

22           “(2) APPOINTMENT AUTHORITY.—The Director  
23       may appoint candidates to any position described in  
24       paragraph (1)—

1           “(A) in accordance with the statutes, rules,  
2           and regulations governing appointments in the  
3           excepted service; and

4           “(B) notwithstanding any statutes, rules,  
5           and regulations governing appointments in the  
6           competitive service.”.

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

9           (1) in the section heading, by striking “RE-  
10          PORTS” and inserting “GAO AUDITS”;

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

13          (3) by striking the first two sentences and in-  
14          serting the following: “The Federal home loan banks  
15          shall be subject to examinations by the Director to  
16          the extent provided in section 1317 of the Federal  
17          Housing Enterprises Financial Safety and Sound-  
18          ness Act of 1992 (12 U.S.C. 4517).”.

19          (d) EFFECTIVE DATE.—This section and the amend-  
20          ments made by this section shall take effect on the date  
21          of the enactment of this Act.

1 **SEC. 107. PROHIBITION AND WITHHOLDING OF EXECUTIVE**  
2 **COMPENSATION.**

3 (a) IN GENERAL.—Section 1318 of the Housing and  
4 Community Development Act of 1992 (12 U.S.C. 4518)  
5 is amended—

6 (1) in the section heading, by striking “**OF EX-**  
7 **CESSIVE**” and inserting “**AND WITHHOLDING OF**  
8 **EXECUTIVE**”;

9 (2) by redesignating subsection (b) as sub-  
10 section (d); and

11 (3) by inserting after subsection (a) the fol-  
12 lowing new subsections:

13 “(b) FACTORS.—In making any determination under  
14 subsection (a), the Director may take into consideration  
15 any factors the Director considers relevant, including any  
16 wrongdoing on the part of the executive officer, and such  
17 wrongdoing shall include any fraudulent act or omission,  
18 breach of trust or fiduciary duty, violation of law, rule,  
19 regulation, order, or written agreement, and insider abuse  
20 with respect to the regulated entity.

21 “(c) WITHHOLDING OF COMPENSATION.—In car-  
22 rying out subsection (a), the Director may require a regu-  
23 lated entity to withhold any payment, transfer, or dis-  
24 bursement of compensation to an executive officer, or to  
25 place such compensation in an escrow account, during the

1 review of the reasonableness and comparability of com-  
2 pensation.”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) FANNIE MAE.—Section 309(d) of the Fed-  
5 eral National Mortgage Association Charter Act (12  
6 U.S.C. 1723a(d)) is amended by adding at the end  
7 the following new paragraph:

8 “(4) The corporation shall not transfer, disburse, or  
9 pay compensation to any executive officer, or enter into  
10 an agreement with such executive officer, without the ap-  
11 proval of the Director, for matters being reviewed under  
12 section 1318 of the Federal Housing Enterprises Finan-  
13 cial Safety and Soundness Act of 1992 (12 U.S.C.  
14 4518).”.

15 (2) FREDDIE MAC.—Section 303(h) of the Fed-  
16 eral Home Loan Mortgage Corporation Act (12  
17 U.S.C. 1452(h)) is amended by adding at the end  
18 the following new paragraph:

19 “(4) The Corporation shall not transfer, disburse, or  
20 pay compensation to any executive officer, or enter into  
21 an agreement with such executive officer, without the ap-  
22 proval of the Director, for matters being reviewed under  
23 section 1318 of the Federal Housing Enterprises Finan-  
24 cial Safety and Soundness Act of 1992 (12 U.S.C.  
25 4518).”.

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

5           “(1) DIRECTOR’S APPROVAL OF COMPENSATION.—  
6           Notwithstanding any other provision of this section, a  
7           Federal home loan bank shall not transfer, disburse, or  
8           pay compensation to any executive officer, or enter into  
9           an agreement with such executive officer, without the ap-  
10          proval of the Director, for matters being reviewed under  
11          section 1318 of the Federal Housing Enterprises Finan-  
12          cial Safety and Soundness Act of 1992 (12 U.S.C.  
13          4518).”.

14   **SEC. 108. REVIEWS OF REGULATED ENTITIES.**

15          Section 1319 of the Housing and Community Devel-  
16          opment Act of 1992 (12 U.S.C. 4519) is amended—

17                 (1) by striking the section designation and  
18                 heading and inserting the following:

19   **“SEC. 1319. REVIEWS OF REGULATED ENTITIES.”**; and

20                 (2) by inserting after “any entity” the fol-  
21                 lowing: “that the Director considers appropriate, in-  
22                 cluding an entity”.

23   **SEC. 109. REGULATIONS AND ORDERS.**

24          Section 1319G of the Housing and Community De-  
25          velopment Act of 1992 (12 U.S.C. 4526) is amended—

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

3           “(a) **AUTHORITY.**—The Director shall issue any reg-  
4           ulations, guidelines, and orders necessary to carry out the  
5           duties of the Director under this title, the Federal Na-  
6           tional Mortgage Association Charter Act, the Federal  
7           Home Loan Mortgage Corporation Act, and the Federal  
8           Home Loan Bank Act to ensure that the purposes of this  
9           title and such Acts are accomplished.”; and

10           (2) by striking subsection (c).

11 **SEC. 110. RISK-BASED CAPITAL REQUIREMENTS.**

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

15 **“SEC. 1361. RISK-BASED CAPITAL LEVELS FOR REGULATED**  
16 **ENTITIES.**

17           “(a) **IN GENERAL.**—

18           “(1) **ENTERPRISES.**—The Director shall, by  
19           regulation, establish risk-based capital requirements  
20           for the enterprises to ensure that the enterprises op-  
21           erate in a safe and sound manner, maintaining suffi-  
22           cient capital and reserves to support the risks that  
23           arise in the operations and management of the en-  
24           terprises.



1           “(2) FEDERAL HOME LOAN BANKS.—The Di-  
2           rector shall establish risk-based capital standards  
3           under section 6 of the Federal Home Loan Bank  
4           Act for the Federal home loan banks.

5           “(b) REQUIRED REGISTRATION UNDER THE SECURI-  
6           TIES EXCHANGE ACT OF 1934.—

7           “(1) IN GENERAL.—Each regulated entity shall  
8           register at least one class of the capital stock of  
9           such regulated entity, and maintain such registra-  
10          tion with the Securities and Exchange Commission,  
11          under the Securities Exchange Act of 1934.

12          “(2) ENTERPRISES.—Each enterprise shall  
13          comply with sections 14 and 16 of the Securities Ex-  
14          change Act of 1934.

15          “(c) NO LIMITATION.—Nothing in this section shall  
16          limit the authority of the Director to require other reports  
17          or undertakings, or take other action, in furtherance of  
18          the responsibilities of the Director under this Act.”.

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

22                 (1) by striking subparagraph (A) and inserting  
23                 the following new subparagraph:

24                         “(A) RISK-BASED CAPITAL STANDARDS.—

25                         The Director shall, by regulation, establish risk-

1 based capital standards for the Federal home  
2 loan banks to ensure that the Federal home  
3 loan banks operate in a safe and sound manner,  
4 with sufficient permanent capital and reserves  
5 to support the risks that arise in the operations  
6 and management of the Federal home loans  
7 banks.”; and

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

10 **SEC. 111. MINIMUM AND CRITICAL CAPITAL LEVELS.**

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

14 (1) in subsection (a), by striking the subsection  
15 heading and inserting “ENTERPRISES” ; and

16 (2) by striking subsection (b) and inserting the  
17 following new subsections:

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

24 “(c) **REGULATORY DISCRETION TO INCREASE**  
25 **LEVEL.**—Notwithstanding subsections (a) and (b), the Di-

1 rector may, by regulations issued under section 1319G(b),  
2 establish a minimum capital level that is higher than the  
3 level specified in subsection (a) for an enterprise or the  
4 level specified in subsection (b) for a Federal home loan  
5 bank.

6 “(d) AUTHORITY TO REQUIRE TEMPORARY IN-  
7 CREASE.—Notwithstanding subsections (a) and (b) and  
8 any minimum capital level established pursuant to sub-  
9 section (c), the Director may, by order, increase the min-  
10 imum capital level for a regulated entity for such period  
11 as the Director may provide if the Director—

12 “(1) makes any of the determinations specified  
13 in subparagraphs (A) through (C) of section  
14 1364(e)(1); or

15 “(2) determines that the regulated entity has  
16 violated any of the prudential management and op-  
17 erations standards established pursuant to section  
18 1313A and, as a result of such violation, is oper-  
19 ating in an unsafe and unsound manner.

20 “(e) AUTHORITY TO ESTABLISH ADDITIONAL CAP-  
21 ITAL AND RESERVE REQUIREMENTS FOR PARTICULAR  
22 PROGRAMS.—The Director may, at any time by order or  
23 regulation, establish such capital or reserve requirements  
24 with respect to any program or activity of a regulated enti-  
25 ty as the Director considers appropriate to ensure that

1 the regulated entity operates in a safe and sound manner,  
2 with sufficient capital and reserves to support the risks  
3 that arise in the operations and management of the regu-  
4 lated entity.”.

5 (b) CRITICAL CAPITAL LEVELS.—

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

9 (A) by striking “For” and inserting “(a)  
10 ENTERPRISES.—For”; and

11 (B) by adding at the end the following new  
12 subsection:

13 “(b) FEDERAL HOME LOAN BANKS.—

14 “(1) IN GENERAL.—For purposes of this sub-  
15 title, the critical capital level for each Federal home  
16 loan bank shall be such amount of capital as the Di-  
17 rector shall, by regulation require.

18 “(2) CONSIDERATION OF OTHER CRITICAL CAP-  
19 ITAL LEVELS.—In establishing the critical capital  
20 level under paragraph (1) for the Federal home loan  
21 banks, the Director shall take due consideration of  
22 the critical capital level established under subsection  
23 (a) for the enterprises, with such modifications as  
24 the Director determines to be appropriate to reflect

1 the difference in operations between the banks and  
2 the enterprises.”.

3 (2) REGULATIONS.—Not later than the expira-  
4 tion of the 120-day period beginning on the effective  
5 date under section 184, the Director of the Federal  
6 Housing Finance Agency shall issue regulations pur-  
7 suant to section 1363(b) of the Housing and Com-  
8 munity Development Act of 1992 (as added by para-  
9 graph (1) of this subsection) establishing the critical  
10 capital level under such section.

11 **SEC. 112. REVIEW OF AND AUTHORITY OVER ENTERPRISE**  
12 **ASSETS AND OBLIGATIONS.**

13 Subtitle B of title XIII of the Housing and Commu-  
14 nity Development Act of 1992 (12 U.S.C. 4611 et seq.)  
15 is amended—

16 (1) by striking the subtitle designation and  
17 heading and inserting the following:

18 **“Subtitle B—Required Capital Lev-**  
19 **els for Regulated Entities, Spe-**  
20 **cial Enforcement Powers, and**  
21 **Reviews of Assets and Obliga-**  
22 **tions”**; and

23 (2) by adding at the end the following new sec-  
24 tion:

1 **“SEC. 1369E. REVIEWS OF ENTERPRISE ASSETS AND OBLI-**  
 2 **GATIONS.**

3 “(a) IN GENERAL.—The Director shall conduct, on  
 4 a periodic basis, a review of the on-balance sheet assets  
 5 and off-balance sheet obligations of each enterprise.

6 “(b) AUTHORITY TO REQUIRE DISPOSITION OR AC-  
 7 QUISSION.—Pursuant to such a review, the Director may  
 8 by order require an enterprise, under such terms and con-  
 9 ditions as the Director determines to be appropriate, to  
 10 dispose of or acquire any asset or obligation, if the Direc-  
 11 tor determines that such action is consistent with the safe  
 12 and sound operation of the enterprise or with the purposes  
 13 of this Act, the Federal National Mortgage Association  
 14 Charter Act, or the Federal Home Loan Mortgage Cor-  
 15 poration Act.”.

16 **SEC. 113. CORPORATE GOVERNANCE OF ENTERPRISES.**

17 The Housing and Community Development Act of  
 18 1992 is amended by inserting before section 1323 (12  
 19 U.S.C. 4543) the following new section:

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

21 “(a) BOARD OF DIRECTORS.—

22 “(1) MEMBERSHIP.—

23 “(A) IN GENERAL.—No person may serve  
 24 on the board of directors of an enterprise for  
 25 more than 10 years or past the age of 72,  
 26 whichever comes first; except that a member of

1 a board of directors may serve his or her full  
2 term if he or she has served less than 10 years  
3 or is 72 years on the date of his or her election  
4 or appointment to the board.

5 “(B) WAIVER.—Upon the written request  
6 of an enterprise, the Director may waive, in the  
7 Director’s sole discretion and for good cause,  
8 the limits on the service of a board member  
9 under subparagraph (A).

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

16 “(3) 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  
20 a year and not less than once a calendar quarter.

21 “(4) NON-MANAGEMENT BOARD MEMBER  
22 MEETINGS.—The non-management directors of an  
23 enterprise shall meet at regularly scheduled execu-  
24 tive sessions without management participation.

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

6           “(6) INFORMATION.—The management of an  
7           enterprise shall provide a board member of the en-  
8           terprise with such adequate and appropriate infor-  
9           mation that a reasonable board member would find  
10          important to the fulfillment of his or her fiduciary  
11          duties and obligations.

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

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

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

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



1           “(A) Audit committee.

2           “(B) Compensation committee.

3           “(C) Nominating/corporate governance  
4           committee.

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  
9           Act of 1934 (15 U.S.C. 78j-1(m)), with respect to  
10          the audit committee, and under rules issued by the  
11          New York Stock Exchange, as such rules may be  
12          amended 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  
18                         is reasonable and appropriate;

19                         “(B) shall be commensurate with the du-  
20                         ties 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  
2           regulatory 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  
9           result 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 enter-  
12          prise shall reimburse the enterprise as provided  
13          under section 304 of the Sarbanes-Oxley Act of  
14          2002 (15 U.S.C. 7243). This provision does not oth-  
15          erwise limit the authority of the Agency to employ  
16          remedies available to it under its enforcement au-  
17          thorities.

18          “(d) CODE OF CONDUCT AND ETHICS.—

19                 “(1) IN GENERAL.—An enterprise shall estab-  
20                 lish and administer a written code of conduct and  
21                 ethics that is reasonably designed to assure the abil-  
22                 ity of board members, executive officers, and em-  
23                 ployees of the enterprise to discharge their duties  
24                 and responsibilities, on behalf of the enterprise, in  
25                 an objective and impartial manner, and that includes

1 standards required under section 406 of the Sar-  
2 banes-Oxley Act of 2002 (15 U.S.C. 7264) and  
3 other applicable laws, rules, and regulations.

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

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

18 “(1) Corporate strategy, major plans of action,  
19 risk policy, programs for legal and regulatory com-  
20 pliance and corporate performance, including pru-  
21 dent plans for growth and allocation of adequate re-  
22 sources to manage operations risk.

23 “(2) Hiring and retention of qualified senior ex-  
24 ecutive officers and succession planning for such  
25 senior executive officers.

1           “(3) Compensation programs of the enterprise.

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

5           “(5) Process and adequacy of reporting, disclo-  
6           sures, and communications to shareholders, inves-  
7           tors, and potential investors.

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

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

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

23          “(g) CERTIFICATION OF DISCLOSURES.—The chief  
24          executive officer and the chief financial officer of an enter-  
25          prise shall review each quarterly report and annual report

1 issued by the enterprise and such reports shall include cer-  
2 tifications by such officers as required by section 302 of  
3 the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7241).

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

11 “(i) COMPLIANCE PROGRAM.—

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

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

1       ments to such policies and procedures that the com-  
2       pliance officer 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  
7       the operations of the enterprise.

8               “(2) RISK MANAGEMENT OFFICER.—The risk  
9       management program of an enterprise shall be head-  
10      ed by a risk management officer, however styled,  
11      who reports directly to the chief executive officer of  
12      the enterprise. The risk management officer shall re-  
13      port regularly to the board of directors or an appro-  
14      priate committee of the board of directors on compli-  
15      ance with and the adequacy of current risk manage-  
16      ment policies and procedures of the enterprise, and  
17      shall recommend any adjustments to such policies  
18      and procedures that the risk management officer  
19      considers necessary 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 Ex-  
25      change Act of 1934, the enterprise shall comply or

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

17 “(l) MODIFICATION OF CERTAIN PROVISIONS.—In  
18 connection with standards of Federal or State law (includ-  
19 ing the Revised Model Corporation Act) or New York  
20 Stock Exchange rules that are made applicable to an en-  
21 terprise by section 1710.10 of the Director’s rules (12  
22 C.F.R. 1710.10) and by subsections (a), (b), (g), (i), (j),  
23 and (k) of this section, the Director, in the Director’s sole  
24 discretion, may modify the standards contained in this sec-  
25 tion or in part 1710 of the Director’s rules (12 U.S.C.

1 Part 1710) in accordance with section 553 of title 5,  
2 United States Code, and upon written notice to the enter-  
3 prise.”.

4 **SEC. 114. CONFORMING AMENDMENTS.**

5 (a) 1992 Act.—Part 1 of subtitle A of title XIII of  
6 the Housing and Community Development Act of 1992  
7 (12 U.S.C. 4511 et seq.), as amended by the preceding  
8 provisions of this Act, is further amended—

9 (1) by striking “an enterprise” each place such  
10 term appears in such part (except in sections  
11 1313(a)(2)(A), 1313A(b)(2)(B)(ii)(I), and  
12 1316(b)(3)) and inserting “a regulated entity”;

13 (2) by striking “the enterprise” each place such  
14 term appears in such part (except in section  
15 1316(b)(3)) and inserting “the regulated entity”;

16 (3) by striking “the enterprises” each place  
17 such term appears in such part (except in sections  
18 1312(e)(2), 1312(e)(2), 1317(g)(1), and  
19 1319B(a)(4)(D)) and inserting “the regulated enti-  
20 ties”;

21 (4) by striking “each enterprise” each place  
22 such term appears in such part and inserting “each  
23 regulated entity”;

24 (5) by striking “Office” each place such term  
25 appears in such part (except in sections 1312(b)(5),



1 1315(b), and 1316(g), and subsections (c) and (d)  
2 of section 1317) and inserting “Agency”;

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

4 (A) in subsection (a)—

5 (i) in the subsection heading, by strik-  
6 ing “OFFICE PERSONNEL” and inserting  
7 “IN GENERAL”; and

8 (ii) by striking “The” and inserting  
9 “Subject to titles III and IV of the Federal  
10 Housing Finance Reform Act of 2005,  
11 the”;

12 (B) by striking subsection (d); and

13 (C) by redesignating subsections (e) and  
14 (f) as subsections (d) and (e), respectively;

15 (7) in section 1316(e) (12 U.S.C. 4516(e)), by  
16 striking “any enterprise” and inserting “any regu-  
17 lated entity”;

18 (8) in section 1319A (12 U.S.C. 4520)—

19 (A) by striking “(a) IN GENERAL.—Each  
20 enterprise” and inserting “Each regulated enti-  
21 ty”; and

22 (B) by striking subsection (b);

23 (9) in section 1319B (12 U.S.C. 4521), by  
24 striking “Committee on Banking, Finance and

1 Urban Affairs” each place such term appears and  
2 inserting “Committee on Financial Services”; and

3 (10) in section 1319F (12 U.S.C. 4525), strik-  
4 ing all that follows “United States Code” and insert-  
5 ing “, the Agency shall be considered an agency re-  
6 sponsible for the regulation or supervision of finan-  
7 cial institutions.”.

8 (b) AMENDMENTS TO FANNIE MAE CHARTER ACT.—

9 The Federal National Mortgage Association Charter Act  
10 (12 U.S.C. 1716 et seq.) is amended—

11 (1) by striking “Director of the Office of Fed-  
12 eral Housing Enterprise Oversight of the Depart-  
13 ment of Housing and Urban Development” each  
14 place such term appears, and inserting “Director of  
15 the Federal Housing Finance Agency”, in—

16 (A) section 303(c)(2) (12 U.S.C.  
17 1718(c)(2));

18 (B) section 309(d)(3)(B) (12 U.S.C.  
19 1723a(d)(3)(B)); and

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

21 (2) in section 309—

22 (A) in subsections (d)(3)(A) and (n)(1), by  
23 striking “Banking, Finance and Urban Affairs”  
24 each place such term appears and inserting  
25 “Financial Services”; and

1 (B) in subsection (n)(1), by inserting “the  
2 Director of the Federal Housing Finance Agen-  
3 cy,” after “Senate,”.

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

6 (1) by striking “Director of the Office of Fed-  
7 eral Housing Enterprise Oversight of the Depart-  
8 ment of Housing and Urban Development” each  
9 place such term appears, and inserting “Director of  
10 the Federal Housing Finance Agency”, in—

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

13 (B) section 303(h)(2) (12 U.S.C.  
14 1452(h)(2)); and

15 (C) section 307(c)(1) (12 U.S.C.  
16 1456(c)(1));

17 (2) in sections 303(h)(1) and 307(f)(1) (12  
18 U.S.C. 1452(h)(1), 1456(f)(1)), by striking “Bank-  
19 ing, Finance and Urban Affairs” each place such  
20 term appears and inserting “Financial Services”;

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

22 (A) by striking “section 1316(c)” and in-  
23 serting “section 306(c)”; and

24 (B) by striking “section 106” and insert-  
25 ing “section 1316”; and

1 (4) in section 307(f)(1) (12 U.S.C. 1456(f)(1)),  
2 by inserting “the Director of the Federal Housing  
3 Finance Agency,” after “Senate,”.

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

6 **SEC. 121. TRANSFER OF PROGRAM AND ACTIVITIES AP-**  
7 **PROVAL AND HOUSING GOAL OVERSIGHT.**

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

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

13 **“PART 2—PROGRAM AND ACTIVITIES APPROVAL**  
14 **BY DIRECTOR, CORPORATE GOVERNANCE,**  
15 **AND ESTABLISHMENT OF HOUSING GOALS”;**

16 and

17 (2) by striking sections 1321 and 1322.

18 **SEC. 122. REVIEW BY DIRECTOR OF NEW PROGRAMS AND**  
19 **ACTIVITIES OF ENTERPRISES.**

20 (a) IN GENERAL.—Part 2 of subtitle A of title XIII  
21 of the Housing and Community Development Act of 1992  
22 is amended by inserting before section 1323 (12 U.S.C.  
23 4543) the following new section:

1 **“SEC. 1321. REVIEW AND APPROVAL BY DIRECTOR OF NEW**  
2 **PROGRAMS AND BUSINESS ACTIVITIES OF**  
3 **ENTERPRISES.**

4 “(a) **LIMITATION ON AUTHORITY TO UNDERTAKE**  
5 **PROGRAMS AND ACTIVITIES.**—An enterprise may not un-  
6 dertake any new program, including a pilot program, or  
7 any new business activity except in accordance with the  
8 procedures set forth in this section and orders and regula-  
9 tions issued under this section.

10 “(b) **NEW PROGRAMS.**—

11 “(1) **PRIOR APPROVAL REQUIREMENT.**—An en-  
12 terprise may not commence any new program before  
13 it has obtained the approval of the Director, pursu-  
14 ant to this subsection, for the new program.

15 “(2) **APPLICATION.**—The Director shall, by  
16 order or regulation, require that an enterprise shall,  
17 to obtain a determination by the Director regarding  
18 approval of a new program by the enterprise, submit  
19 to the Director a written application for the new  
20 program in a format as prescribed by the Director.

21 “(3) **NOTICE.**—Immediately upon receipt of a  
22 complete application for a new program, the Direc-  
23 tor shall cause to be published in the Federal Reg-  
24 ister notice of the receipt of such application and of  
25 the period for public comment pursuant to para-  
26 graph (4) regarding such new program, and a de-

1       scription of the new program proposed by the appli-  
2       cation.

3           “(4) PUBLIC COMMENT PERIOD.—During the  
4       30-day period beginning upon publication pursuant  
5       to paragraph (3) of a notice regarding such an ap-  
6       plication, the Director shall receive public comments  
7       regarding the new program.

8           “(5) DETERMINATION.—Not less than 15 days  
9       after the conclusion of the public comment period  
10      pursuant to paragraph (4) regarding an application  
11      but not more than 30 days after the conclusion of  
12      such comment period, the Director shall approve,  
13      conditionally approve, or reject such program, in  
14      writing.

15          “(6) STANDARD FOR APPROVAL.—The Director  
16      may approve, or conditionally approve, a new pro-  
17      gram of an enterprise only if the Director deter-  
18      mines, taking into consideration any relevant infor-  
19      mation and comments received during the public  
20      comment period, that such new program—

21           “(A) does not contravene and is not incon-  
22      sistent with the purposes of this title, the Fed-  
23      eral National Mortgage Association Charter  
24      Act, or the Federal Home Loan Mortgage Cor-  
25      poration Act, as such purposes are determined

1 taking into consideration the definitions of the  
2 terms ‘primary mortgage market’ and ‘sec-  
3 ondary mortgage market’ pursuant to section  
4 1303;

5 “(B) is not otherwise inconsistent with the  
6 safety and soundness of the enterprise; and

7 “(C) is in the public interest.

8 “(c) BUSINESS ACTIVITIES.—

9 “(1) AUTHORITY OF DIRECTOR TO PROHIBIT  
10 ACTIVITIES.—The Director shall have authority to  
11 prohibit any business activity by an enterprise if the  
12 Director determines, in writing, that such activity—

13 “(A) contravenes or is inconsistent with  
14 the purposes of this title, the Federal National  
15 Mortgage Association Charter Act, or the Fed-  
16 eral Home Loan Mortgage Corporation Act;

17 “(B) is otherwise inconsistent with the  
18 safety and soundness of the enterprise; or

19 “(C) is not in the public interest.

20 “(2) NOTIFICATION OF NEW BUSINESS ACTIVI-  
21 TIES.— An enterprise that undertakes any new busi-  
22 ness activity shall provide written notice of the activ-  
23 ity to the Director and may commence the new busi-  
24 ness activity only in accordance with paragraph (4).

1           “(3) DIRECTOR DETERMINATION OF APPLICA-  
2           BLE PROCEDURE.—

3           “(A) TIMING.—Immediately upon receipt  
4           of any notice under paragraph (2) regarding a  
5           new business activity, the Director shall under-  
6           take a determination under subparagraph (B)  
7           of this paragraph regarding the business activ-  
8           ity.

9           “(B) DETERMINATION AND TREATMENT  
10           AS NEW PROGRAM.—If the Director determines  
11           that any new business activity consists of, re-  
12           lates to, or involves any new program—

13                   “(i) the Director shall notify the en-  
14                   terprise of the determination;

15                   “(ii) the new business activity de-  
16                   scribed in the notice shall be considered a  
17                   new program for purposes of this section;  
18                   and

19                   “(iii) the Director shall prohibit the  
20                   enterprise from carrying out the activity  
21                   except to the extent that approval for the  
22                   activity is obtained pursuant to subsection  
23                   (b).

24           “(4) COMMENCEMENT.—An enterprise may  
25           commence a new business activity—



1           “(A) if the Director issues a written ap-  
2           proval regarding such business activity, imme-  
3           diately upon such issuance or at such other  
4           time as provided by the Director in such letter;  
5           or

6           “(B) if, during the 30-day period begin-  
7           ning upon receipt by the Director of notice pur-  
8           suant to paragraph (2) regarding a new busi-  
9           ness activity, the Director has not issued to the  
10          enterprise a written approval or denial of the  
11          new business activity, upon the expiration of  
12          such 30-day period.

13          “(d) APPROVAL AND CONDITIONAL APPROVAL.—The  
14          Director may at any time conditionally approve the under-  
15          taking of a particular new program or business activity  
16          by an enterprise and set forth the terms and conditions  
17          that apply to the program or activity with which the enter-  
18          prise shall comply if it undertakes the new program or  
19          activity. Such approval may, in the discretion of the Direc-  
20          tor, be in the form of a written agreement between the  
21          enterprise and the Director and shall be subject to such  
22          terms and conditions therein. Such a written agreement  
23          or conditional approval shall be enforceable under subtitle  
24          C.

25          “(e) EFFECT ON OTHER AUTHORITIES.—

1           “(1) EXAMINATIONS.—Nothing in this section  
2           may be construed to limit, in any manner, any other  
3           authority or right the Director may have under  
4           other provisions of law to conduct an examination of  
5           an enterprise.

6           “(2) REQUESTS FOR INFORMATION.—Nothing  
7           in this section may be construed to limit the right  
8           of the Director at any time to request additional in-  
9           formation from an enterprise concerning any busi-  
10          ness activity.

11          “(3) NO IMPLIED RIGHT OF ACTION.—This sec-  
12          tion shall not create any private right of action  
13          against an enterprise or any director or executive of-  
14          ficer of an enterprise, or impair any private right of  
15          action under other applicable law.

16          “(4) NO LIMITATION.—Nothing in this section  
17          may be construed to restrict the general supervisory  
18          and regulatory authority of the Director over all pro-  
19          grams, products, activities, or business operations of  
20          any kind.

21          “(f) REPORT ON PROGRAMS AND BUSINESS ACTIVI-  
22          TIES.—Not later than the expiration of the 180-day period  
23          beginning on the effective date under section 184 of the  
24          Federal Housing Finance Reform Act of 2005, each enter-  
25          prise shall submit to the Director a report identifying and

1 describing each program and business activity of the en-  
2 terprise engaged in or existing as of the submission of the  
3 report.

4 “(g) REGULATIONS.—The Director shall by order or  
5 regulation issue rules and procedures to implement this  
6 section, including in the discretion of the Director, such  
7 definitions, interpretations, forms, and other guidances as  
8 the Director considers appropriate.”.

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

12 (1) by redesignating paragraphs (16) through  
13 (22) as paragraphs (19) through (25), respectively;

14 (2) by inserting after paragraph (15) the fol-  
15 lowing new paragraph:

16 “(18) NEW BUSINESS ACTIVITY.—The term  
17 ‘new business activity’ means, with respect to an en-  
18 terprise, any business activity of the enterprise  
19 that—

20 “(A) the enterprise was not engaging in on  
21 the effective date under section 184 of the Fed-  
22 eral Housing Finance Reform Act of 2005; and

23 “(B) that the enterprise is not authorized,  
24 pursuant to the provisions of section 1321(e),

1 to offer, undertake, transact, conduct, or en-  
2 gage in.”;

3 (3) by redesignating paragraphs (14) and (15)  
4 as paragraphs (16) and (17), respectively;

5 (4) by inserting after paragraph (13) the fol-  
6 lowing new paragraph:

7 “(15) MORTGAGE MARKETS.—The terms ‘pri-  
8 mary mortgage market’ and ‘secondary mortgage  
9 market’ shall have such meanings as the Director  
10 shall, by regulation, prescribe consistent with the  
11 Federal National Mortgage Association Charter Act  
12 and the Federal Home Loan Mortgage Corporation  
13 Act. The Director shall issue such regulations not  
14 later than the expiration of the 6-month period be-  
15 ginning on the effective date under section 184 of  
16 the Federal Housing Finance Reform Act of 2005.”;

17 (5) by redesignating paragraphs (5) through  
18 (13) as paragraphs (6) through (14), respectively;  
19 and

20 (6) by inserting after paragraph (4) the fol-  
21 lowing new paragraph:

22 “(5) BUSINESS ACTIVITY.—The term ‘business  
23 activity’ means, with respect to an enterprise any of-  
24 fering, undertaking, transacting, conducting, or en-

1 gaging in any conduct or activity by an enterprise,  
2 as the Director shall provide.”.

3 **SEC. 123. CONFORMING LOAN LIMITS.**

4 (a) FANNIE MAE.—Section 302(b)(2) of the Federal  
5 National Mortgage Association Charter Act (12 U.S.C.  
6 1717(b)(2)) is amended by striking the 7th and 8th sen-  
7 tences and inserting the following new sentences: “Such  
8 limitations shall not exceed \$359,650 for a mortgage se-  
9 cured by a single-family residence, \$460,400 for a mort-  
10 gage secured by a 2-family residence, \$556,500 for a  
11 mortgage secured by a 3-family residence, and \$694,600  
12 for a mortgage secured by a 4-family residence, except  
13 that such maximum limitations shall be adjusted effective  
14 January 1 of each year beginning with 2006, subject to  
15 the limitations in this paragraph. Each adjustment shall  
16 be made by adding to or subtracting from each such  
17 amount (as it may have been previously adjusted) a per-  
18 centage thereof equal to the percentage increase or de-  
19 crease during the 12-month period ending with the pre-  
20 vious October in the housing price index maintained by  
21 the Director of the Federal Housing Finance Agency (pur-  
22 suant to section 1322 of the Housing and Community De-  
23 velopment Act of 1992 (12 U.S.C. 4541)).”.

24 (b) FREDDIE MAC.—Section 305(a)(2) of the Fed-  
25 eral National Mortgage Association Charter Act (12

1 U.S.C. 1454(a)(2)) is amended by striking the 6th and  
2 7th sentences and inserting the following new sentences:  
3 “Such limitations shall not exceed \$359,650 for a mort-  
4 gage secured by a single-family residence, \$460,400 for  
5 a mortgage secured by a 2-family residence, \$556,500 for  
6 a mortgage secured by a 3-family residence, and \$694,600  
7 for a mortgage secured by a 4-family residence, except  
8 that such maximum limitations shall be adjusted effective  
9 January 1 of each year beginning with 2006, subject to  
10 the limitations in this paragraph. Each adjustment shall  
11 be made by adding to or subtracting from each such  
12 amount (as it may have been previously adjusted) a per-  
13 centage thereof equal to the percentage increase or de-  
14 crease during the 12-month period ending with the pre-  
15 vious October in the housing price index maintained by  
16 the Director of the Federal Housing Finance Agency (pur-  
17 suant to section 1322 of the Housing and Community De-  
18 velopment Act of 1992 (12 U.S.C. 4541)).”.

19 (c) HOUSING PRICE INDEX.—Subpart A of part 2 of  
20 subtitle A of title XIII of the Housing and Community  
21 Development Act of 1992 (as amended by the preceding  
22 provisions of this Act) is amended by inserting after sec-  
23 tion 1321 (as added by section 122 of this Act) the fol-  
24 lowing new section:

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

2       “(a) IN GENERAL.—The Director shall establish and  
3 maintain a method of assessing the national average 1-  
4 family house price for use for adjusting the conforming  
5 loan limitations of the enterprises. In establishing such  
6 method, the Director shall take into consideration the  
7 monthly survey of all major lenders conducted by the Fed-  
8 eral Housing Finance Agency to determine the national  
9 average 1-family house price, the House Price Index main-  
10 tained by the Office of Federal Housing Enterprise Over-  
11 sight of the Department of Housing and Urban Develop-  
12 ment before the effective date of the Federal Housing Fi-  
13 nance Reform Act of 2005, any appropriate house price  
14 indexes of the Bureau of the Census of the Department  
15 of Commerce, and any other indexes or measures that the  
16 Director considers appropriate.

17       “(b) GAO AUDIT.—

18               “(1) IN GENERAL.—At such times as are re-  
19 quired under paragraph (2), the Comptroller Gen-  
20 eral of the United States shall conduct an audit of  
21 the methodology established by the Director under  
22 subsection (a) to determine whether the methodology  
23 established is an accurate and appropriate means of  
24 measuring changes to the national average 1-family  
25 house price.

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

5           “(A) ESTABLISHMENT.—The date upon  
6 which such methodology is initially established  
7 under subsection (a) in final form by the Direc-  
8 tor.

9           “(B) MODIFICATION OR AMENDMENT.—  
10 Each date upon which any modification or  
11 amendment to such methodology is adopted in  
12 final form by the Director.

13           “(3) REPORT.—Within 30 days of the comple-  
14 tion of any audit conducted under this subsection,  
15 the Comptroller General shall submit a report detail-  
16 ing the results and conclusions of the audit to the  
17 Director, the Committee on Financial Services of the  
18 House of Representatives, and the Committee on  
19 Banking, Housing, and Urban Affairs of the Sen-  
20 ate.”.

21 **SEC. 124. ANNUAL HOUSING REPORT REGARDING REGU-**  
22 **LATED ENTITIES.**

23           The Housing and Community Development Act of  
24 1992 is amended by striking section 1324 (12 U.S.C.  
25 4544) and inserting the following new section:



1 **“SEC. 1324. ANNUAL HOUSING REPORT REGARDING REGU-**  
2 **LATED ENTITIES.**

3 “(a) IN GENERAL.—After reviewing and analyzing  
4 the reports submitted under section 309(n) of the Federal  
5 National Mortgage Association Charter Act, section  
6 307(f) of the Federal Home Loan Mortgage Corporation  
7 Act, and section 10(j)(12) of the Federal Home Loan  
8 Bank Act (12 U.S.C. 1430(j)(12)), the Director shall sub-  
9 mit a report, as part of the annual report under section  
10 1328, not later than October 30 of each year, to the Com-  
11 mittee on Financial Services of the House of Representa-  
12 tives and the Committee on Banking, Housing, and Urban  
13 Affairs of the Senate, on the activities of each regulated  
14 entity.

15 “(b) CONTENTS.—The report shall—

16 “(1) discuss the extent to which—

17 “(A) each enterprise is achieving the an-  
18 nual housing goals established under subpart B  
19 of this part;

20 “(B) each Federal home loan bank is  
21 meeting the contribution requirements under  
22 section 10(j)(5) of the Federal Home Loan  
23 Bank Act; and

24 “(C) each regulated entity is achieving the  
25 purposes of the regulated entity established by  
26 law;

1           “(2) aggregate and analyze census tract and  
2 other relevant data to assess the compliance of each  
3 enterprise with the central cities, rural areas, and  
4 other underserved areas housing goal and to deter-  
5 mine levels of business in central cities, rural areas,  
6 underserved areas, low- and moderate-income census  
7 tracts, minority census tracts, and other geo-  
8 graphical areas deemed appropriate by the Director;

9           “(3) aggregate and analyze relevant data on in-  
10 come to assess the compliance of each enterprise  
11 with the housing goals under subpart B;

12           “(4) aggregate and analyze data on income,  
13 race, and gender by census tract and other relevant  
14 classifications, and compare such data with larger  
15 demographic, housing, and economic trends;

16           “(5) examine actions that—

17           “(A) each enterprise has undertaken or  
18 could undertake to promote and expand the an-  
19 nual goals established under subpart B and the  
20 purposes of the enterprise established by law;  
21 and

22           “(B) each Federal home loan bank has  
23 taken or could undertake to promote and ex-  
24 pand the community investment program and  
25 affordable housing program of the bank estab-

1           lished under section subsections (i) and (j) of  
2           section 10 of the Federal Home Loan Bank  
3           Act;

4           “(6) examine the primary and secondary multi-  
5           family housing mortgage markets and describe—

6                   “(A) the availability and liquidity of mort-  
7                   gage credit;

8                   “(B) the status of efforts to provide stand-  
9                   ard credit terms and underwriting guidelines  
10                  for multifamily housing and to securitize such  
11                  mortgage products; and

12                  “(C) any factors inhibiting such standard-  
13                  ization and securitization;

14           “(7) examine actions each regulated entity has  
15           undertaken and could undertake to promote and ex-  
16           pand opportunities for first-time homebuyers;

17           “(8) describe any actions taken under section  
18           1325(5) with respect to originators found to violate  
19           fair lending procedures; and

20           “(9) discuss and analyze existing conditions and  
21           trends, including conditions and trends relating to  
22           pricing, in the housing markets and mortgage mar-  
23           kets.

24           “(c) DATA COLLECTION AND REPORTING.—

1           “(1) IN GENERAL.—To assist the Director in  
2 analyzing the matters described in subsection (b)  
3 and establishing the methodology described in sec-  
4 tion 1322, the Director shall conduct, on a monthly  
5 basis, a survey of mortgage markets in accordance  
6 with this subsection.

7           “(2) DATA POINTS.—Each monthly survey con-  
8 ducted by the Director under paragraph (1) shall  
9 collect data on—

10           “(A) the characteristics of individual mort-  
11 gages that are eligible for purchase by the en-  
12 terprises and the characteristics of individual  
13 mortgages that are not eligible for purchase by  
14 the enterprises including, in both cases, infor-  
15 mation concerning—

16           “(i) the price of the house that se-  
17 cures the mortgage;

18           “(ii) the loan-to-value ratio of the  
19 mortgage, which shall reflect any sec-  
20 ondary liens on the relevant property;

21           “(iii) the terms of the mortgage;

22           “(iv) the creditworthiness of the bor-  
23 rower or borrowers; and

1                   “(v) whether the mortgage, in the  
2                   case of a conforming mortgage, was pur-  
3                   chased by an enterprise; and

4                   “(B) such other matters as the Director  
5                   determines to be appropriate.

6                   “(3) PUBLIC AVAILABILITY.—The Director  
7                   shall make any data collected by the Director in con-  
8                   nection with the conduct of a monthly survey avail-  
9                   able to the public in a timely manner, provided that  
10                  the Director may modify the data released to the  
11                  public to ensure that the data is not released in an  
12                  identifiable form.

13                  “(4) DEFINITION.—For purposes of this sub-  
14                  section, the term ‘identifiable form’ means any rep-  
15                  resentation of information that permits the identity  
16                  of a borrower to which the information relates to be  
17                  reasonably inferred by either direct or indirect  
18                  means.”.

19 **SEC. 125. ESTABLISHMENT OF HOUSING GOALS.**

20                  Section 1331 of the Housing and Community Devel-  
21                  opment Act of 1992 (12 U.S.C. 4561) is amended by  
22                  striking subsection (a) and inserting the following new  
23                  subsection:

24                  “(a) IN GENERAL.—The Director shall establish, by  
25                  regulation, housing goals under this subpart for each en-

1 terprise. The housing goals shall include a low- and mod-  
2 erate-income housing goal pursuant to section 1332, a  
3 special affordable housing goal pursuant to section 1333,  
4 a central cities, rural areas, and other underserved areas  
5 housing goal pursuant to section 1334, a home purchase  
6 goal under section 1334A, and such other goals as the  
7 Director may establish under section 1334B. The Director  
8 shall implement this subpart in a manner consistent with  
9 section 301(3) of the Federal National Mortgage Associa-  
10 tion Charter Act and section 301(b)(3) of the Federal  
11 Home Loan Mortgage Corporation Act.”.

12 **SEC. 126. HOME PURCHASE GOAL AND ADDITIONS, MODI-**  
13 **FICATIONS, AND RESCISSIONS TO GOALS.**

14 The Housing and Community Development Act of  
15 1992 is amended by inserting after section 1334 (12  
16 U.S.C. 4564) the following new sections:

17 **“SEC. 1334A. HOME PURCHASE GOAL.**

18 “(a) IN GENERAL.—The Director shall establish an  
19 annual home purchase goal for the purchase by each en-  
20 terprise of mortgages financing the purchase of owner-oc-  
21 cupied single family dwelling units. The Director may, by  
22 regulation, establish components for such goal to include  
23 any or all of the following: first-time homebuyers; low- and  
24 moderate-income homebuyers; homebuyers in central cit-  
25 ies, rural areas, and other underserved areas; and home-

1 buyers of special affordable housing. The Director may,  
2 by regulation, establish the goal with components as per-  
3 centages of enterprise business or by such other means  
4 as necessary to increase the enterprises' secondary market  
5 financing of mortgages for home purchases consistent with  
6 the enterprises' charter missions. The components of the  
7 goal established by the Director shall be enforceable as  
8 goals. The goal under this section with its components  
9 must be established for metropolitan and rural areas for  
10 which data is available.

11       “(b) FACTORS TO BE APPLIED.—In establishing the  
12 home purchase goal under this section for an enterprise,  
13 the Director shall consider—

14               “(1) national housing needs;

15               “(2) economic, housing, and demographic condi-  
16 tions;

17               “(3) the performance and effort of the enter-  
18 prises toward achieving the home purchase goal in  
19 previous years;

20               “(4) the size of the conventional mortgage mar-  
21 ket serving home purchasers relative to the size of  
22 the overall conventional mortgage market;

23               “(5) the ability of the enterprises to lead the in-  
24 dustry in making mortgage credit available for home  
25 purchasers; and





1           “(2) as a dollar amount of each enterprise’s  
2 mortgage purchases; or

3           “(3) by such other means as necessary to in-  
4 crease the enterprises’ secondary market financing  
5 of mortgages addressed by the goal.

6           “(b) FACTORS TO BE APPLIED.—In establishing,  
7 modifying, or rescinding a goal, the Director shall con-  
8 sider—

9           “(1) national housing needs;

10           “(2) economic, housing, and demographic condi-  
11 tions;

12           “(3) the performance and effort of the enter-  
13 prises toward achieving the need addressed by such  
14 goal in previous years;

15           “(4) the size of the conventional mortgage mar-  
16 ket serving the need addressed by the goal relative  
17 to the size of the overall conventional mortgage mar-  
18 ket;

19           “(5) the ability of the enterprises to lead the in-  
20 dustry in making mortgage credit available to meet  
21 the need addressed by the goal; and

22           “(6) the need to maintain the sound financial  
23 condition of the enterprises.

24           “(c) TIMING.—The Director may exercise the author-  
25 ity under this section to issue regulations to establish,

1 modify, or rescind housing goals not more than once per  
2 calendar year. Such regulations for a calendar year may  
3 establish, or make modifications or rescissions with re-  
4 spect to, more than one annual housing goal, but all such  
5 regulations for a calendar year shall be issued concur-  
6 rently.

7 “(d) TRANSITION.—In order to permit a transition  
8 to any goal established under this section, the Director  
9 shall phase in such goal over a period of one year. Such  
10 goal shall not be enforceable during the one-year transi-  
11 tion period.

12 “(e) IMPLEMENTATION DURING TRANSITION.—The  
13 Director shall establish any requirements necessary to im-  
14 plement the transition provisions under this section by no-  
15 tice, after providing the enterprises with an opportunity  
16 to review and comment not less than 30 days before the  
17 issuance of such notice.”

18 **SEC. 127. OTHER REQUIREMENTS.**

19 The first sentence of section 1335(a) of the Housing  
20 and Community Development Act of 1992 (12 U.S.C.  
21 4565(a)) is amended by striking “low-” and all that fol-  
22 lows through “1334” and inserting “goals under this sub-  
23 part”.

1 **SEC. 128. MONITORING AND ENFORCING COMPLIANCE**  
2 **WITH HOUSING GOALS.**

3 Section 1336 of the Housing and Community Devel-  
4 opment Act of 1992 (12 U.S.C. 4566) is amended—

5 (1) in subsection (a)(1), by striking “estab-  
6 lished” and all that follows through “1334” and in-  
7 serting “under this subpart”;

8 (2) in subsection (b)—

9 (A) in the subsection heading, by inserting  
10 “PRELIMINARY” before “DETERMINATION”;

11 (B) by striking paragraph (1) and insert-  
12 ing the following new paragraph:

13 “(1) NOTICE.—If the Director preliminarily de-  
14 termines that an enterprise has failed, or that there  
15 is a substantial probability that an enterprise will  
16 fail, to meet any housing goal under this subpart,  
17 the Director shall provide written notice to the en-  
18 terprise of such a preliminary determination, the  
19 reasons for such determination, and the information  
20 on which the Director based the determination.”;

21 (C) in paragraph (2)—

22 (i) in subparagraph (A), by inserting  
23 “finally” before “determining”;

24 (ii) by striking subparagraphs (B) and  
25 (C) and inserting the following new sub-  
26 paragraph:

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

3                   “(i) extend the period under subpara-  
4                   graph (A) for good cause for not more  
5                   than 30 additional days; and

6                   “(ii) shorten the period under sub-  
7                   paragraph (A) for good cause.”; and

8                   (iii) by redesignating subparagraph  
9                   (D) as subparagraph (C); and  
10                  (D) in paragraph (3)—

11                   (i) in subparagraph (A), by striking  
12                   “determine” and inserting “issue a final  
13                   determination of”;

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

16                   (iii) in subparagraph (C)—

17                           (I) by striking “Committee on  
18                           Banking, Finance and Urban Affairs”  
19                           and inserting “Committee on Finan-  
20                           cial Services”; and

21                           (II) by inserting “final” before  
22                           “determination” each place such term  
23                           appears; and

24                  (3) in subsection (c)—

1 (A) by striking the subsection designation  
2 and heading and all that follows through the  
3 end of paragraph (1) and inserting the fol-  
4 lowing:

5 “(c) CEASE AND DESIST ORDERS, CIVIL MONEY  
6 PENALTIES, AND REMEDIES INCLUDING HOUSING  
7 PLANS.—

8 “(1) REQUIREMENT.—If the Director finds,  
9 pursuant to subsection (b), that there is a substan-  
10 tial probability that an enterprise will fail, or has ac-  
11 tually failed, to meet any housing goal under this  
12 subpart and that the achievement of the housing  
13 goal was or is feasible, the Director may require that  
14 the enterprise submit a housing plan under this sub-  
15 section. If the Director makes such a finding and  
16 the enterprise refuses to submit such a plan, sub-  
17 mits an unacceptable plan, fails to comply with the  
18 plan or the Director finds that the enterprise has  
19 failed to meet any housing goal under this subpart,  
20 in addition to requiring an enterprise to submit a  
21 housing plan, the Director may issue a cease and de-  
22 sist order in accordance with section 1341, impose  
23 civil money penalties in accordance with section  
24 1345, or order other remedies as set forth in para-  
25 graph (7) of this subsection.”;

1 (B) in paragraph (2)—

2 (i) by striking “CONTENTS.—Each  
3 housing plan” and inserting “HOUSING  
4 PLAN.—If the Director requires a housing  
5 plan under this section, such a plan”; and

6 (ii) in subparagraph (B), by inserting  
7 “and changes in its operations” after “im-  
8 provements”;

9 (C) in paragraph (3)—

10 (i) by inserting “comply with any re-  
11 medial action or” before “submit a housing  
12 plan”; and

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

15 (D) in paragraph (4), by striking the first  
16 two sentences and inserting the following: “The  
17 Director shall review each submission by an en-  
18 terprise, including a housing plan submitted  
19 under this subsection, and not later than 30  
20 days after submission, approve or disapprove  
21 the plan or other action. The Director may ex-  
22 tend the period for approval or disapproval for  
23 a single additional 30-day period if the Director  
24 determines such extension necessary.”; and

1 (E) by adding at the end the following new  
2 paragraph:

3 “(7) ADDITIONAL REMEDIES FOR FAILURE TO  
4 MEET GOALS.—In addition to ordering a housing  
5 plan under this section, issuing cease and desist or-  
6 ders under section 1341, and ordering civil money  
7 penalties under section 1345, the Director may seek  
8 other actions when an enterprise fails to meet a  
9 goal, and exercise appropriate enforcement authority  
10 available to the Director under this Act to prohibit  
11 the enterprise from entering into new programs and  
12 new business activities and to order the enterprise to  
13 suspend programs and business activities pending its  
14 achievement of the goal.”.

15 **SEC. 129. ENFORCEMENT.**

16 (a) CEASE-AND-DESIST PROCEEDINGS.—Section  
17 1341 of the Housing and Community Development Act  
18 of 1992 (12 U.S.C. 4581) is amended—

19 (1) by striking subsection (a) and inserting the  
20 following new subsection:

21 “(a) GROUNDS FOR ISSUANCE.—The Director may  
22 issue and serve a notice of charges under this section upon  
23 an enterprise if the Director determines—

24 “(1) the enterprise has failed to meet any hous-  
25 ing goal established under subpart B, following a

1 written notice and determination of such failure in  
2 accordance with section 1336;

3 “(2) the enterprise has failed to submit a report  
4 under section 1314, following a notice of such fail-  
5 ure, an opportunity for comment by the enterprise,  
6 and a final determination by the Director;

7 “(3) the enterprise has failed to submit the in-  
8 formation required under subsection (m) or (n) of  
9 section 309 of the Federal National Mortgage Asso-  
10 ciation Charter Act, or subsection (e) or (f) of sec-  
11 tion 307 of the Federal Home Loan Mortgage Cor-  
12 poration Act;

13 “(4) the enterprise has violated any provision of  
14 this part or any order, rule or regulation under this  
15 part;

16 “(5) the enterprise has failed to submit a hous-  
17 ing plan that complies with section 1336(c) within  
18 the applicable period; or

19 “(6) the enterprise has failed to comply with a  
20 housing plan under section 1336(c).”;

21 (2) in subsection (b)(2), by striking “requiring  
22 the enterprise to” and all that follows through the  
23 end of the paragraph and inserting the following:

24 “requiring the enterprise to—

25 “(A) comply with the goal or goals;



1 “(B) submit a report under section 1314;

2 “(C) comply with any provision this part  
3 or any order, rule or regulation under such  
4 part;

5 “(D) submit a housing plan in compliance  
6 with section 1336(c);

7 “(E) comply with a housing plan submitted  
8 under section 1336(c); or

9 “(F) provide the information required  
10 under subsection (m) or (n) of section 309 of  
11 the Federal National Mortgage Association  
12 Charter Act or subsection (e) or (f) of section  
13 307 of the Federal Home Loan Mortgage Cor-  
14 poration Act, as applicable.”;

15 (3) in subsection (c), by inserting “date of the”  
16 before “service of the order”; and

17 (4) by striking subsection (d).

18 (b) AUTHORITY OF DIRECTOR TO ENFORCE NOTICES  
19 AND ORDERS.—Section 1344 of the Housing and Commu-  
20 nity Development Act of 1992 (12 U.S.C. 4584) is amend-  
21 ed by striking subsection (a) and inserting the following  
22 new subsection:

23 “(a) ENFORCEMENT.—The Director may, in the dis-  
24 cretion of the Director, apply to the United States District  
25 Court for the District of Columbia, or the United States

1 district court within the jurisdiction of which the head-  
2 quarters of the enterprise is located, for the enforcement  
3 of any effective and outstanding notice or order issued  
4 under section 1341 or 1345, or request that the Attorney  
5 General of the United States bring such an action. Such  
6 court shall have jurisdiction and power to order and re-  
7 quire compliance with such notice or order.”.

8 (c) CIVIL MONEY PENALTIES.—Section 1345 of the  
9 Housing and Community Development Act of 1992 (12  
10 U.S.C. 4585) is amended—

11 (1) by striking subsections (a) and (b) and in-  
12 serting the following new subsections:

13 “(a) AUTHORITY.—The Director may impose a civil  
14 money penalty, in accordance with the provisions of this  
15 section, on any enterprise that has failed to—

16 “(1) meet any housing goal established under  
17 subpart B, following a written notice and determina-  
18 tion of such failure in accordance with section  
19 1336(b);

20 “(2) submit a report under section 1314, fol-  
21 lowing a notice of such failure, an opportunity for  
22 comment by the enterprise, and a final determina-  
23 tion by the Director;

24 “(3) submit the information required under  
25 subsection (m) or (n) of section 309 of the Federal

1 National Mortgage Association Charter Act, or sub-  
2 section (e) or (f) of section 307 of the Federal Home  
3 Loan Mortgage Corporation Act;

4 “(4) comply with any provision of this part or  
5 any order, rule or regulation under this part;

6 “(5) submit a housing plan pursuant to section  
7 1336(e) within the required period; or

8 “(6) comply with a housing plan for the enter-  
9 prise under section 1336(e).

10 “(b) AMOUNT OF PENALTY.—The amount of the  
11 penalty, as determined by the Director, may not exceed—

12 “(1) for any failure described in paragraph (1),  
13 (5), or (6) of subsection (a), \$50,000 for each day  
14 that the failure occurs; and

15 “(2) for any failure described in paragraph (2),  
16 (3), or (4) of subsection (a), \$20,000 for each day  
17 that the failure occurs.”;

18 (2) in subsection (c)—

19 (A) in paragraph (1)—

20 (i) in subparagraph (A), by inserting  
21 “and” after the semicolon at the end;

22 (ii) in subparagraph (B), by striking  
23 “; and” and inserting a period; and

24 (iii) by striking subparagraph (C);

25 and

1 (B) in paragraph (2), by inserting after  
2 the period at the end the following: “In deter-  
3 mining the penalty under subsection (a)(1), the  
4 Director shall give consideration to the length  
5 of time the enterprise should reasonably take to  
6 achieve the goal.”;

7 (3) in the first sentence of subsection (d)—

8 (A) by striking “request the Attorney Gen-  
9 eral of the United States to” and inserting “,  
10 in the discretion of the Director,”; and

11 (B) by inserting “, or request that the At-  
12 torney General of the United States bring such  
13 an action” before the period at the end;

14 (4) by striking subsection (f); and

15 (5) by redesignating subsection (g) as sub-  
16 section (f).

17 (d) CONFORMING AMENDMENT.—The heading for  
18 subpart C of part 2 of subtitle A of the Housing and Com-  
19 munity Development Act of 1992 is amended to read as  
20 follows:

21 **“Subpart C—Enforcement”.**

22 **SEC. 130. CONFORMING AMENDMENTS.**

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

1 (1) by striking “Secretary” each place such  
2 term appears in such part and inserting “Director”;

3 (2) in the section heading for section 1323 (12  
4 U.S.C. 4543), by inserting “**OF ENTERPRISES**” be-  
5 fore the period at the end;

6 (3) in section 1326 (12 U.S.C. 4546)—

7 (A) in subsection (a)—

8 (i) by striking “or” the last place it  
9 appears; and

10 (ii) by inserting “, or section  
11 10(j)(12) of the Federal Home Loan Bank  
12 Act (12 U.S.C. 1441a)” before the period  
13 at the end; and

14 (B) in subsection (b)—

15 (i) by striking “or” the last place it  
16 appears and inserting a comma; and

17 (ii) by inserting “, or section  
18 10(j)(12) of the Federal Home Loan Bank  
19 Act (12 U.S.C. 1441a)” before the period  
20 at the end;

21 (4) by striking section 1327 (12 U.S.C. 4547);

22 (5) by striking section 1328 (12 U.S.C. 4548);

23 (6) in section 1332 (12 U.S.C. 4562), by strik-  
24 ing subsection (d);

1 (7) in section 1333 (12 U.S.C. 4563), by strik-  
2 ing subsection (d);

3 (8) in section 1334 (12 U.S.C. 4564), by strik-  
4 ing subsection (d);

5 (9) by striking sections 1337 and 1338 (12  
6 U.S.C. 4567, 4562 note);

7 (10) in sections 1345(c)(1)(A) and 1346(b) (12  
8 U.S.C. 4585(c)(1)(A), 4586(b)), by striking “Sec-  
9 retary’s” each place such term appears and inserting  
10 “Director’s”; and

11 (11) by striking section 1349 (12 U.S.C. 4589).

## 12 **Subtitle C—Prompt Corrective** 13 **Action**

### 14 **SEC. 141. CAPITAL CLASSIFICATIONS.**

15 (a) IN GENERAL.—Section 1364 of the Housing and  
16 Community Development Act of 1992 (12 U.S.C. 4614)  
17 is amended—

18 (1) in the heading for subsection (a) by striking  
19 “IN GENERAL” and inserting “ENTERPRISES”;

20 (2) in subsection (c)—

21 (A) by striking “subsection (b)” and in-  
22 serting “subsection (e)”;

23 (B) by striking “enterprises” and inserting  
24 “regulated entities”; and

25 (C) by striking the last sentence;

1           (3) by redesignating subsections (c) (as so  
2 amended by paragraph (2) of this subsection) and  
3 (d) as subsections (d) and (f), respectively;

4           (4) by striking subsection (b) and inserting the  
5 following new subsections:

6           “(b) FEDERAL HOME LOAN BANKS.—

7           “(1) ESTABLISHMENT AND CRITERIA.—For  
8 purposes of this subtitle, the Director shall, by regu-  
9 lation—

10           “(A) establish the capital classifications  
11 specified under paragraph (2) for the Federal  
12 home loan banks;

13           “(B) establish criteria for each such cap-  
14 ital classification based on the amount and  
15 types of capital held by a bank and the risk-  
16 based, minimum, and critical capital levels for  
17 the banks and taking due consideration of the  
18 capital classifications established under sub-  
19 section (a) for the enterprises, with such modi-  
20 fications as the Director determines to be ap-  
21 propriate to reflect the difference in operations  
22 between the banks and the enterprises; and

23           “(C) shall classify the Federal home loan  
24 banks according to such capital classifications.

1           “(2) CLASSIFICATIONS.—The capital classifica-  
2           tions specified under this paragraph are—

3                   “(A) adequately capitalized;

4                   “(B) undercapitalized;

5                   “(C) significantly undercapitalized; and

6                   “(D) critically undercapitalized.

7           “(c) DISCRETIONARY CLASSIFICATION.—

8                   “(1) GROUNDS FOR RECLASSIFICATION.—The  
9           Director may reclassify a regulated entity under  
10          paragraph (2) if—

11                   “(A) at any time, the Director determines  
12           in writing that the regulated entity is engaging  
13           in conduct that could result in a rapid depletion  
14           of core or total capital or, in the case of an en-  
15           terprise, that the value of the property subject  
16           to mortgages held or securitized by the enter-  
17           prise has decreased significantly;

18                   “(B) after notice and an opportunity for  
19           hearing, the Director determines that the regu-  
20           lated entity is in an unsafe or unsound condi-  
21           tion; or

22                   “(C) pursuant to section 1371(b), the Di-  
23           rector deems the regulated entity to be engag-  
24           ing in an unsafe or unsound practice.



1           “(2) RECLASSIFICATION.—In addition to any  
2 other action authorized under this title, including  
3 the reclassification of a regulated entity for any rea-  
4 son not specified in this subsection, if the Director  
5 takes any action described in paragraph (1) the Di-  
6 rector may classify a regulated entity—

7           “(A) as undercapitalized, if the regulated  
8 entity is otherwise classified as adequately cap-  
9 italized;

10           “(B) as significantly undercapitalized, if  
11 the regulated entity is otherwise classified as  
12 undercapitalized; and

13           “(C) as critically undercapitalized, if the  
14 regulated entity is otherwise classified as sig-  
15 nificantly undercapitalized.”; and

16           (5) by inserting after subsection (d) (as so re-  
17 designated by paragraph (3) of this subsection), the  
18 following new subsection:

19           “(e) RESTRICTION ON CAPITAL DISTRIBUTIONS.—

20           “(1) IN GENERAL.—A regulated entity shall  
21 make no capital distribution if, after making the dis-  
22 tribution, the regulated entity would be under-  
23 capitalized.

24           “(2) EXCEPTION.—Notwithstanding paragraph  
25 (1), the Director may permit a regulated entity, to

1 the extent appropriate or applicable, to repurchase,  
 2 redeem, retire, or otherwise acquire shares or owner-  
 3 ship interests if the repurchase, redemption, retire-  
 4 ment, or other acquisition—

5 “(A) is made in connection with the  
 6 issuance of additional shares or obligations of  
 7 the regulated entity in at least an equivalent  
 8 amount; and

9 “(B) will reduce the financial obligations of  
 10 the regulated entity or otherwise improve the fi-  
 11 nancial condition of the entity.”.

12 (b) REGULATIONS.—Not later than the expiration of  
 13 the 120-day period beginning on the effective date under  
 14 section 184, the Director of the Federal Housing Finance  
 15 Agency shall issue regulations to carry out section 1364(b)  
 16 of the Housing and Community Development Act of 1992  
 17 (as added by paragraph (4) of this subsection), relating  
 18 to capital classifications for the Federal home loan banks.

19 **SEC. 142. SUPERVISORY ACTIONS APPLICABLE TO UNDER-**  
 20 **CAPITALIZED REGULATED ENTITIES.**

21 Section 1365 of the Housing and Community Devel-  
 22 opment Act of 1992 (12 U.S.C. 4615) is amended—

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

25 (2) in subsection (a)—

1 (A) by redesignating paragraphs (1) and  
2 (2) as paragraphs (2) and (3), respectively;

3 (B) by inserting before paragraph (2) the  
4 following paragraph:

5 “(1) REQUIRED MONITORING.—The Director  
6 shall—

7 “(A) closely monitor the condition of any  
8 regulated entity that is classified as under-  
9 capitalized;

10 “(B) closely monitor compliance with the  
11 capital restoration plan, restrictions, and re-  
12 quirements imposed under this section; and

13 “(C) periodically review the plan, restric-  
14 tions, and requirements applicable to the under-  
15 capitalized regulated entity to determine wheth-  
16 er the plan, restrictions, and requirements are  
17 achieving the purpose of this section.”; and

18 (C) by inserting at the end the following  
19 new paragraphs:

20 “(4) RESTRICTION OF ASSET GROWTH.—A reg-  
21 ulated entity that is classified as undercapitalized  
22 shall not permit its average total assets (as such  
23 term is defined in section 1316(b) during any cal-  
24 endar quarter to exceed its average total assets dur-  
25 ing the preceding calendar quarter unless—

1           “(A) the Director has accepted the capital  
2 restoration plan of the regulated entity;

3           “(B) any increase in total assets is con-  
4 sistent with the plan; and

5           “(C) the ratio of core or total capital to as-  
6 sets for the regulated entity increases during  
7 the calendar quarter at a rate sufficient to en-  
8 able the entity to become adequately capitalized  
9 within a reasonable time.

10           “(5) PRIOR APPROVAL OF ACQUISITIONS, NEW  
11 PROGRAMS, AND NEW BUSINESS ACTIVITIES.—A reg-  
12 ulated entity that is classified as undercapitalized  
13 shall not, directly or indirectly, acquire any interest  
14 in any entity or engage in any new program or new  
15 business activity unless—

16           “(A) the Director has accepted the capital  
17 restoration plan of the regulated entity, the en-  
18 tity is implementing the plan, and the Director  
19 determines that the proposed action is con-  
20 sistent with and will further the achievement of  
21 the plan; or

22           “(B) the Director determines that the pro-  
23 posed action will further the purpose of this  
24 section.”;

1           (3) in the subsection heading for subsection (b),  
 2           by striking “FROM UNDERCAPITALIZED TO SIGNIFI-  
 3           CANTLY UNDERCAPITALIZED”; and

4           (4) by striking subsection (c) and inserting the  
 5           following new subsection:

6           “(c) OTHER DISCRETIONARY SAFEGUARDS.—The  
 7           Director may take, with respect to a regulated entity that  
 8           is classified as undercapitalized, any of the actions author-  
 9           ized to be taken under section 1366 with respect to a regu-  
 10          lated entity that is classified as significantly undercapital-  
 11          ized, if the Director determines that such actions are nec-  
 12          essary to carry out the purpose of this subtitle.”.

13   **SEC. 143. SUPERVISORY ACTIONS APPLICABLE TO SIGNIFI-**  
 14                           **CANTLY UNDERCAPITALIZED REGULATED**  
 15                           **ENTITIES.**

16          Section 1366 of the Housing and Community Devel-  
 17          opment Act of 1992 (12 U.S.C. 4616) is amended—

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

20           (2) in subsection (a)(2)(A), by striking “enter-  
 21           prise” the last place such term appears;

22           (3) in subsection (b)—

23                   (A) in the subsection heading, by striking  
 24                   “DISCRETIONARY SUPERVISORY ACTIONS” and  
 25                   inserting “SPECIFIC ACTIONS”;

1 (B) in the matter preceding paragraph (1),  
2 by striking “may, at any time, take any” and  
3 inserting “shall carry out this section by taking,  
4 at any time, one or more”;

5 (C) by redesignating paragraphs (5) and  
6 (6) as paragraphs (6) and (7), respectively;

7 (D) by inserting after paragraph (4) the  
8 following new paragraph:

9 “(5) IMPROVEMENT OF MANAGEMENT.—Take  
10 one or more of the following actions:

11 “(A) NEW ELECTION OF BOARD.—Order a  
12 new election for the board of directors of the  
13 regulated entity.

14 “(B) DISMISSAL OF DIRECTORS OR EXECU-  
15 TIVE OFFICERS.—Require the regulated entity  
16 to dismiss from office any director or executive  
17 officer who had held office for more than 180  
18 days immediately before the entity became  
19 undercapitalized. Dismissal under this subpara-  
20 graph shall not be construed to be a removal  
21 pursuant to the Director’s enforcement powers  
22 provided in section 1377.

23 “(C) EMPLOY QUALIFIED EXECUTIVE OF-  
24 FICERS.—Require the regulated entity to em-  
25 ploy qualified executive officers (who, if the Di-

1           rector so specifies, shall be subject to approval  
2           by the Director).”; and

3           (E) by inserting at the end the following  
4           new paragraph:

5           “(8) OTHER ACTION.—Require the regulated  
6           entity to take any other action that the Director de-  
7           termines will better carry out the purpose of this  
8           section than any of the actions specified in this  
9           paragraph.”;

10          (4) by redesignating subsection (c) as sub-  
11          section (d); and

12          (5) by inserting after subsection (b) the fol-  
13          lowing new subsection:

14          “(c) RESTRICTION ON COMPENSATION OF EXECU-  
15          TIVE OFFICERS.—A regulated entity that is classified as  
16          significantly undercapitalized may not, without prior writ-  
17          ten approval by the Director—

18                 “(1) pay any bonus to any executive officer; or

19                 “(2) provide compensation to any executive offi-  
20                 cer at a rate exceeding that officer’s average rate of  
21                 compensation (excluding bonuses, stock options, and  
22                 profit sharing) during the 12 calendar months pre-  
23                 ceding the calendar month in which the regulated  
24                 entity became undercapitalized.”.

1 **SEC. 144. AUTHORITY OVER CRITICALLY UNDERCAPITAL-**  
2 **IZED REGULATED ENTITIES.**

3 (a) ENTERPRISES.—Section 1367 of the Housing and  
4 Community Development Act of 1992 (12 U.S.C. 4617)  
5 is amended to read as follows:

6 **“SEC. 1367. AUTHORITY OVER CRITICALLY UNDERCAPITAL-**  
7 **IZED ENTERPRISES.**

8 “(a) APPOINTMENT OF AGENCY AS CONSERVATOR  
9 OR RECEIVER.—

10 “(1) IN GENERAL.—Notwithstanding any other  
11 provision of Federal law, the Director may establish  
12 a conservatorship or receivership in the manner pro-  
13 vided under paragraph (2).

14 “(2) APPOINTMENT.—The Agency may, at the  
15 discretion of the Director, be appointed conservator  
16 or receiver for the purpose of reorganizing, rehabili-  
17 tating, or winding up the affairs of an enterprise

18 “(3) GROUNDS FOR APPOINTMENT.—The  
19 grounds for appointing a conservator or receiver for  
20 any enterprise are as follows:

21 “(A) ASSETS INSUFFICIENT FOR OBLIGA-  
22 TIONS.—The assets of the enterprise are less  
23 than the obligations of the enterprise to its  
24 creditors and others.



1           “(B) SUBSTANTIAL DISSIPATION.—Sub-  
2           stantial dissipation of assets or earnings due  
3           to—

4                   “(i) any violation of any provision of  
5           Federal or State law; or

6                   “(ii) any unsafe or unsound practice.

7           “(C) UNSAFE OR UNSOUND CONDITION.—  
8           An unsafe or unsound condition to transact  
9           business.

10           “(D) CEASE-AND-DESIST ORDERS.—Any  
11           willful violation of a cease-and-desist order that  
12           has become final.

13           “(E) CONCEALMENT.—Any concealment of  
14           the books, papers, records, or assets of the en-  
15           terprise, or any refusal to submit the books, pa-  
16           pers, records, or affairs of the enterprise, for  
17           inspection to any examiner or to any lawful  
18           agent of the Director.

19           “(F) INABILITY TO MEET OBLIGATIONS.—  
20           The enterprise is likely to be unable to pay its  
21           obligations or meet the demands of its creditors  
22           in the normal course of business.

23           “(G) LOSSES.—The enterprise has in-  
24           curred or is likely to incur losses that will de-  
25           plete all or substantially all of its capital, and

1           there is no reasonable prospect for the enter-  
2           prise to become adequately capitalized (as de-  
3           fined in section 1364(a)(1)).

4           “(H) VIOLATIONS OF LAW.—Any violation  
5           of any law or regulation, or any unsafe or un-  
6           sound practice or condition that is likely to—

7                   “(i) cause insolvency or substantial  
8                   dissipation of assets or earnings; or

9                   “(ii) weaken the condition of the en-  
10                  terprise.

11           “(I) CONSENT.—The enterprise, by resolu-  
12           tion of its board of directors or its shareholders  
13           or members, consents to the appointment.

14           “(J) UNDERCAPITALIZATION.—The enter-  
15           prise is undercapitalized or significantly under-  
16           capitalized (as defined in section 1364(a)(3)),  
17           and—

18                   “(i) has no reasonable prospect of be-  
19                   coming adequately capitalized;

20                   “(ii) fails to become adequately cap-  
21                   italized, as required by—

22                           “(I) section 1365(a)(1) with re-  
23                           spect to an undercapitalized enter-  
24                           prise; or

1                   “(II) section 1366(a)(1) with re-  
2                   spect to a significantly undercapital-  
3                   ized enterprise;

4                   “(iii) fails to submit a capital restora-  
5                   tion plan acceptable to the Agency within  
6                   the time prescribed under section 1369C;  
7                   or

8                   “(iv) materially fails to implement a  
9                   capital restoration plan submitted and ac-  
10                  cepted under section 1369C.

11                  “(K) CRITICAL UNDERCAPITALIZATION.—  
12                  The enterprise is critically undercapitalized, as  
13                  defined in section 1364(a)(4).

14                  “(L) MONEY LAUNDERING.—The Attorney  
15                  General notifies the Director in writing that the  
16                  enterprise has been found guilty of a criminal  
17                  offense under section 1956 or 1957 of title 18,  
18                  United States Code, or section 5322 or 5324 of  
19                  title 31, United States Code.

20                  “(4) JUDICIAL REVIEW.—

21                  “(A) IN GENERAL.—If the Agency is ap-  
22                  pointed conservator or receiver under this sec-  
23                  tion, the enterprise may, within 30 days of such  
24                  appointment, bring an action in the United  
25                  States District Court for the judicial district in

1           which the home office of such enterprise is lo-  
2           cated, or in the United States District Court  
3           for the District of Columbia, for an order re-  
4           quiring the Agency to remove itself as conser-  
5           vator or receiver.

6           “(B) REVIEW.—Upon the filing of an ac-  
7           tion under subparagraph (A), the court shall,  
8           upon the merits, dismiss such action or direct  
9           the Agency to remove itself as such conservator  
10          or receiver.

11          “(5) DIRECTORS NOT LIABLE FOR ACQUI-  
12          ESCING IN APPOINTMENT OF CONSERVATOR OR RE-  
13          CEIVER.—The members of the board of directors of  
14          an enterprise shall not be liable to the shareholders  
15          or creditors of the enterprise for acquiescing in or  
16          consenting in good faith to the appointment of the  
17          Agency as conservator or receiver for that enter-  
18          prise.

19          “(6) AGENCY NOT SUBJECT TO ANY OTHER  
20          FEDERAL AGENCY.—When acting as conservator or  
21          receiver, the Agency shall not be subject to the di-  
22          rection or supervision of any other agency of the  
23          United States or any State in the exercise of the  
24          rights, powers, and privileges of the Agency.

1       “(b) POWERS AND DUTIES OF THE AGENCY AS CON-  
2 SERVATOR OR RECEIVER.—

3           “(1) RULEMAKING AUTHORITY OF THE AGEN-  
4 CY.—The Agency may prescribe such regulations as  
5 the Agency determines to be appropriate regarding  
6 the conduct of conservatorships or receiverships.

7           “(2) GENERAL POWERS.—

8           “(A) SUCCESSOR TO ENTERPRISE.—The  
9 Agency shall, as conservator or receiver, and by  
10 operation of law, immediately succeed to—

11           “(i) all rights, titles, powers, and  
12 privileges of the enterprise, and of any  
13 stockholder, officer, or director of such en-  
14 terprise with respect to the enterprise and  
15 the assets of the enterprise; and

16           “(ii) title to the books, records, and  
17 assets of any other legal custodian of such  
18 enterprise.

19           “(B) OPERATE THE ENTERPRISE.—The  
20 Agency may, as conservator or receiver—

21           “(i) take over the assets of and oper-  
22 ate the enterprise with all the powers of  
23 the shareholders, the directors, and the of-  
24 ficers of the enterprise and conduct all  
25 business of the enterprise;

1           “(ii) collect all obligations and money  
2           due the enterprise;

3           “(iii) perform all functions of the en-  
4           terprise in the name of the enterprise  
5           which are consistent with the appointment  
6           as conservator or receiver; and

7           “(iv) preserve and conserve the assets  
8           and property of such enterprise.

9           “(C) FUNCTIONS OF OFFICERS, DIREC-  
10          TORS, AND SHAREHOLDERS OF AN ENTER-  
11          PRISE.—The Agency may, by regulation or  
12          order, provide for the exercise of any function  
13          by any stockholder, director, or officer of any  
14          enterprise for which the Agency has been  
15          named conservator or receiver.

16          “(D) POWERS AS CONSERVATOR.—The  
17          Agency may, as conservator, take such action  
18          as may be—

19               “(i) necessary to put the enterprise in  
20               a sound and solvent condition; and

21               “(ii) appropriate to carry on the busi-  
22               ness of the enterprise and preserve and  
23               conserve the assets and property of the en-  
24               terprise.

1           “(E) ADDITIONAL POWERS AS RE-  
2           CEIVER.—The Agency may, as receiver, place  
3           the enterprise in liquidation and proceed to re-  
4           alize upon the assets of the enterprise, having  
5           due regard to the conditions of the housing fi-  
6           nance market.

7           “(F) ORGANIZATION OF NEW ENTER-  
8           PRISES.—The Agency may, as receiver, orga-  
9           nize a successor enterprise that will operate  
10          pursuant to subsection (i).

11          “(G) TRANSFER OF ASSETS AND LIABIL-  
12          ITIES.—The Agency may, as conservator or re-  
13          ceiver, transfer any asset or liability of the en-  
14          terprise in default without any approval, assign-  
15          ment, or consent with respect to such transfer.

16          “(H) PAYMENT OF VALID OBLIGATIONS.—  
17          The Agency, as conservator or receiver, shall, to  
18          the extent of proceeds realized from the per-  
19          formance of contracts or sale of the assets of an  
20          enterprise, pay all valid obligations of the enter-  
21          prise in accordance with the prescriptions and  
22          limitations of this section.

23          “(I) SUBPOENA AUTHORITY.—

24                 “(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 an enterprise (including deter-  
6           mining any claim against the enter-  
7           prise and determining and realizing  
8           upon any asset of any person in the  
9           course of collecting money due the en-  
10          terprise), exercise any power estab-  
11          lished 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  
17          such provisions apply under that sec-  
18          tion.

19           “(ii) AUTHORITY OF DIRECTOR.—A  
20          subpoena or subpoena duces tecum may be  
21          issued under clause (i) only by, or with the  
22          written approval of, the Director, or the  
23          designee of the Director.

24           “(iii) RULE OF CONSTRUCTION.—This  
25          subsection shall not be construed to limit



1 any rights that the Agency, in any capac-  
2 ity, might otherwise have under section  
3 1317 or 1379B.

4 “(J) INCIDENTAL POWERS.—The Agency  
5 may, as conservator or receiver—

6 “(i) exercise all powers and authori-  
7 ties specifically granted to conservators or  
8 receivers, respectively, under this section,  
9 and such incidental powers as shall be nec-  
10 essary to carry out such powers; and

11 “(ii) take any action authorized by  
12 this section, which the Agency determines  
13 is in the best interests of the enterprise or  
14 the Agency.

15 “(3) AUTHORITY OF RECEIVER TO DETERMINE  
16 CLAIMS.—

17 “(A) IN GENERAL.—The Agency may, as  
18 receiver, determine claims in accordance with  
19 the requirements of this subsection and any  
20 regulations prescribed under paragraph (4).

21 “(B) NOTICE REQUIREMENTS.—The re-  
22 ceiver, in any case involving the liquidation or  
23 winding up of the affairs of a closed enterprise,  
24 shall—

1           “(i) promptly publish a notice to the  
2           creditors of the enterprise to present their  
3           claims, together with proof, to the receiver  
4           by a date specified in the notice which  
5           shall be not less than 90 days after the  
6           publication of such notice; and

7           “(ii) republish such notice approxi-  
8           mately 1 month and 2 months, respec-  
9           tively, after the publication under clause  
10          (i).

11          “(C) MAILING REQUIRED.—The receiver  
12          shall mail a notice similar to the notice pub-  
13          lished under subparagraph (B)(i) at the time of  
14          such publication to any creditor shown on the  
15          books of the enterprise—

16               “(i) at the last address of the creditor  
17               appearing in such books; or

18               “(ii) upon discovery of the name and  
19               address of a claimant not appearing on the  
20               books of the enterprise within 30 days  
21               after the discovery of such name and ad-  
22               dress.

23          “(4) RULEMAKING AUTHORITY RELATING TO  
24          DETERMINATION OF CLAIMS.—Subject to subsection  
25          (c), the Director may prescribe regulations regarding

1 the allowance or disallowance of claims by the re-  
2 ceiver and providing for administrative determina-  
3 tion of claims and review of such determination.

4 “(5) PROCEDURES FOR DETERMINATION OF  
5 CLAIMS.—

6 “(A) DETERMINATION PERIOD.—

7 “(i) IN GENERAL.—Before the end of  
8 the 180-day period beginning on the date  
9 on which any claim against an enterprise is  
10 filed with the Agency as receiver, the  
11 Agency shall determine whether to allow or  
12 disallow the claim and shall notify the  
13 claimant of any determination with respect  
14 to such claim.

15 “(ii) EXTENSION OF TIME.—The pe-  
16 riod described in clause (i) may be ex-  
17 tended by a written agreement between the  
18 claimant and the Agency.

19 “(iii) MAILING OF NOTICE SUFFI-  
20 CIENT.—The requirements of clause (i)  
21 shall be deemed to be satisfied if the notice  
22 of any determination with respect to any  
23 claim is mailed to the last address of the  
24 claimant which appears—

1                   “(I) on the books of the enter-  
2                   prise;

3                   “(II) in the claim filed by the  
4                   claimant; or

5                   “(III) in documents submitted in  
6                   proof of the claim.

7                   “(iv) CONTENTS OF NOTICE OF DIS-  
8                   ALLOWANCE.—If any claim filed under  
9                   clause (i) is disallowed, the notice to the  
10                  claimant shall contain—

11                  “(I) a statement of each reason  
12                  for the disallowance; and

13                  “(II) the procedures available for  
14                  obtaining agency review of the deter-  
15                  mination to disallow the claim or judi-  
16                  cial determination of the claim.

17                  “(B) ALLOWANCE OF PROVEN CLAIM.—  
18                  The receiver shall allow any claim received on  
19                  or before the date specified in the notice pub-  
20                  lished under paragraph (3)(B)(i) by the receiver  
21                  from any claimant which is proved to the satis-  
22                  faction of the receiver.

23                  “(C) DISALLOWANCE OF CLAIMS FILED  
24                  AFTER END OF FILING PERIOD.—Claims filed  
25                  after the date specified in the notice published

1 under paragraph (3)(B)(i), or the date specified  
2 under paragraph (3)(C), shall be disallowed and  
3 such disallowance shall be final.

4 “(D) AUTHORITY TO DISALLOW CLAIMS.—

5 “(i) IN GENERAL.—The receiver may  
6 disallow any portion of any claim by a  
7 creditor or claim of security, preference, or  
8 priority which is not proved to the satisfac-  
9 tion of the receiver.

10 “(ii) PAYMENTS TO LESS THAN  
11 FULLY SECURED CREDITORS.—In the case  
12 of a claim of a creditor against an enter-  
13 prise which is secured by any property or  
14 other asset of such enterprise, the re-  
15 ceiver—

16 “(I) may treat the portion of  
17 such claim which exceeds an amount  
18 equal to the fair market value of such  
19 property or other asset as an unse-  
20 cured claim against the enterprise;  
21 and

22 “(II) may not make any payment  
23 with respect to such unsecured por-  
24 tion of the claim other than in connec-  
25 tion with the disposition of all claims

1 of unsecured creditors of the enter-  
2 prise.

3 “(iii) EXCEPTIONS.—No provision of  
4 this paragraph shall apply with respect  
5 to—

6 “(I) any extension of credit from  
7 any Federal Reserve Bank or the  
8 United States Treasury; or

9 “(II) any security interest in the  
10 assets of the enterprise securing any  
11 such extension of credit.

12 “(E) NO JUDICIAL REVIEW OF DETER-  
13 MINATION PURSUANT TO SUBPARAGRAPH (D).—  
14 No court may review the determination of the  
15 Agency under subparagraph (D) to disallow a  
16 claim.

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,  
4 subject to the determination of claims by  
5 the 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)  
11 in the district or territorial court of the United  
12 States for the district within which the prin-  
13 cipal place of business of the enterprise is lo-  
14 cated or the United States District Court for  
15 the District of Columbia (and such court shall  
16 have jurisdiction to hear such claim), before the  
17 end of the 60-day period beginning on the ear-  
18 lier of—

19 “(i) the end of the period described in  
20 paragraph (5)(A)(i) with respect to any  
21 claim against an enterprise for which the  
22 Agency is receiver; or

23 “(ii) the date of any notice of dis-  
24 allowance of such claim pursuant to para-  
25 graph (5)(A)(i).

1           “(B) STATUTE OF LIMITATIONS.—A claim  
2 shall be deemed to be disallowed (other than  
3 any portion of such claim which was allowed by  
4 the receiver), and such disallowance shall be  
5 final, and the claimant shall have no further  
6 rights or remedies with respect to such claim,  
7 if the claimant fails, before the end of the 60-  
8 day period described under subparagraph (A),  
9 to file suit on such claim (or continue an action  
10 commenced before the appointment of the re-  
11 ceiver).

12           “(7) REVIEW OF CLAIMS.—

13           “(A) OTHER REVIEW PROCEDURES.—

14           “(i) IN GENERAL.—The Agency shall  
15 establish such alternative dispute resolu-  
16 tion processes as may be appropriate for  
17 the resolution of claims filed under para-  
18 graph (5)(A)(i).

19           “(ii) CRITERIA.—In establishing alter-  
20 native dispute resolution processes, the  
21 Agency shall strive for procedures which  
22 are expeditious, fair, independent, and low  
23 cost.

24           “(iii) VOLUNTARY BINDING OR NON-  
25 BINDING PROCEDURES.—The Agency may



1           establish both binding and nonbinding  
2           processes, which may be conducted by any  
3           government or private party. All parties,  
4           including the claimant and the Agency,  
5           must agree to the use of the process in a  
6           particular case.

7           “(B) CONSIDERATION OF INCENTIVES.—  
8           The Agency shall seek to develop incentives for  
9           claimants to participate in the alternative dis-  
10          pute resolution process.

11          “(8) EXPEDITED DETERMINATION OF  
12          CLAIMS.—

13                 “(A) ESTABLISHMENT REQUIRED.—The  
14                 Agency shall establish a procedure for expedited  
15                 relief outside of the routine claims process es-  
16                 tablished under paragraph (5) for claimants  
17                 who—

18                         “(i) allege the existence of legally  
19                         valid and enforceable or perfected security  
20                         interests in assets of any enterprise for  
21                         which the Agency has been appointed re-  
22                         ceiver; and

23                         “(ii) allege that irreparable injury will  
24                         occur if the routine claims procedure is fol-  
25                         lowed.

1           “(B) DETERMINATION PERIOD.—Before  
2 the end of the 90-day period beginning on the  
3 date any claim is filed in accordance with the  
4 procedures established under subparagraph (A),  
5 the Director shall—

6           “(i) determine—

7                   “(I) whether to allow or disallow  
8 such claim; or

9                   “(II) whether such claim should  
10 be determined pursuant to the proce-  
11 dures established under paragraph  
12 (5); and

13           “(ii) notify the claimant of the deter-  
14 mination, and if the claim is disallowed,  
15 provide a statement of each reason for the  
16 disallowance and the procedure for obtain-  
17 ing agency review or judicial determina-  
18 tion.

19           “(C) PERIOD FOR FILING OR RENEWING  
20 SUIT.—Any claimant who files a request for ex-  
21 pedited relief shall be permitted to file a suit,  
22 or to continue a suit filed before the appoint-  
23 ment of the receiver, seeking a determination of  
24 the rights of the claimant with respect to such  
25 security interest after the earlier of—

1           “(i) the end of the 90-day period be-  
2           ginning on the date of the filing of a re-  
3           quest for expedited relief; or

4           “(ii) the date the Agency denies the  
5           claim.

6           “(D) STATUTE OF LIMITATIONS.—If an  
7           action described under subparagraph (C) is not  
8           filed, or the motion to renew a previously filed  
9           suit is not made, before the end of the 30-day  
10          period beginning on the date on which such ac-  
11          tion or motion may be filed under subparagraph  
12          (B), the claim shall be deemed to be disallowed  
13          as of the end of such period (other than any  
14          portion of such claim which was allowed by the  
15          receiver), such disallowance shall be final, and  
16          the claimant shall have no further rights or  
17          remedies with respect to such claim.

18          “(E) LEGAL EFFECT OF FILING.—

19               “(i) STATUTE OF LIMITATION  
20               TOLLED.—For purposes of any applicable  
21               statute of limitations, the filing of a claim  
22               with the receiver shall constitute a com-  
23               mencement of an action.

24               “(ii) NO PREJUDICE TO OTHER AC-  
25               TIONS.—Subject to paragraph (10), the fil-

1           ing of a claim with the receiver shall not  
2           prejudice any right of the claimant to con-  
3           tinue any action that was filed before the  
4           appointment of the receiver, subject to the  
5           determination of claims by the receiver.

6           “(9) PAYMENT OF CLAIMS.—

7           “(A) IN GENERAL.—The receiver may, in  
8           the discretion of the receiver, and to the extent  
9           funds are available from the assets of the enter-  
10          prise, pay creditor claims, in such manner and  
11          amounts as are authorized under this section,  
12          which are—

13                   “(i) allowed by the receiver;

14                   “(ii) approved by the Agency pursuant  
15                   to a final determination pursuant to para-  
16                   graph (7) or (8); or

17                   “(iii) determined by the final judg-  
18                   ment of any court of competent jurisdic-  
19                   tion.

20          “(B) AGREEMENTS AGAINST THE INTER-  
21          EST OF THE AGENCY.—No agreement that  
22          tends to diminish or defeat the interest of the  
23          Agency in any asset acquired by the Agency as  
24          receiver under this section shall be valid against  
25          the Agency unless such agreement is in writing.

1           “(C) PAYMENT OF DIVIDENDS ON  
2 CLAIMS.—The receiver may, in the sole discre-  
3 tion of the receiver, pay from the assets of the  
4 enterprise dividends on proved claims at any  
5 time, and no liability shall attach to the Agen-  
6 cy, by reason of any such payment, for failure  
7 to pay dividends to a claimant whose claim is  
8 not proved at the time of any such payment.

9           “(D) RULEMAKING AUTHORITY OF THE  
10 DIRECTOR.—The Director may prescribe such  
11 rules, including definitions of terms, as the Di-  
12 rector deems appropriate to establish a single  
13 uniform interest rate for, or to make payments  
14 of post-insolvency interest to creditors holding  
15 proven claims against the receivership estates of  
16 enterprises following satisfaction by the receiver  
17 of the principal amount of all creditor claims.

18           “(10) SUSPENSION OF LEGAL ACTIONS.—

19           “(A) IN GENERAL.—After the appointment  
20 of a conservator or receiver for an enterprise,  
21 the conservator or receiver may, in any judicial  
22 action or proceeding to which such enterprise is  
23 or becomes a party, request a stay for a period  
24 not to exceed—

1                   “(i) 45 days, in the case of any con-  
2                   servator; and

3                   “(ii) 90 days, in the case of any re-  
4                   ceiver.

5                   “(B) GRANT OF STAY BY ALL COURTS RE-  
6                   QUIRED.—Upon receipt of a request by any  
7                   conservator or receiver under subparagraph (A)  
8                   for a stay of any judicial action or proceeding  
9                   in any court with jurisdiction of such action or  
10                  proceeding, the court shall grant such stay as  
11                  to all parties.

12                  “(11) ADDITIONAL RIGHTS AND DUTIES.—

13                  “(A) PRIOR FINAL ADJUDICATION.—The  
14                  Agency shall abide by any final unappealable  
15                  judgment of any court of competent jurisdiction  
16                  which was rendered before the appointment of  
17                  the Agency as conservator or receiver.

18                  “(B) RIGHTS AND REMEDIES OF CONSER-  
19                  VATOR OR RECEIVER.—In the event of any ap-  
20                  pealable judgment, the Agency as conservator  
21                  or receiver shall—

22                  “(i) have all the rights and remedies  
23                  available to the enterprise (before the ap-  
24                  pointment of such conservator or receiver)

1 and the Agency, including removal to Fed-  
2 eral court and all appellate rights; and

3 “(ii) not be required to post any bond  
4 in order to pursue such remedies.

5 “(C) NO ATTACHMENT OR EXECUTION.—

6 No attachment or execution may issue by any  
7 court upon assets in the possession of the re-  
8 ceiver.

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 determina-  
14 tion of rights with respect to, the assets of  
15 any enterprise for which the Agency has  
16 been appointed receiver; or

17 “(ii) any claim relating to any act or  
18 omission of such enterprise or the Agency  
19 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  
23 any sale or disposition of assets of an enterprise  
24 for which the Agency has been appointed con-

1 servator or receiver, the Agency shall conduct  
2 its operations in a manner which—

3 “(i) maximizes the net present value  
4 return from the sale or disposition of such  
5 assets;

6 “(ii) minimizes the amount of any loss  
7 realized in the resolution of cases; and

8 “(iii) ensures adequate competition  
9 and fair and consistent treatment of  
10 offerors.

11 “(12) STATUTE OF LIMITATIONS FOR ACTIONS  
12 BROUGHT BY CONSERVATOR OR RECEIVER.—

13 “(A) IN GENERAL.—Notwithstanding any  
14 provision of any contract, the applicable statute  
15 of limitations with regard to any action brought  
16 by the Agency as conservator or receiver shall  
17 be—

18 “(i) in the case of any contract claim,  
19 the longer of—

20 “(I) the 6-year period beginning  
21 on the date the claim accrues; or

22 “(II) the period applicable under  
23 State law; and

24 “(ii) in the case of any tort claim, the  
25 longer of—



1                   “(I) the 3-year period beginning  
2                   on the date the claim accrues; or

3                   “(II) the period applicable under  
4                   State law.

5                   “(B) DETERMINATION OF THE DATE ON  
6                   WHICH A CLAIM ACCRUES.—For purposes of  
7                   subparagraph (A), the date on which the stat-  
8                   ute of limitations begins to run on any claim  
9                   described in such subparagraph shall be the  
10                  later of—

11                  “(i) the date of the appointment of  
12                  the Agency as conservator or receiver; or

13                  “(ii) the date on which the cause of  
14                  action accrues.

15                  “(13) REVIVAL OF EXPIRED STATE CAUSES OF  
16                  ACTION.—

17                  “(A) IN GENERAL.—In the case of any tort  
18                  claim described under subparagraph (B) for  
19                  which the statute of limitations applicable  
20                  under State law with respect to such claim has  
21                  expired not more than 5 years before the ap-  
22                  pointment of the Agency as conservator or re-  
23                  ceiver, the Agency may bring an action as con-  
24                  servator or receiver on such claim without re-

1           gard to the expiration of the statute of limita-  
2           tion applicable under State law.

3           “(B) CLAIMS DESCRIBED.—A tort claim  
4           referred 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 en-  
8           terprise.

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 proce-  
14          dures established by the Agency, maintain a full  
15          accounting of each conservatorship and receiv-  
16          ership or other disposition of an enterprise in  
17          default.

18           “(B) ANNUAL ACCOUNTING OR REPORT.—  
19          With respect to each conservatorship or receiv-  
20          ership, the Agency shall make an annual ac-  
21          counting or report available to the Board, the  
22          Comptroller General of the United States, the  
23          Committee on Banking, Housing, and Urban  
24          Affairs of the Senate, and the Committee on

1 Financial Services of the House of Representa-  
2 tives.

3 “(C) AVAILABILITY OF REPORTS.—Any re-  
4 port prepared under subparagraph (B) shall be  
5 made available by the Agency upon request to  
6 any shareholder of an enterprise or any member  
7 of the public.

8 “(D) RECORDKEEPING REQUIREMENT.—  
9 After the end of the 6-year period beginning on  
10 the date that the conservatorship or receiver-  
11 ship is terminated by the Director, the Agency  
12 may destroy any records of such enterprise  
13 which the Agency, in the discretion of the Agen-  
14 cy, determines to be unnecessary unless di-  
15 rected not to do so by a court of competent ju-  
16 risdiction or governmental agency, or prohibited  
17 by law.

18 “(15) FRAUDULENT TRANSFERS.—

19 “(A) IN GENERAL.—The Agency, as con-  
20 servator or receiver, may avoid a transfer of  
21 any interest of an enterprise-affiliated party, or  
22 any person who the conservator or receiver de-  
23 termines is a debtor of the enterprise, in prop-  
24 erty, or any obligation incurred by such party  
25 or person, that was made within 5 years of the

1 date on which the Agency was appointed con-  
2 servator or receiver, if such party or person vol-  
3 untarily or involuntarily made such transfer or  
4 incurred such liability with the intent to hinder,  
5 delay, or defraud the enterprise, the Agency,  
6 the conservator, or receiver.

7 “(B) RIGHT OF RECOVERY.—To the extent  
8 a transfer is avoided under subparagraph (A),  
9 the conservator or receiver may recover, for the  
10 benefit of the enterprise, the property trans-  
11 ferred, or, if a court so orders, the value of  
12 such property (at the time of such transfer)  
13 from—

14 “(i) the initial transferee of such  
15 transfer or the enterprise-affiliated party  
16 or person for whose benefit such transfer  
17 was made; or

18 “(ii) any immediate or mediate trans-  
19 feree of any such initial transferee.

20 “(C) RIGHTS OF TRANSFEREE OR OBLI-  
21 GEE.—The conservator or receiver may not re-  
22 cover under subparagraph (B) from—

23 “(i) any transferee that takes for  
24 value, including satisfaction or securing of

1 a present or antecedent debt, in good faith;

2 or

3 “(ii) any immediate or mediate good  
4 faith transferee of such transferee.

5 “(D) RIGHTS UNDER THIS PARAGRAPH.—

6 The rights under this paragraph of the conser-  
7 vator or receiver described under subparagraph  
8 (A) shall be superior to any rights of a trustee  
9 or any other party (other than any party which  
10 is a Federal agency) under title 11, United  
11 States Code.

12 “(16) ATTACHMENT OF ASSETS AND OTHER IN-  
13 JUNCTIVE RELIEF.—Subject to paragraph (17), any  
14 court of competent jurisdiction may, at the request  
15 of the conservator or receiver, issue an order in ac-  
16 cordance with Rule 65 of the Federal Rules of Civil  
17 Procedure, including an order placing the assets of  
18 any person designated by the Agency or such conser-  
19 vator under the control of the court, and appointing  
20 a trustee to hold such assets.

21 “(17) STANDARDS OF PROOF.—Rule 65 of the  
22 Federal Rules of Civil Procedure shall apply with re-  
23 spect to any proceeding under paragraph (16) with-  
24 out regard to the requirement of such rule that the

1 applicant show that the injury, loss, or damage is ir-  
2 reparable and immediate.

3 “(18) TREATMENT OF CLAIMS ARISING FROM  
4 BREACH OF CONTRACTS EXECUTED BY THE RE-  
5 CEIVER OR CONSERVATOR.—

6 “(A) IN GENERAL.—Notwithstanding any  
7 other provision of this subsection, any final and  
8 unappealable judgment for monetary damages  
9 entered against a receiver or conservator for the  
10 breach of an agreement executed or approved in  
11 writing by such receiver or conservator after the  
12 date of its appointment, shall be paid as an ad-  
13 ministrative expense of the receiver or conser-  
14 vator.

15 “(B) NO LIMITATION OF POWER.—Nothing  
16 in this paragraph shall be construed to limit the  
17 power of a receiver or conservator to exercise  
18 any rights under contract or law, including to  
19 terminate, breach, cancel, or otherwise dis-  
20 continue such agreement.

21 “(19) GENERAL EXCEPTIONS.—

22 “(A) LIMITATIONS.—The rights of a con-  
23 servator or receiver appointed under this section  
24 shall be subject to the limitations on the powers  
25 of a receiver under sections 402 through 407 of

1 the Federal Deposit Insurance Corporation Im-  
2 provement Act of 1991 (12 U.S.C. 4402  
3 through 4407).

4 “(B) MORTGAGES HELD IN TRUST.—

5 “(i) IN GENERAL.—Any mortgage,  
6 pool of mortgages, or interest in a pool of  
7 mortgages, held in trust, custodial, or  
8 agency capacity by an enterprise for the  
9 benefit of persons other than the enterprise  
10 shall not be available to satisfy the claims  
11 of creditors generally.

12 “(ii) HOLDING OF MORTGAGES.—Any  
13 mortgage, pool of mortgages, or interest in  
14 a pool of mortgages, described under  
15 clause (i) shall be held by the conservator  
16 or receiver appointed under this section for  
17 the beneficial owners of such mortgage,  
18 pool of mortgages, or interest in a pool of  
19 mortgages in accordance with the terms of  
20 the agreement creating such trust, custo-  
21 dial, or other agency arrangement.

22 “(iii) LIABILITY OF RECEIVER.—The  
23 liability of a receiver appointed under this  
24 section for damages shall, in the case of  
25 any contingent or unliquidated claim relat-

1                   ing to the mortgages held in trust, be esti-  
2                   mated in accordance set forth in the regu-  
3                   lations of the Director.

4           “(c) PRIORITY OF EXPENSES AND UNSECURED  
5 CLAIMS.—

6                   “(1) IN GENERAL.—Unsecured claims against  
7                   an enterprise, or a receiver, that are proven to the  
8                   satisfaction of the receiver shall have priority in the  
9                   following order:

10                   “(A) Administrative expenses of the re-  
11                   ceiver.

12                   “(B) Any other general or senior liability  
13                   of the enterprise (which is not a liability de-  
14                   scribed under subparagraph (C) or (D)).

15                   “(C) Any obligation subordinated to gen-  
16                   eral creditors (which is not an obligation de-  
17                   scribed under subparagraph (D)).

18                   “(D) Any obligation to shareholders or  
19                   members arising as a result of their status as  
20                   shareholder or members.

21                   “(2) CREDITORS SIMILARLY SITUATED.—All  
22                   creditors that are similarly situated under paragraph  
23                   (1) shall be treated in a similar manner.

24                   “(3) DEFINITION.—The term ‘administrative  
25                   expenses of the receiver’ shall include the actual,



1 necessary costs and expenses incurred by the re-  
2 ceiver in preserving the assets of a failed enterprise  
3 or liquidating or otherwise resolving the affairs of  
4 the failed enterprise. Such expenses shall include ob-  
5 ligations that are incurred by the receiver after ap-  
6 pointment as receiver that the Director determines  
7 are necessary and appropriate to facilitate the  
8 smooth and orderly liquidation or other resolution of  
9 the enterprise.

10 “(d) PROVISIONS RELATING TO CONTRACTS EN-  
11 TERED INTO BEFORE APPOINTMENT OF CONSERVATOR  
12 OR RECEIVER.—

13 “(1) AUTHORITY TO REPUDIATE CONTRACTS.—  
14 In addition to any other rights a conservator or re-  
15 ceiver may have, the conservator or receiver for any  
16 enterprise may disaffirm or repudiate any contract  
17 or lease—

18 “(A) to which such enterprise is a party;

19 “(B) the performance of which the conser-  
20 vator or receiver, in its sole discretion, deter-  
21 mines to be burdensome; and

22 “(C) the disaffirmance or repudiation of  
23 which the conservator or receiver determines, in  
24 its sole discretion, will promote the orderly ad-  
25 ministration of the affairs of the enterprise.

1           “(2) TIMING OF REPUDIATION.—The conser-  
2 vator or receiver shall determine whether or not to  
3 exercise the rights of repudiation under this sub-  
4 section within a reasonable period following such ap-  
5 pointment.

6           “(3) CLAIMS FOR DAMAGES FOR REPUDI-  
7 ATION.—

8           “(A) IN GENERAL.—Except as otherwise  
9 provided under subparagraph (C) and para-  
10 graphs (4), (5), and (6), the liability of the con-  
11 servator or receiver for the disaffirmance or re-  
12 pudiation of any contract pursuant to para-  
13 graph (1) shall be—

14                   “(i) limited to actual direct compen-  
15 satory damages; and

16                   “(ii) determined as of—

17                           “(I) the date of the appointment  
18 of the conservator or receiver; or

19                           “(II) in the case of any contract  
20 or agreement referred to in paragraph  
21 (8), the date of the disaffirmance or  
22 repudiation of such contract or agree-  
23 ment.

24           “(B) NO LIABILITY FOR OTHER DAM-  
25 AGES.—For purposes of subparagraph (A), the

1 term ‘actual direct compensatory damages’ shall  
2 not include—

3 “(i) punitive or exemplary damages;

4 “(ii) damages for lost profits or op-  
5 portunity; or

6 “(iii) damages for pain and suffering.

7 “(C) MEASURE OF DAMAGES FOR REPUDI-  
8 ATION OF FINANCIAL CONTRACTS.—In the case  
9 of any qualified financial contract or agreement  
10 to which paragraph (8) applies, compensatory  
11 damages shall be—

12 “(i) deemed to include normal and  
13 reasonable costs of cover or other reason-  
14 able measures of damages utilized in the  
15 industries for such contract and agreement  
16 claims; and

17 “(ii) paid in accordance with this sub-  
18 section and subsection (e), except as other-  
19 wise specifically provided in this section.

20 “(4) LEASES UNDER WHICH THE ENTERPRISE  
21 IS THE LESSEE.—

22 “(A) IN GENERAL.—If the conservator or  
23 receiver disaffirms or repudiates a lease under  
24 which the enterprise was the lessee, the conser-  
25 vator or receiver shall not be liable for any

1 damages (other than damages determined  
2 under subparagraph (B)) for the disaffirmance  
3 or repudiation of such lease.

4 “(B) PAYMENTS OF RENT.—Notwith-  
5 standing subparagraph (A), the lessor under a  
6 lease to which that subparagraph applies  
7 shall—

8 “(i) be entitled to the contractual rent  
9 accruing before the later of the date—

10 “(I) the notice of disaffirmance  
11 or repudiation is mailed; or

12 “(II) the disaffirmance or repudi-  
13 ation becomes effective, unless the les-  
14 sor is in default or breach of the  
15 terms of the lease;

16 “(ii) have no claim for damages under  
17 any acceleration clause or other penalty  
18 provision in the lease; and

19 “(iii) have a claim for any unpaid  
20 rent, subject to all appropriate offsets and  
21 defenses, due as of the date of the appoint-  
22 ment, which shall be paid in accordance  
23 with this subsection and subsection (e).

24 “(5) LEASES UNDER WHICH THE ENTERPRISE  
25 IS THE LESSOR.—

1           “(A) IN GENERAL.—If the conservator or  
2 receiver repudiates an unexpired written lease  
3 of real property of the enterprise under which  
4 the enterprise is the lessor and the lessee is not,  
5 as of the date of such repudiation, in default,  
6 the lessee under such lease may either—

7                   “(i) treat the lease as terminated by  
8 such repudiation; or

9                   “(ii) remain in possession of the lease-  
10 hold interest for the balance of the term of  
11 the lease, unless the lessee defaults under  
12 the terms of the lease after the date of  
13 such repudiation.

14           “(B) PROVISIONS APPLICABLE TO LESSEE  
15 REMAINING IN POSSESSION.—If any lessee  
16 under a lease described under subparagraph (A)  
17 remains in possession of a leasehold interest  
18 under clause (ii) of such subparagraph—

19                   “(i) the lessee—

20                           “(I) shall continue to pay the  
21 contractual rent pursuant to the  
22 terms of the lease after the date of  
23 the repudiation of such lease; and

24                           “(II) may offset against any rent  
25 payment which accrues after the date

1 of the repudiation of the lease, and  
2 any damages which accrue after such  
3 date due to the nonperformance of  
4 any obligation of the enterprise under  
5 the lease after such date; and

6 “(ii) the conservator or receiver shall  
7 not be liable to the lessee for any damages  
8 arising after such date as a result of the  
9 repudiation other than the amount of any  
10 offset allowed under clause (i)(II).

11 “(6) CONTRACTS FOR THE SALE OF REAL  
12 PROPERTY.—

13 “(A) IN GENERAL.—If the conservator or  
14 receiver repudiates any contract for the sale of  
15 real property and the purchaser of such real  
16 property under such contract is in possession,  
17 and is not, as of the date of such repudiation,  
18 in default, such purchaser may either—

19 “(i) treat the contract as terminated  
20 by such repudiation; or

21 “(ii) remain in possession of such real  
22 property.

23 “(B) PROVISIONS APPLICABLE TO PUR-  
24 CHASER REMAINING IN POSSESSION.—If any  
25 purchaser of real property under any contract

1 described under subparagraph (A) remains in  
2 possession of such property under clause (ii) of  
3 such subparagraph—

4 “(i) the purchaser—

5 “(I) shall continue to make all  
6 payments due under the contract after  
7 the date of the repudiation of the con-  
8 tract; and

9 “(II) may offset against any such  
10 payments any damages which accrue  
11 after such date due to the non-  
12 performance (after such date) of any  
13 obligation of the enterprise under the  
14 contract; and

15 “(ii) the conservator or receiver  
16 shall—

17 “(I) not be liable to the pur-  
18 chaser for any damages arising after  
19 such date as a result of the repudi-  
20 ation other than the amount of any  
21 offset allowed under clause (i)(II);

22 “(II) deliver title to the pur-  
23 chaser in accordance with the provi-  
24 sions of the contract; and

1                   “(III) have no obligation under  
2                   the contract other than the perform-  
3                   ance required under subclause (II).

4                   “(C) ASSIGNMENT AND SALE ALLOWED.—

5                   “(i) IN GENERAL.—No provision of  
6                   this paragraph shall be construed as lim-  
7                   iting the right of the conservator or re-  
8                   ceiver to assign the contract described  
9                   under subparagraph (A), and sell the prop-  
10                  erty subject to the contract and the provi-  
11                  sions of this paragraph.

12                  “(ii) NO LIABILITY AFTER ASSIGN-  
13                  MENT AND SALE.—If an assignment and  
14                  sale described under clause (i) is con-  
15                  summated, the conservator or receiver  
16                  shall have no further liability under the  
17                  contract described under subparagraph  
18                  (A), or with respect to the real property  
19                  which was the subject of such contract.

20                  “(7) PROVISIONS APPLICABLE TO SERVICE CON-  
21                  TRACTS.—

22                  “(A) SERVICES PERFORMED BEFORE AP-  
23                  POINTMENT.—In the case of any contract for  
24                  services between any person and any enterprise  
25                  for which the Agency has been appointed con-



1 servator or receiver, any claim of such person  
2 for services performed before the appointment  
3 of the conservator or the receiver shall be—

4 “(i) a claim to be paid in accordance  
5 with subsections (b) and (e); and

6 “(ii) deemed to have arisen as of the  
7 date the conservator or receiver was ap-  
8 pointed.

9 “(B) SERVICES PERFORMED AFTER AP-  
10 POINTMENT AND PRIOR TO REPUDIATION.—If,  
11 in the case of any contract for services de-  
12 scribed under subparagraph (A), the conser-  
13 vator or receiver accepts performance by the  
14 other person before the conservator or receiver  
15 makes any determination to exercise the right  
16 of repudiation of such contract under this sec-  
17 tion—

18 “(i) the other party shall be paid  
19 under the terms of the contract for the  
20 services performed; and

21 “(ii) the amount of such payment  
22 shall be treated as an administrative ex-  
23 pense of the conservatorship or receiver-  
24 ship.

1           “(C) ACCEPTANCE OF PERFORMANCE NO  
2           BAR TO SUBSEQUENT REPUDIATION.—The ac-  
3           ceptance by any conservator or receiver of serv-  
4           ices referred to under subparagraph (B) in con-  
5           nection with a contract described in such sub-  
6           paragraph shall not affect the right of the con-  
7           servator or receiver to repudiate such contract  
8           under this section at any time after such per-  
9           formance.

10           “(8) CERTAIN QUALIFIED FINANCIAL CON-  
11           TRACTS.—

12           “(A) RIGHTS OF PARTIES TO CON-  
13           TRACTS.—Subject to paragraph (10) and not-  
14           withstanding any other provision of this Act,  
15           any other Federal law, or the law of any State,  
16           no person shall be stayed or prohibited from ex-  
17           ercising—

18           “(i) any right to cause the termi-  
19           nation or liquidation of any qualified finan-  
20           cial contract with an enterprise that arises  
21           upon the appointment of the Agency as re-  
22           ceiver for such enterprise at any time after  
23           such appointment;

1           “(ii) any right under any security ar-  
2           rangement relating to any contract or  
3           agreement described in clause (i); or

4           “(iii) any right to offset or net out  
5           any termination value, payment amount, or  
6           other transfer obligation arising under or  
7           in connection with 1 or more contracts and  
8           agreements described in clause (i), includ-  
9           ing any master agreement for such con-  
10          tracts or agreements.

11          “(B) APPLICABILITY OF OTHER PROVI-  
12          SIONS.—Paragraphs (10) and (12) of sub-  
13          section (b) shall apply in the case of any judi-  
14          cial action or proceeding brought against any  
15          receiver referred to under subparagraph (A), or  
16          the enterprise for which such receiver was ap-  
17          pointed, by any party to a contract or agree-  
18          ment described under subparagraph (A)(i) with  
19          such enterprise.

20          “(C) CERTAIN TRANSFERS NOT AVOID-  
21          ABLE.—

22          “(i) IN GENERAL.—Notwithstanding  
23          paragraph (11), the Agency, whether act-  
24          ing as such or as conservator or receiver of  
25          an enterprise, may not avoid any transfer

1 of money or other property in connection  
2 with any qualified financial contract with  
3 an enterprise.

4 “(ii) EXCEPTION FOR CERTAIN  
5 TRANSFERS.—Clause (i) shall not apply to  
6 any transfer of money or other property in  
7 connection with any qualified financial con-  
8 tract with an enterprise if the Agency de-  
9 termines that the transferee had actual in-  
10 tent to hinder, delay, or defraud such en-  
11 terprise, the creditors of such enterprise,  
12 or any conservator or receiver appointed  
13 for such enterprise.

14 “(D) CERTAIN CONTRACTS AND AGREE-  
15 MENTS DEFINED.—In this subsection:

16 “(i) QUALIFIED FINANCIAL CON-  
17 TRACT.—The term ‘qualified financial con-  
18 tract’ means any securities contract, com-  
19 modity contract, forward contract, repur-  
20 chase agreement, swap agreement, and any  
21 similar agreement that the Agency deter-  
22 mines by regulation to be a qualified finan-  
23 cial contract for purposes of this para-  
24 graph.

1           “(ii) SECURITIES CONTRACT.—The  
2 term ‘securities contract’ has the meaning  
3 given to such term under section 741 of  
4 title 11, United States Code, except that  
5 the term ‘security’ (as used in such sec-  
6 tion) shall be deemed to include any mort-  
7 gage loan, any mortgage-related security  
8 (as defined in section 3(a)(41) of the Secu-  
9 rities Exchange Act of 1934), and any in-  
10 terest in any mortgage loan or mortgage-  
11 related security, and does not include any  
12 participation in a commercial mortgage  
13 loan.

14           “(iii) COMMODITY CONTRACT.—The  
15 term ‘commodity contract’ has the mean-  
16 ing given to such term in section 761 of  
17 title 11, United States Code.

18           “(iv) FORWARD CONTRACT.—The  
19 term ‘forward contract’ has the meaning  
20 given to such term in section 101 of title  
21 11, United States Code.

22           “(v) REPURCHASE AGREEMENT.—The  
23 term ‘repurchase agreement’ has the mean-  
24 ing given to such term in section 101 of  
25 title 11, the United States Code, except

1 that the items (as described in such sec-  
2 tion) which may be subject to any such  
3 agreement shall be deemed to include  
4 mortgage-related securities (as such term  
5 is defined in section 3(a)(41) of the Securi-  
6 ties Exchange Act of 1934), any mortgage  
7 loan, and any interest in any mortgage  
8 loan and does not include any participation  
9 in a commercial mortgage loan unless the  
10 Agency determines by regulation, resolu-  
11 tion, or order to include any such partici-  
12 pation within the meaning of such term.

13 “(vi) SWAP AGREEMENT.—The term  
14 ‘swap agreement’—

15 “(I) means any agreement, in-  
16 cluding the terms and conditions in-  
17 corporated by reference in any such  
18 agreement, which is a rate swap  
19 agreement, basis swap, commodity  
20 swap, forward rate agreement, inter-  
21 est rate future, interest rate option  
22 purchased, forward foreign exchange  
23 agreement, rate cap agreement, rate  
24 floor agreement, rate collar agree-  
25 ment, currency swap agreement,

1 cross-currency rate swap agreement,  
2 currency future, or currency option  
3 purchased or any other similar agree-  
4 ment; and

5 “(II) includes any combination of  
6 such agreements and any option to  
7 enter into any such agreement.

8 “(vii) TREATMENT OF MASTER  
9 AGREEMENT AS 1 QUALIFIED FINANCIAL  
10 CONTRACT.—Any master agreement for  
11 any agreements described under this sub-  
12 paragraph, together with all supplements  
13 to such master agreement, shall be treated  
14 as 1 qualified financial contract.

15 “(viii) TRANSFER.—The term ‘trans-  
16 fer’ has the meaning given to such term in  
17 section 101 of title 11, United States  
18 Code.

19 “(E) CERTAIN PROTECTIONS IN EVENT OF  
20 APPOINTMENT OF CONSERVATOR.—Notwith-  
21 standing any other provision of this Act (other  
22 than paragraph (12) of this subsection), any  
23 other Federal law, or the law of any State, no  
24 person shall be stayed or prohibited from exer-  
25 cising—

1           “(i) any right such person has to  
2           cause the termination, liquidation, or accel-  
3           eration of any qualified financial contract  
4           with an enterprise in a conservatorship  
5           based upon a default under such financial  
6           contract which is enforceable under appli-  
7           cable noninsolvency law;

8           “(ii) any right under any security ar-  
9           rangement relating to such qualified finan-  
10          cial contracts; or

11          “(iii) any right to offset or net out  
12          any termination values, payment amounts,  
13          or other transfer obligations arising under  
14          or in connection with such qualified finan-  
15          cial contracts.

16          “(9) TRANSFER OF QUALIFIED FINANCIAL CON-  
17          TRACTS.—In making any transfer of assets or liabil-  
18          ities of an enterprise in default which includes any  
19          qualified financial contract, the conservator or re-  
20          ceiver for such enterprise shall either—

21                 “(A) transfer to 1 person—

22                         “(i) all qualified financial contracts  
23                         between—

24                                 “(I) any person (or any affiliate  
25                                 of such person); and



1 “(II) the enterprise in default;

2 “(ii) all claims of such person (or any  
3 affiliate of such person) against such en-  
4 terprise under any such contract (other  
5 than any claim which, under the terms of  
6 any such contract, is subordinated to the  
7 claims of general unsecured creditors of  
8 such enterprise);

9 “(iii) all claims of such enterprise  
10 against such person (or any affiliate of  
11 such person) under any such contract; and

12 “(iv) all property securing any claim  
13 described in clause (ii) or (iii) under any  
14 such contract; or

15 “(B) transfer none of the financial con-  
16 tracts, claims, or property referred to under  
17 subparagraph (A) (with respect to such person  
18 and any affiliate of such person).

19 “(10) NOTIFICATION OF TRANSFER.—

20 “(A) IN GENERAL.—If—

21 “(i) the conservator or receiver for an  
22 enterprise in default makes any transfer of  
23 the assets and liabilities of such enterprise,  
24 and

1           “(ii) the transfer includes any quali-  
2           fied financial contract,  
3           the conservator or receiver shall use best efforts  
4           to notify any person who is a party to any such  
5           contract of such transfer by 12 p.m. (noon)  
6           (Eastern Standard Time) on the business day  
7           following such transfer.

8           “(B) BUSINESS DAY DEFINED.—For pur-  
9           poses of this paragraph, the term ‘business day’  
10          means any day other than any Saturday, Sun-  
11          day, or any day on which either the New York  
12          Stock Exchange or the Federal Reserve Bank  
13          of New York is closed.

14          “(11) CERTAIN SECURITY INTERESTS NOT  
15          AVOIDABLE.—No provision of this subsection shall  
16          be construed as permitting the avoidance of any le-  
17          gally enforceable or perfected security interest in any  
18          of the assets of any enterprise, except where such an  
19          interest is taken in contemplation of the insolvency  
20          of the enterprise, or with the intent to hinder, delay,  
21          or defraud the enterprise or the creditors of such en-  
22          terprise.

23          “(12) AUTHORITY TO ENFORCE CONTRACTS.—

24                 “(A) IN GENERAL.—Notwithstanding any  
25                 provision of a contract providing for termi-

1 nation, default, acceleration, or exercise of  
2 rights upon, or solely by reason of, insolvency  
3 or the appointment of a conservator or receiver,  
4 the conservator or receiver may enforce any  
5 contract, other than a contract for director's or  
6 officer's liability or an enterprise bond, entered  
7 into by the enterprise.

8 “(B) CERTAIN RIGHTS NOT AFFECTED.—

9 No provision of this paragraph may be con-  
10 strued as impairing or affecting any right of the  
11 conservator or receiver to enforce or recover  
12 under a director's or officer's liability insurance  
13 contract or enterprise bond under other applica-  
14 ble law.

15 “(C) CONSENT REQUIREMENT.—

16 “(i) IN GENERAL.—Except as other-  
17 wise provided under this section, no person  
18 may exercise any right or power to termi-  
19 nate, accelerate, or declare a default under  
20 any contract to which an enterprise is a  
21 party, or to obtain possession of or exercise  
22 control over any property of the enterprise,  
23 or affect any contractual rights of the en-  
24 terprise, without the consent of the conser-

1 vator or receiver, as appropriate, for a pe-  
2 riod of—

3 “(I) 45 days after the date of ap-  
4 pointment of a conservator; or

5 “(II) 90 days after the date of  
6 appointment of a receiver.

7 “(ii) EXCEPTIONS.—This subpara-  
8 graph shall—

9 “(I) not apply to a director’s or  
10 officer’s liability insurance contract;

11 “(II) not apply to the rights of  
12 parties to certain qualified financial  
13 contracts under subsection (d)(8); and

14 “(III) not be construed as per-  
15 mitting the conservator or receiver to  
16 fail to comply with otherwise enforce-  
17 able provisions of such contracts.

18 “(e) VALUATION OF CLAIMS IN DEFAULT.—

19 “(1) IN GENERAL.—Notwithstanding any other  
20 provision of Federal law or the law of any State, and  
21 regardless of the method which the Agency deter-  
22 mines to utilize with respect to an enterprise in de-  
23 fault or in danger of default, including transactions  
24 authorized under subsection (i), this subsection shall  
25 govern the rights of the creditors of such enterprise.

1           “(2) MAXIMUM LIABILITY.—The maximum li-  
2           ability of the Agency, acting as receiver or in any  
3           other capacity, to any person having a claim against  
4           the receiver or the enterprise for which such receiver  
5           is appointed shall equal the lesser of—

6                   “(A) the amount such claimant would have  
7                   received if the Agency had liquidated the assets  
8                   and liabilities of such enterprise without exer-  
9                   cising the authority of the Agency under sub-  
10                  section (i) of this section; or

11                   “(B) the amount of proceeds realized from  
12                   the performance of contracts or sale of the as-  
13                   sets of the enterprise.

14           “(f) LIMITATION ON COURT ACTION.—Except as  
15           provided in this section or at the request of the Director,  
16           no court may take any action to restrain or affect the exer-  
17           cise of powers or functions of the Agency as a conservator  
18           or a receiver.

19           “(g) LIABILITY OF DIRECTORS AND OFFICERS.—

20                   “(1) IN GENERAL.—A director or officer of an  
21                   enterprise may be held personally liable for mone-  
22                   tary damages in any civil action by, on behalf of, or  
23                   at the request or direction of the Agency, which ac-  
24                   tion is prosecuted wholly or partially for the benefit  
25                   of the Agency—

1           “(A) acting as conservator or receiver of  
2           such enterprise, or

3           “(B) acting based upon a suit, claim, or  
4           cause of action purchased from, assigned by, or  
5           otherwise conveyed by such receiver or conser-  
6           vator,

7           for gross negligence, including any similar conduct  
8           or conduct that demonstrates a greater disregard of  
9           a duty of care (than gross negligence) including in-  
10          tentional tortious conduct, as such terms are defined  
11          and determined under applicable State law.

12          “(2) NO LIMITATION.—Nothing in this para-  
13          graph shall impair or affect any right of the Agency  
14          under other applicable law.

15          “(h) DAMAGES.—In any proceeding related to any  
16          claim against a director, officer, employee, agent, attorney,  
17          accountant, appraiser, or any other party employed by or  
18          providing services to an enterprise, recoverable damages  
19          determined to result from the improvident or otherwise  
20          improper use or investment of any assets of the enterprise  
21          shall include principal losses and appropriate interest.

22          “(i) LIMITED-LIFE ENTERPRISE.—

23                  “(1) ORGANIZATION.—

24                          “(A) PURPOSE.—If an enterprise is in de-  
25                          fault, or if the Agency anticipates that an en-

1           enterprise will default, the Agency may organize a  
2           limited-life enterprise with those powers and at-  
3           tributes of the enterprise in default or in dan-  
4           ger of default that the Director determines nec-  
5           essary, subject to the provisions of this sub-  
6           section. The Director shall grant a temporary  
7           charter to the limited-life enterprise, and the  
8           limited-life enterprise shall operate subject to  
9           that charter.

10           “(B) AUTHORITIES.—Upon the creation of  
11           a limited-life enterprise under subparagraph  
12           (A), the limited-life enterprise may—

13                   “(i) assume such liabilities of the en-  
14                   terprise that is in default or in danger of  
15                   default as the Agency may, in its discre-  
16                   tion, determine to be appropriate, provided  
17                   that the liabilities assumed shall not exceed  
18                   the amount of assets of the limited-life en-  
19                   terprise;

20                   “(ii) purchase such assets of the en-  
21                   terprise that is in default, or in danger of  
22                   default, as the Agency may, in its discre-  
23                   tion, determine to be appropriate; and

24                   “(iii) perform any other temporary  
25                   function which the Agency may, in its dis-

1           cretion, prescribe in accordance with this  
2           section.

3           “(2) CHARTER.—

4           “(A) CONDITIONS.—The Agency may  
5           grant a temporary charter if the Agency deter-  
6           mines that the continued operation of the enter-  
7           prise in default or in danger of default is in the  
8           best interest of the national economy and the  
9           housing markets.

10           “(B) LIMITED-LIFE ENTERPRISE TREATED  
11           AS BEING IN DEFAULT FOR CERTAIN PUR-  
12           POSES.—A limited-life enterprise shall be treat-  
13           ed as an enterprise in default at such times and  
14           for such purposes as the Agency may, in its dis-  
15           cretion, determine.

16           “(C) MANAGEMENT.—A limited-life enter-  
17           prise, upon the granting of its charter, shall be  
18           under the management of a board of directors  
19           consisting of not fewer than 5 nor more than  
20           10 members appointed by the Agency.

21           “(D) BYLAWS.—The board of directors of  
22           a limited-life enterprise shall adopt such bylaws  
23           as may be approved by the Agency.

24           “(3) CAPITAL STOCK.—No capital stock need  
25           be paid into a limited-life enterprise by the Agency.



1           “(4) INVESTMENTS.—Funds of a limited-life  
2 enterprise shall be kept on hand in cash, invested in  
3 obligations of the United States or obligations guar-  
4 anteed as to principal and interest by the United  
5 States, or deposited with the Agency, or any Federal  
6 Reserve bank.

7           “(5) EXEMPT STATUS.—Notwithstanding any  
8 other provision of Federal or State law, the limited-  
9 life enterprise, its franchise, property, and income  
10 shall be exempt from all taxation now or hereafter  
11 imposed by the United States, by any territory, de-  
12 pendency, or possession thereof, or by any State,  
13 county, municipality, or local taxing authority.

14           “(6) OTHER EXEMPTIONS.—When acting as a  
15 receiver, the following provisions shall apply with re-  
16 spect to the Agency:

17           “(A) The Agency, including its franchise,  
18 its capital, reserves, and surplus, and its in-  
19 come, shall be exempt from all taxation imposed  
20 by any State, country, municipality, or local  
21 taxing authority, except that any real property  
22 of the Agency shall be subject to State, terri-  
23 torial, county, municipal, or local taxation to  
24 the same extent according to its value as other  
25 real property is taxed, except that, notwith-

1 standing the failure of any person to challenge  
2 an assessment under State law of the value of  
3 such property, and the tax thereon, shall be de-  
4 termined as of the period for which such tax is  
5 imposed.

6 “(B) No property of the Agency shall be  
7 subject to levy, attachment, garnishment, fore-  
8 closure, or sale without the consent of the  
9 Agency, nor shall any involuntary lien attach to  
10 the property of the Agency.

11 “(C) The Agency shall not be liable for any  
12 amounts in the nature of penalties or fines, in-  
13 cluding those arising from the failure of any  
14 person to pay any real property, personal prop-  
15 erty, probate, or recording tax or any recording  
16 or filing fees when due.

17 “(7) WINDING UP.—

18 “(A) IN GENERAL.—Subject to subpara-  
19 graph (B), unless Congress authorizes the sale  
20 of the capital stock of the limited-life enter-  
21 prise, not later than 2 years after the date of  
22 its organization, the Agency shall wind up the  
23 affairs of the limited-life enterprise.

24 “(B) EXTENSION.—The Director may, in  
25 the discretion of the Director, extend the status

1 of the limited-life enterprise for 3 additional 1-  
2 year periods.

3 “(8) TRANSFER OF ASSETS AND LIABILITIES.—

4 “(A) IN GENERAL.—

5 “(i) TRANSFER OF ASSETS AND LI-  
6 ABILITIES.—The Agency, as receiver, may  
7 transfer any assets and liabilities of an en-  
8 terprise in default, or in danger of default,  
9 to the limited-life enterprise in accordance  
10 with paragraph (1).

11 “(ii) SUBSEQUENT TRANSFERS.—At  
12 any time after a charter is transferred to  
13 a limited-life enterprise, the Agency, as re-  
14 ceiver, may transfer any assets and liabil-  
15 ities of such enterprise in default, or in  
16 danger in default, as the Agency may, in  
17 its discretion, determine to be appropriate  
18 in accordance with paragraph (1).

19 “(iii) EFFECTIVE WITHOUT AP-  
20 PROVAL.—The transfer of any assets or li-  
21 abilities of an enterprise in default, or in  
22 danger of default, transferred to a limited-  
23 life enterprise shall be effective without  
24 any further approval under Federal or

1 State law, assignment, or consent with re-  
2 spect thereto.

3 “(9) PROCEEDS.—To the extent that available  
4 proceeds from the limited-life enterprise exceed  
5 amounts required to pay obligations, such proceeds  
6 may be paid to the enterprise in default, or in dan-  
7 ger of default.

8 “(10) POWERS OF LIMITED-LIFE ENTER-  
9 PRISES.—

10 “(A) IN GENERAL.—Each limited-life en-  
11 terprise created under this subsection shall have  
12 all corporate powers of, and be subject to the  
13 same provisions of law as, the enterprise in de-  
14 fault or in danger of default to which it relates,  
15 except that—

16 “(i) the Agency may—

17 “(I) remove the directors of a  
18 limited-life enterprise; and

19 “(II) fix the compensation of  
20 members of the board of directors and  
21 senior management, as determined by  
22 the Agency in its discretion, of a lim-  
23 ited-life enterprise;

24 “(ii) the Agency may indemnify the  
25 representatives for purposes of paragraph

1 (1)(B), and the directors, officers, employ-  
2 ees, and agents of a limited-life enterprise  
3 on such terms as the Agency determines to  
4 be appropriate; and

5 “(iii) the board of directors of a lim-  
6 ited-life enterprise—

7 “(I) shall elect a chairperson who  
8 may also serve in the position of chief  
9 executive officer, except that such per-  
10 son shall not serve either as chair-  
11 person or as chief executive officer  
12 without the prior approval of the  
13 Agency; and

14 “(II) may appoint a chief execu-  
15 tive officer who is not also the chair-  
16 person, except that such person shall  
17 not serve as chief executive officer  
18 without the prior approval of the  
19 Agency.

20 “(B) STAY OF JUDICIAL ACTION.—Any ju-  
21 dicial action to which a limited-life enterprise  
22 becomes a party by virtue of its acquisition of  
23 any assets or assumption of any liabilities of an  
24 enterprise in default shall be stayed from fur-  
25 ther proceedings for a period of up to 45 days

1 at the request of the limited-life enterprise.  
2 Such period may be modified upon the consent  
3 of all parties.

4 “(11) NO FEDERAL STATUS.—

5 “(A) AGENCY STATUS.—A limited-life en-  
6 terprise is not an agency, establishment, or in-  
7 strumentality of the United States.

8 “(B) EMPLOYEE STATUS.—Representa-  
9 tives for purposes of paragraph (1)(B), interim  
10 directors, directors, officers, employees, or  
11 agents of a limited-life enterprise are not, solely  
12 by virtue of service in any such capacity, offi-  
13 cers or employees of the United States. Any  
14 employee of the Agency or of any Federal in-  
15 strumentality who serves at the request of the  
16 Agency as a representative for purposes of  
17 paragraph (1)(B), interim director, director, of-  
18 ficer, employee, or agent of a limited-life enter-  
19 prise shall not—

20 “(i) solely by virtue of service in any  
21 such capacity lose any existing status as  
22 an officer or employee of the United States  
23 for purposes of title 5, United States Code,  
24 or any other provision of law; or

1           “(ii) receive any salary or benefits for  
2           service in any such capacity with respect to  
3           a limited-life enterprise in addition to such  
4           salary or benefits as are obtained through  
5           employment with the Agency or such Fed-  
6           eral instrumentality.

7           “(j) PROHIBITION OF CHARTER REVOCATION.—In  
8           no case may a receiver appointed pursuant to this section  
9           revoke, annul, or terminate the charter of an enterprise.

10          “(k) OBTAINING CREDIT BY A LIMITED-LIFE EN-  
11          TERPRISE.—

12           “(1) IN GENERAL.—The limited-life enterprise  
13           may obtain unsecured credit and incur unsecured  
14           debt in the ordinary course of business.

15           “(2) INABILITY TO OBTAIN CREDIT.—If the  
16           limited-life enterprise is unable to obtain unsecured  
17           credit the Director may authorize the obtaining of  
18           credit or the incurring of debt—

19           “(A) with priority over any or all adminis-  
20           trative expenses;

21           “(B) secured by a lien on property that is  
22           not otherwise subject to a lien; or

23           “(C) secured by a junior lien on property  
24           that is subject to a lien.

25           “(3) LIMITATIONS.—

1           “(A) IN GENERAL.—The Director, after  
2           notice and a hearing, may authorize the obtain-  
3           ing of credit or the incurring of debt secured by  
4           a senior or equal lien on property that is sub-  
5           ject to a lien (other than mortgages that  
6           collateralize the mortgage-backed securities  
7           issued or guaranteed by the enterprise) only  
8           if—

9                   “(i) the limited-life enterprise is un-  
10                  able to obtain such credit otherwise; and

11                   “(ii) there is adequate protection of  
12                  the interest of the holder of the lien on the  
13                  property which such senior or equal lien is  
14                  proposed to be granted.

15           “(B) BURDEN OF PROOF.—In any hearing  
16           under this subsection, the Director has the bur-  
17           den of proof on the issue of adequate protec-  
18           tion.

19           “(4) AFFECT ON DEBTS AND LIENS.—The re-  
20           versal or modification on appeal of an authorization  
21           under this subsection to obtain credit or incur debt,  
22           or of a grant under this section of a priority or a  
23           lien, does not affect the validity of any debt so in-  
24           curred, or any priority or lien so granted, to an enti-  
25           ty that extended such credit in good faith, whether



1 or not such entity knew of the pendency of the ap-  
2 peal, unless such authorization and the incurring of  
3 such debt, or the granting of such priority or lien,  
4 were stayed pending appeal.”.

5 (b) FEDERAL HOME LOAN BANKS.—Section 26 of  
6 the Federal Home Loan Bank Act (12 U.S.C. 1446) is  
7 amended—

8 (1) by inserting “(a)” before “Whenever”;

9 (2) in the first sentence, by inserting “or pursu-  
10 ant to a determination and notice under section  
11 1368(d) of the Federal Housing Enterprises Finan-  
12 cial Safety and Soundness Act of 1992 that a Fed-  
13 eral home loan bank is critically undercapitalized,”  
14 after “such action,”; and

15 (3) by adding at the end the following new sub-  
16 section:

17 “(b) The Director shall, by regulation, provide for the  
18 authority, procedures, and conditions in liquidating and  
19 reorganizing critically undercapitalized Federal home loan  
20 banks pursuant to subsection (a), taking due consideration  
21 of the authorities, procedures, and conditions established  
22 under section 1367 of the Federal Housing Enterprises  
23 Financial Safety and Soundness Act of 1992, with respect  
24 to the enterprises, with such modifications as the Director

1 determines to be appropriate to reflect the difference in  
2 operations between the banks and the enterprises.”.

3 (c) CONFORMING AMENDMENTS.—Subtitle B of title  
4 XIII of the Housing and Community Development Act of  
5 1992 is amended by striking sections 1369 (12 U.S.C.  
6 4619), 1369A (12 U.S.C. 4620), and 1369B (12 U.S.C.  
7 4621)

8 **SEC. 145. CONFORMING AMENDMENTS.**

9 Subtitle B of title XIII of the Housing and Commu-  
10 nity Development Act of 1992 (42 U.S.C. 4611 et seq.),  
11 as amended by the preceding provisions of this Act, is fur-  
12 ther amended—

13 (1) in sections 1365 (12 U.S.C. 4615) through  
14 1369D (12 U.S.C. 4623), but not including section  
15 1367 (12 U.S.C. 4617) as added by section 144 of  
16 this Act—

17 (A) by striking “An enterprise” each place  
18 such term appears and inserting “A regulated  
19 entity”;

20 (B) by striking “an enterprise” each place  
21 such term appears and inserting “a regulated  
22 entity”; and

23 (C) by striking “the enterprise” each place  
24 such term appears and inserting “the regulated  
25 entity”;

1           (2) in section 1366(d) (12 U.S.C. 4616(d)), by  
2           striking “the enterprises” and inserting “the regu-  
3           lated entities”;

4           (3) in section 1368(d) (12 U.S.C. 4618(d)), by  
5           striking “Committee on Banking, Finance and  
6           Urban Affairs” and inserting “Committee on Finan-  
7           cial Services”; and

8           (4) in section 1369C(e) (12 U.S.C. 4622(c)), by  
9           striking “any enterprise” and inserting “any regu-  
10          lated entity”.

## 11       **Subtitle D—Enforcement Actions**

### 12       **SEC. 161. CEASE-AND-DESIST PROCEEDINGS.**

13           Section 1371 of the Housing and Community Devel-  
14          opment Act of 1992 (12 U.S.C. 4631) is amended—

15           (1) by striking subsections (a) and (b) and in-  
16          serting the following new subsections:

17           “(a) **ISSUANCE FOR UNSAFE OR UNSOUND PRAC-**  
18          **TICES AND VIOLATIONS OF RULES OR LAWS.**—If, in the  
19          opinion of the Director, a regulated entity or any regulated  
20          entity-affiliated party is engaging or has engaged, or the  
21          Director has reasonable cause to believe that the regulated  
22          entity or any regulated entity-affiliated party is about to  
23          engage, in an unsafe or unsound practice in conducting  
24          the business of the regulated entity or is violating or has  
25          violated, or the Director has reasonable cause to believe

1 that the regulated entity or any regulated entity-affiliated  
2 party is about to violate, a law, rule, or regulation, or any  
3 condition imposed in writing by the Director in connection  
4 with the granting of any application or other request by  
5 the regulated entity or any written agreement entered into  
6 with the Director, the Director may issue and serve upon  
7 the regulated entity or such party a notice of charges in  
8 respect thereof. The Director may not enforce compliance  
9 with any housing goal established under subpart B of part  
10 2 of subtitle A of this title, with section 1336 or 1337  
11 of this title, with subsection (m) or (n) of section 309 of  
12 the Federal National Mortgage Association Charter Act  
13 (12 U.S.C. 1723a(m), (n)), with subsection (e) or (f) of  
14 section 307 of the Federal Home Loan Mortgage Corpora-  
15 tion Act (12 U.S.C. 1456(e), (f)), or with paragraph (5)  
16 or (12) of section 10(j) of the Federal Home Loan Bank  
17 Act (12 U.S.C. 1430(j)).

18       “(b) ISSUANCE FOR UNSATISFACTORY RATING.—If a  
19 regulated entity receives, in its most recent report of ex-  
20 amination, a less-than-satisfactory rating for asset quality,  
21 management, earnings, or liquidity, the Director may (if  
22 the deficiency is not corrected) deem the regulated entity  
23 to be engaging in an unsafe or unsound practice for pur-  
24 poses of this subsection.”;

1 (2) in subsection (c)(2), by striking “or direc-  
2 tor” and inserting “director, or regulated entity-af-  
3 filiated party”; and

4 (3) in subsection (d)—

5 (A) in paragraph (1), by inserting “(in-  
6 cluding reimbursement of compensation under  
7 section 1318)” after “reimbursement”;

8 (B) in paragraph (6), by striking “and” at  
9 the end;

10 (C) by redesignating paragraph (7) as  
11 paragraph (8); and

12 (D) by inserting after paragraph (6) the  
13 following new paragraph:

14 “(7) to effect an attachment on a regulated en-  
15 tity or regulated entity-affiliated party subject to an  
16 order under this section or section 1372; and”.

17 **SEC. 162. TEMPORARY CEASE-AND-DESIST PROCEEDINGS.**

18 Section 1372 of the Housing and Community Devel-  
19 opment Act of 1992 (12 U.S.C. 4632) is amended—

20 (1) by striking subsection (a) and inserting the  
21 following new subsection:

22 “(a) **GROUNDS FOR ISSUANCE.**—Whenever the Direc-  
23 tor determines that the violation or threatened violation  
24 or the unsafe or unsound practice or practices specified  
25 in the notice of charges served upon the regulated entity

1 or any regulated entity-affiliated party pursuant to section  
2 1371(a), or the continuation thereof, is likely to cause in-  
3 solvency or significant dissipation of assets or earnings of  
4 the regulated entity, or is likely to weaken the condition  
5 of the regulated entity prior to the completion of the pro-  
6 ceedings conducted pursuant to sections 1371 and 1373,  
7 the Director may issue a temporary order requiring the  
8 regulated entity or such party to cease and desist from  
9 any such violation or practice and to take affirmative ac-  
10 tion to prevent or remedy such insolvency, dissipation,  
11 condition, or prejudice pending completion of such pro-  
12 ceedings. Such order may include any requirement author-  
13 ized under subsection 1371(d).”;

14 (2) in subsection (b), by striking “or director”  
15 and inserting “director, or regulated entity-affiliated  
16 party”;

17 (3) in subsection (d), striking “or director” and  
18 inserting “director, or regulated entity-affiliated  
19 party”; and

20 (4) by striking subsection (e) and in inserting  
21 the following new subsection:

22 “(e) ENFORCEMENT.—In the case of violation or  
23 threatened violation of, or failure to obey, a temporary  
24 cease-and-desist order issued pursuant to this section, the  
25 Director may apply to the United States District Court

1 for the District of Columbia or the United States district  
2 court within the jurisdiction of which the headquarters of  
3 the regulated entity is located, for an injunction to enforce  
4 such order, and, if the court determines that there has  
5 been such violation or threatened violation or failure to  
6 obey, it shall be the duty of the court to issue such injunc-  
7 tion. Such an injunction may include an injunction to ef-  
8 fect an attachment on a regulated entity or regulated-enti-  
9 ty affiliated party.”.

10 **SEC. 163. ENFORCEMENT AND JURISDICTION.**

11 Section 1375 of the Housing and Community Devel-  
12 opment Act of 1992 (12 U.S.C. 4635) is amended—

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

15 “(a) ENFORCEMENT.—The Director may, in the dis-  
16 cretion of the Director, apply to the United States District  
17 Court for the District of Columbia, or the United States  
18 district court within the jurisdiction of which the head-  
19 quarters of the regulated entity is located, for the enforce-  
20 ment of any effective and outstanding notice or order  
21 issued under this subtitle or subtitle B, or request that  
22 the Attorney General of the United States bring such an  
23 action. Such court shall have jurisdiction and power to  
24 order and require compliance with such notice or order.”;  
25 and

1           (2) in subsection (b), by striking “or 1376” and  
2           inserting “1376, or 1377”.

3 **SEC. 164. CIVIL MONEY PENALTIES.**

4           Section 1376 of the Housing and Community Devel-  
5           opment Act of 1992 (12 U.S.C. 4636) is amended—

6           (1) in subsection (a)—

7                   (A) in the matter preceding paragraph (1),  
8                   by striking “or any executive officer or” and in-  
9                   serting “any executive officer of a regulated en-  
10                   tity, any regulated entity-affiliated party, or  
11                   any”; and

12                   (B) in paragraph (1)—

13                           (i) by inserting “Federal Home Loan  
14                           Bank Act,” after “Corporation Act,”;

15                           (ii) by striking “or subsection” and  
16                           inserting “, subsection”; and

17                           (iii) by inserting “, or paragraph (5)  
18                           or (12) of section 10(j) of the Federal  
19                           Home Loan Bank Act” before the semi-  
20                           colon at the end;

21           (2) by striking subsection (b) and inserting the  
22           following new subsection:

23           “(b) AMOUNT OF PENALTY.—

24                   “(1) FIRST TIER.—Any regulated entity which,  
25                   or any regulated entity-affiliated party who—



1           “(A) violates any provision of this title, the  
2           Federal National Mortgage Association Charter  
3           Act (12 U.S.C. 1716 et seq.), the Federal  
4           Home Loan Mortgage Corporation Act (12  
5           U.S.C. 1451 et seq.), the Federal Home Loan  
6           Bank Act (12 U.S.C. 1421 et seq., or any  
7           order, condition, rule, or regulation under any  
8           such title or Act, except that the Director may  
9           not enforce compliance with any housing goal  
10          established under subpart B of part 2 of sub-  
11          title A of this title, with section 1336 or 1337  
12          of this title, with subsection (m) or (n) of sec-  
13          tion 309 of the Federal National Mortgage As-  
14          sociation Charter Act (12 U.S.C. 1723a(m),  
15          (n)), with subsection (e) or (f) of section 307 of  
16          the Federal Home Loan Mortgage Corporation  
17          Act (12 U.S.C. 1456(e), (f)), or with paragraph  
18          (5) or (12) of section 10(j) of the Federal  
19          Home Loan Bank Act;

20           “(B) violates any final or temporary order  
21          or notice issued pursuant to this title;

22           “(C) violates any condition imposed in  
23          writing by the Director in connection with the  
24          grant of any application or other request by  
25          such regulated entity;

1           “(D) violates any written agreement be-  
2           tween the regulated entity and the Director; or

3           “(E) engages in any conduct the Director  
4           determines to be an unsafe or unsound practice,  
5           shall forfeit and pay a civil penalty of not more than  
6           \$10,000 for each day during which such violation  
7           continues.

8           “(2) SECOND TIER.—Notwithstanding para-  
9           graph (1)—

10           “(A) if a regulated entity, or a regulated  
11           entity-affiliated party—

12                   “(i) commits any violation described  
13                   in any subparagraph of paragraph (1);

14                   “(ii) recklessly engages in an unsafe  
15                   or unsound practice in conducting the af-  
16                   fairs of such regulated entity; or

17                   “(iii) breaches any fiduciary duty; and

18           “(B) the violation, practice, or breach—

19                   “(i) is part of a pattern of mis-  
20                   conduct;

21                   “(ii) causes or is likely to cause more  
22                   than a minimal loss to such regulated enti-  
23                   ty; or

24                   “(iii) results in pecuniary gain or  
25                   other benefit to such party,

1 the regulated entity or regulated entity-affiliated  
2 party shall forfeit and pay a civil penalty of not  
3 more than \$50,000 for each day during which such  
4 violation, practice, or breach continues.

5 “(3) THIRD TIER.—Notwithstanding para-  
6 graphs (1) and (2), any regulated entity which, or  
7 any regulated entity-affiliated party who—

8 “(A) knowingly—

9 “(i) commits any violation or engages  
10 in any conduct described in any subpara-  
11 graph of paragraph (1);

12 “(ii) engages in any unsafe or un-  
13 sound practice in conducting the affairs of  
14 such regulated entity; or

15 “(iii) breaches any fiduciary duty; and

16 “(B) knowingly or recklessly causes a sub-  
17 stantial loss to such regulated entity or a sub-  
18 stantial pecuniary gain or other benefit to such  
19 party by reason of such violation, practice, or  
20 breach,

21 shall forfeit and pay a civil penalty in an amount not  
22 to exceed the applicable maximum amount deter-  
23 mined under paragraph (4) for each day during  
24 which such violation, practice, or breach continues.

1           “(4) MAXIMUM AMOUNTS OF PENALTIES FOR  
2           ANY VIOLATION DESCRIBED IN PARAGRAPH (3).—  
3           The maximum daily amount of any civil penalty  
4           which may be assessed pursuant to paragraph (3)  
5           for any violation, practice, or breach described in  
6           such paragraph is—

7                   “(A) in the case of any person other than  
8                   a regulated entity, an amount not to exceed  
9                   \$2,000,000; and

10                   “(B) in the case of any regulated entity,  
11                   \$2,000,000.”;

12           (3) in subsection (c)(1)(B), by inserting “regu-  
13           lated entity-affiliated party,” after “executive offi-  
14           cer,”; and

15           (4) in subsection (d)—

16                   (A) by striking “or director” each place  
17                   such term appears and inserting “director, or  
18                   regulated entity-affiliated party”;

19                   (B) by striking “request the Attorney Gen-  
20                   eral of the United States to”;

21                   (C) by inserting “, or the United States  
22                   district court within the jurisdiction of which  
23                   the headquarters of the regulated entity is lo-  
24                   cated,” after “District of Columbia”; and

1 (D) by striking “, or may, under the direc-  
2 tion and control of the Attorney General, bring  
3 such an action”.

4 **SEC. 165. REMOVAL AND PROHIBITION AUTHORITY.**

5 (a) IN GENERAL.—Subtitle C of title XIII of the  
6 Housing and Community Development Act of 1992 is  
7 amended—

8 (1) by redesignating sections 1377, 1378, 1379,  
9 1379A, and 1379B (12 U.S.C. 4637–41) as sections  
10 1379, 1379A, 1379B, 1379C, and 1379D, respec-  
11 tively; and

12 (2) by inserting after section 1376 (12 U.S.C.  
13 4636) the following new section:

14 **“SEC. 1377. REMOVAL AND PROHIBITION AUTHORITY.**

15 **“(a) AUTHORITY TO ISSUE ORDER.—**Whenever the  
16 Director determines that—

17 **“(1) any regulated entity-affiliated party has,**  
18 **directly or indirectly—**

19 **“(A) violated—**

20 **“(i) any law or regulation;**

21 **“(ii) any cease-and-desist order which**  
22 **has become final;**

23 **“(iii) any condition imposed in writing**  
24 **by the Director in connection with the**

1 grant of any application or other request  
2 by such regulated entity; or

3 “(iv) any written agreement between  
4 such regulated entity and the Director;

5 “(B) engaged or participated in any unsafe  
6 or unsound practice in connection with any reg-  
7 ulated entity; or

8 “(C) committed or engaged in any act,  
9 omission, or practice which constitutes a breach  
10 of such party’s fiduciary duty;

11 “(2) by reason of the violation, practice, or  
12 breach described in any subparagraph of paragraph  
13 (1)—

14 “(A) such regulated entity has suffered or  
15 will probably suffer financial loss or other dam-  
16 age; or

17 “(B) such party has received financial gain  
18 or other benefit by reason of such violation,  
19 practice, or breach; and

20 “(3) such violation, practice, or breach—

21 “(A) involves personal dishonesty on the  
22 part of such party; or

23 “(B) demonstrates willful or continuing  
24 disregard by such party for the safety or sound-  
25 ness of such regulated entity,

1 the Director may serve upon such party a written notice  
2 of the Director's intention to remove such party from of-  
3 fice or to prohibit any further participation by such party,  
4 in any manner, in the conduct of the affairs of any regu-  
5 lated entity.

6 “(b) SUSPENSION ORDER.—

7 “(1) SUSPENSION OR PROHIBITION AUTHOR-  
8 ITY.—If the Director serves written notice under  
9 subsection (a) to any regulated entity-affiliated party  
10 of the Director's intention to issue an order under  
11 such subsection, the Director may—

12 “(A) suspend such party from office or  
13 prohibit such party from further participation  
14 in any manner in the conduct of the affairs of  
15 the regulated entity, if the Director—

16 “(i) determines that such action is  
17 necessary for the protection of the regu-  
18 lated entity; and

19 “(ii) serves such party with written  
20 notice of the suspension order; and

21 “(B) prohibit the regulated entity from re-  
22 leasing to or on behalf of the regulated entity-  
23 affiliated party any compensation or other pay-  
24 ment of money or other thing of current or po-  
25 tential value in connection with any resignation,

1 removal, retirement, or other termination of  
2 employment or office of the party.

3 “(2) EFFECTIVE PERIOD.—Any suspension  
4 order issued under this subsection—

5 “(A) shall become effective upon service;  
6 and

7 “(B) unless a court issues a stay of such  
8 order under subsection (g) of this section, shall  
9 remain in effect and enforceable until—

10 “(i) the date the Director dismisses  
11 the charges contained in the notice served  
12 under subsection (a) with respect to such  
13 party; or

14 “(ii) the effective date of an order  
15 issued by the Director to such party under  
16 subsection (a).

17 “(3) COPY OF ORDER.—If the Director issues a  
18 suspension order under this subsection to any regu-  
19 lated entity-affiliated party, the Director shall serve  
20 a copy of such order on any regulated entity with  
21 which such party is affiliated at the time such order  
22 is issued.

23 “(c) NOTICE, HEARING, AND ORDER.—A notice of  
24 intention to remove a regulated entity-affiliated party  
25 from office or to prohibit such party from participating



1 in the conduct of the affairs of a regulated entity shall  
2 contain a statement of the facts constituting grounds for  
3 such action, and shall fix a time and place at which a hear-  
4 ing will be held on such action. Such hearing shall be fixed  
5 for a date not earlier than 30 days nor later than 60 days  
6 after the date of service of such notice, unless an earlier  
7 or a later date is set by the Director at the request of  
8 (1) such party, and for good cause shown, or (2) the At-  
9 torney General of the United States. Unless such party  
10 shall appear at the hearing in person or by a duly author-  
11 ized representative, such party shall be deemed to have  
12 consented to the issuance of an order of such removal or  
13 prohibition. In the event of such consent, or if upon the  
14 record made at any such hearing the Director shall find  
15 that any of the grounds specified in such notice have been  
16 established, the Director may issue such orders of suspen-  
17 sion or removal from office, or prohibition from participa-  
18 tion in the conduct of the affairs of the regulated entity,  
19 as it may deem appropriate, together with an order pro-  
20 hibiting compensation described in subsection (b)(1)(B).  
21 Any such order shall become effective at the expiration  
22 of 30 days after service upon such regulated entity and  
23 such party (except in the case of an order issued upon  
24 consent, which shall become effective at the time specified  
25 therein). Such order shall remain effective and enforceable

1 except to such extent as it is stayed, modified, terminated,  
2 or set aside by action of the Director or a reviewing court.

3 “(d) PROHIBITION OF CERTAIN SPECIFIC ACTIVI-  
4 TIES.—Any person subject to an order issued under this  
5 section shall not—

6 “(1) participate in any manner in the conduct  
7 of the affairs of any regulated entity;

8 “(2) solicit, procure, transfer, attempt to trans-  
9 fer, vote, or attempt to vote any proxy, consent, or  
10 authorization with respect to any voting rights in  
11 any regulated entity;

12 “(3) violate any voting agreement previously  
13 approved by the Director; or

14 “(4) vote for a director, or serve or act as a  
15 regulated entity-affiliated party.

16 “(e) INDUSTRY-WIDE PROHIBITION.—

17 “(1) IN GENERAL.—Except as provided in para-  
18 graph (2), any person who, pursuant to an order  
19 issued under this section, has been removed or sus-  
20 pended from office in a regulated entity or prohib-  
21 ited from participating in the conduct of the affairs  
22 of a regulated entity may not, while such order is in  
23 effect, continue or commence to hold any office in,  
24 or participate in any manner in the conduct of the  
25 affairs of, any regulated entity.

1           “(2) EXCEPTION IF DIRECTOR PROVIDES WRIT-  
2           TEN CONSENT.—If, on or after the date an order is  
3           issued under this section which removes or suspends  
4           from office any regulated entity-affiliated party or  
5           prohibits such party from participating in the con-  
6           duct of the affairs of a regulated entity, such party  
7           receives the written consent of the Director, the  
8           order shall, to the extent of such consent, cease to  
9           apply to such party with respect to the regulated en-  
10          tity described in the written consent. If the Director  
11          grants such a written consent, it shall publicly dis-  
12          close such consent.

13           “(3) VIOLATION OF PARAGRAPH (1) TREATED  
14          AS VIOLATION OF ORDER.—Any violation of para-  
15          graph (1) by any person who is subject to an order  
16          described in such subsection shall be treated as a  
17          violation of the order.

18           “(f) APPLICABILITY.—This section shall only apply  
19          to a person who is an individual, unless the Director spe-  
20          cifically finds that it should apply to a corporation, firm,  
21          or other business enterprise.

22           “(g) STAY OF SUSPENSION AND PROHIBITION OF  
23          REGULATED ENTITY-AFFILIATED PARTY.—Within 10  
24          days after any regulated entity-affiliated party has been  
25          suspended from office and/or prohibited from participation

1 in the conduct of the affairs of a regulated entity under  
2 this section, such party may apply to the United States  
3 District Court for the District of Columbia, or the United  
4 States district court for the judicial district in which the  
5 headquarters of the regulated entity is located, for a stay  
6 of such suspension and/or prohibition and any prohibition  
7 under subsection (b)(1)(B) pending the completion of the  
8 administrative proceedings pursuant to the notice served  
9 upon such party under this section, and such court shall  
10 have jurisdiction to stay such suspension and/or prohibi-  
11 tion.

12 “(h) SUSPENSION OR REMOVAL OF REGULATED EN-  
13 TITY-AFFILIATED PARTY CHARGED WITH FELONY.—

14 “(1) SUSPENSION OR PROHIBITION.—

15 “(A) IN GENERAL.—Whenever any regu-  
16 lated entity-affiliated party is charged in any  
17 information, indictment, or complaint, with the  
18 commission of or participation in a crime in-  
19 volving dishonesty or breach of trust which is  
20 punishable by imprisonment for a term exceed-  
21 ing one year under State or Federal law, the  
22 Director may, if continued service or participa-  
23 tion by such party may pose a threat to the  
24 regulated entity or impair public confidence in

1 the regulated entity, by written notice served  
2 upon such 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  
8 from releasing to or on behalf of the regu-  
9 lated entity-affiliated party any compensa-  
10 tion or other payment of money or other  
11 thing of current or potential value in con-  
12 nection with the period of any such sus-  
13 pension or with any resignation, removal,  
14 retirement, or other termination of employ-  
15 ment or office 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  
20 served upon the regulated entity.

21 “(ii) EFFECTIVE PERIOD.—A suspen-  
22 sion or prohibition under subparagraph (A)  
23 shall remain in effect until the informa-  
24 tion, indictment, or complaint referred to

1           in such subparagraph is finally disposed of  
2           or until 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 di-  
6           version or other similar program is entered  
7           against a regulated entity-affiliated party in  
8           connection with a crime described in paragraph  
9           (1)(A), at such time as such judgment is not  
10          subject to further appellate review, the Director  
11          may, if continued service or participation by  
12          such party may pose a threat to the regulated  
13          entity or impair public confidence in the regu-  
14          lated entity, issue and serve upon such party an  
15          order that—

16                 “(i) removes such party from office or  
17                 prohibits such party from further partici-  
18                 pation in any manner in the conduct of the  
19                 affairs of the regulated entity without the  
20                 prior written consent of the Director; and

21                 “(ii) prohibits the regulated entity  
22                 from releasing to or on behalf of the regu-  
23                 lated entity-affiliated party any compensa-  
24                 tion or other payment of money or other  
25                 thing of current or potential value in con-

1           nection with the termination of employ-  
2           ment or office of the party.

3           “(B)   PROVISIONS   APPLICABLE   TO  
4           ORDER.—

5                   “(i) COPY.—A copy of any order  
6                   under paragraph (2)(A) shall also be  
7                   served upon the regulated entity, where-  
8                   upon the regulated entity-affiliated party  
9                   who is subject to the order (if a director or  
10                  an officer) shall cease to be a director or  
11                  officer of such regulated entity.

12                  “(ii) EFFECT OF ACQUITTAL.—A find-  
13                  ing of not guilty or other disposition of the  
14                  charge shall not preclude the Director from  
15                  instituting proceedings after such finding  
16                  or disposition to remove such party from  
17                  office or to prohibit further participation in  
18                  regulated entity affairs, and to prohibit  
19                  compensation or other payment of money  
20                  or other thing of current or potential value  
21                  in connection with any resignation, re-  
22                  moval, retirement, or other termination of  
23                  employment or office of the party, pursu-  
24                  ant to subsections (a), (d), or (e) of this  
25                  section.

1           “(iii) EFFECTIVE PERIOD.—Any no-  
2           tice of suspension or order of removal  
3           issued under this subsection shall remain  
4           effective and outstanding until the comple-  
5           tion of any hearing or appeal authorized  
6           under paragraph (4) unless terminated by  
7           the Director.

8           “(3) AUTHORITY OF REMAINING BOARD MEM-  
9           BERS.—If at any time, because of the suspension of  
10          one or more directors pursuant to this section, there  
11          shall be on the board of directors of a regulated enti-  
12          ty less than a quorum of directors not so suspended,  
13          all powers and functions vested in or exercisable by  
14          such board shall vest in and be exercisable by the di-  
15          rector or directors on the board not so suspended,  
16          until such time as there shall be a quorum of the  
17          board of directors. In the event all of the directors  
18          of a regulated entity are suspended pursuant to this  
19          section, the Director shall appoint persons to serve  
20          temporarily as directors in their place and stead  
21          pending the termination of such suspensions, or  
22          until such time as those who have been suspended  
23          cease to be directors of the regulated entity and  
24          their respective successors take office.



1           “(4) HEARING REGARDING CONTINUED PAR-  
2           TICIPATION.—Within 30 days from service of any  
3           notice of suspension or order of removal issued pur-  
4           suant to paragraph (1) or (2) of this subsection, the  
5           regulated entity-affiliated party concerned may re-  
6           quest in writing an opportunity to appear before the  
7           Director to show that the continued service to or  
8           participation in the conduct of the affairs of the reg-  
9           ulated entity by such party does not, or is not likely  
10          to, pose a threat to the interests of the regulated en-  
11          tity or threaten to impair public confidence in the  
12          regulated entity. Upon receipt of any such request,  
13          the Director shall fix a time (not more than 30 days  
14          after receipt of such request, unless extended at the  
15          request of such party) and place at which such party  
16          may appear, personally or through counsel, before  
17          one or more members of the Director or designated  
18          employees of the Director to submit written mate-  
19          rials (or, at the discretion of the Director, oral testi-  
20          mony) and oral argument. Within 60 days of such  
21          hearing, the Director shall notify such party whether  
22          the suspension or prohibition from participation in  
23          any manner in the conduct of the affairs of the reg-  
24          ulated entity will be continued, terminated, or other-  
25          wise modified, or whether the order removing such

1 party from office or prohibiting such party from fur-  
2 ther participation in any manner in the conduct of  
3 the affairs of the regulated entity, and prohibiting  
4 compensation in connection with termination will be  
5 rescinded or otherwise modified. Such notification  
6 shall contain a statement of the basis for the Direc-  
7 tor's decision, if adverse to such party. The Director  
8 is authorized to prescribe such rules as may be nec-  
9 essary to effectuate the purposes of this subsection.

10 “(i) HEARINGS AND JUDICIAL REVIEW.—

11 “(1) VENUE AND PROCEDURE.—Any hearing  
12 provided for in this section shall be held in the Dis-  
13 trict of Columbia or in the Federal judicial district  
14 in which the headquarters of the regulated entity is  
15 located, unless the party afforded the hearing con-  
16 sents to another place, and shall be conducted in ac-  
17 cordance with the provisions of chapter 5 of title 5,  
18 United States Code. After such hearing, and within  
19 90 days after the Director has notified the parties  
20 that the case has been submitted to it for final deci-  
21 sion, it shall render its decision (which shall include  
22 findings of fact upon which its decision is predi-  
23 cated) and shall issue and serve upon each party to  
24 the proceeding an order or orders consistent with  
25 the provisions of this section. Judicial review of any

1 such order shall be exclusively as provided in this  
2 subsection. Unless a petition for review is timely  
3 filed in a court of appeals of the United States, as  
4 provided in paragraph (2), and thereafter until the  
5 record in the proceeding has been filed as so pro-  
6 vided, the Director may at any time, upon such no-  
7 tice and in such manner as it shall deem proper,  
8 modify, terminate, or set aside any such order. Upon  
9 such filing of the record, the Director may modify,  
10 terminate, or set aside any such order with permis-  
11 sion of the court.

12 “(2) REVIEW OF ORDER.—Any party to any  
13 proceeding under paragraph (1) may obtain a review  
14 of any order served pursuant to paragraph (1)  
15 (other than an order issued with the consent of the  
16 regulated entity or the regulated entity-affiliated  
17 party concerned, or an order issued under subsection  
18 (h) of this section) by the filing in the United States  
19 Court of Appeals for the District of Columbia Cir-  
20 cuit or court of appeals of the United States for the  
21 circuit in which the headquarters of the regulated  
22 entity is located, within 30 days after the date of  
23 service of such order, a written petition praying that  
24 the order of the Director be modified, terminated, or  
25 set aside. A copy of such petition shall be forthwith

1 transmitted by the clerk of the court to the Director,  
2 and thereupon the Director shall file in the court the  
3 record in the proceeding, as provided in section 2112  
4 of title 28, United States Code. Upon the filing of  
5 such petition, such court shall have jurisdiction,  
6 which upon the filing of the record shall (except as  
7 provided in the last sentence of paragraph (1)) be  
8 exclusive, to affirm, modify, terminate, or set aside,  
9 in whole or in part, the order of the Director. Re-  
10 view of such proceedings shall be had as provided in  
11 chapter 7 of title 5, United States Code. The judg-  
12 ment and decree of the court shall be final, except  
13 that the same shall be subject to review by the Su-  
14 preme Court upon certiorari, as provided in section  
15 1254 of title 28, United States Code.

16 “(3) PROCEEDINGS NOT TREATED AS STAY.—  
17 The commencement of proceedings for judicial re-  
18 view under paragraph (2) shall not, unless specifi-  
19 cally ordered by the court, operate as a stay of any  
20 order issued by the Director.”.

21 (b) CONFORMING AMENDMENTS.—

22 (1) 1992 ACT.—Section 1317(f) of the Housing  
23 and Community Development Act of 1992 (12  
24 U.S.C. 4517(f)) is amended by striking “section  
25 1379B” and inserting “section 1379D”.

1           (2) FANNIE MAE CHARTER ACT.—The second  
2 sentence of subsection (b) of section 308 of the Fed-  
3 eral National Mortgage Association Charter Act (12  
4 U.S.C. 1723(b)) is amended by striking “The” and  
5 inserting “Except to the extent that action under  
6 section 1377 of the Housing and Community Devel-  
7 opment Act of 1992 temporarily results in a lesser  
8 number, the”.

9           (3) FREDDIE MAC ACT.—The second sentence  
10 of subparagraph (A) of section 303(a)(2) of the  
11 Federal Home Loan Mortgage Corporation Act (12  
12 U.S.C. 1452(a)(2)(A)) is amended by striking  
13 “The” and inserting “Except to the extent that ac-  
14 tion under section 1377 of the Housing and Commu-  
15 nity Development Act of 1992 temporarily results in  
16 a lesser number, the”.

17 **SEC. 166. CRIMINAL PENALTY.**

18           Subtitle C of title XIII of the Housing and Commu-  
19 nity Development Act of 1992 (12 U.S.C. 4631 et seq.)  
20 is amended by inserting after section 1377 (as added by  
21 the preceding provisions of this Act) the following new sec-  
22 tion:

23 **“SEC. 1378. CRIMINAL PENALTY.**

24           “Whoever, being subject to an order in effect under  
25 section 1377, without the prior written approval of the Di-

1 rector, knowingly participates, directly or indirectly, in any  
2 manner (including by engaging in an activity specifically  
3 prohibited in such an order) in the conduct of the affairs  
4 of any regulated entity shall, notwithstanding section  
5 3571 of title 18, be fined not more than \$1,000,000, im-  
6 prisoned for not more than 5 years, or both.”.

7 **SEC. 167. CONFORMING AMENDMENTS.**

8 Subtitle C of title XIII of the Housing and Commu-  
9 nity Development Act of 1992 is amended—

10 (1) in section 1372(c)(1) (12 U.S.C. 4632(c)),  
11 by striking “that enterprise” and inserting “that  
12 regulated entity”;

13 (2) in section 1379 (12 U.S.C. 4637), as so re-  
14 designated by section 165(a)(1) of this Act—

15 (A) by inserting “, or of a regulated entity-  
16 affiliated party,” before “shall not affect”; and

17 (B) by striking “such director or executive  
18 officer” each place such term appears and in-  
19 serting “such director, executive officer, or reg-  
20 ulated entity-affiliated party”;

21 (3) in section 1379A (12 U.S.C. 4638), as so  
22 redesignated by section 165(a)(1) of this Act, by in-  
23 serting “or against a regulated entity-affiliated  
24 party,” before “or impair”;

1 (4) by striking “An enterprise” each place such  
2 term appears in such subtitle and inserting “A regu-  
3 lated entity”;

4 (5) by striking “an enterprise” each place such  
5 term appears in such subtitle and inserting “a regu-  
6 lated entity”;

7 (6) by striking “the enterprise” each place such  
8 term appears in such subtitle and inserting “the reg-  
9 ulated entity”; and

10 (7) by striking “any enterprise” each place such  
11 term appears in such subtitle and inserting “any  
12 regulated entity”.

## 13 **Subtitle E—General Provisions**

### 14 **SEC. 181. PRESIDENTIALLY APPOINTED DIRECTORS OF EN-** 15 **TERPRISES.**

16 (a) FANNIE MAE.—

17 (1) IN GENERAL.—Subsection (b) of section  
18 308 of the Federal National Mortgage Association  
19 Charter Act (12 U.S.C. 1723(b)) is amended—

20 (A) in the first sentence, by striking “five  
21 of whom shall be appointed annually by the  
22 President of the United States, and the remain-  
23 der of whom” and inserting “who”;

24 (B) in the second sentence, by striking  
25 “appointed by the President”;

1 (C) in the third sentence—

2 (i) by striking “appointed or”; and

3 (ii) by striking “, except that any  
4 such appointed member may be removed  
5 from office by the President for good  
6 cause”;

7 (D) in the fourth sentence, by striking  
8 “elective”; and

9 (E) by striking the fifth sentence.

10 (2) TRANSITIONAL PROVISION.—The amend-  
11 ments made by paragraph (1) shall not apply to any  
12 appointed position of the board of directors of the  
13 Federal National Mortgage Association until the ex-  
14 piration of the annual term for such position during  
15 which the effective date under section 184 occurs.

16 (b) FREDDIE MAC.—

17 (1) IN GENERAL.—Paragraph (2) of section  
18 303(a) of the Federal Home Loan Mortgage Cor-  
19 poration Act (12 U.S.C. 1452(a)(2)) is amended—

20 (A) in subparagraph (A)—

21 (i) in the first sentence, by striking “5  
22 of whom shall be appointed annually by  
23 the President of the United States and the  
24 remainder of whom” and inserting “who”;  
25 and



1 (ii) in the second sentence, by striking  
2 “appointed by the President of the United  
3 States”;

4 (B) in subparagraph (B)—

5 (i) by striking “such or”; and

6 (ii) by striking “, except that any ap-  
7 pointed member may be removed from of-  
8 fice by the President for good cause”; and

9 (C) in subparagraph (C)—

10 (i) by striking the first sentence; and

11 (ii) by striking “elective”.

12 (2) TRANSITIONAL PROVISION.—The amend-  
13 ments made by paragraph (1) shall not apply to any  
14 appointed position of the Board of Directors of the  
15 Federal Home Loan Mortgage Corporation until the  
16 expiration of the annual term for such position dur-  
17 ing which the effective date under section 184 oc-  
18 curs.

19 **SEC. 182. REPORT ON PORTFOLIO OPERATIONS, SAFETY**  
20 **AND SOUNDNESS, AND MISSION OF ENTER-**  
21 **PRISES.**

22 Not later than the expiration of the 12-month period  
23 beginning on the effective date under section 184, the Di-  
24 rector of the Federal Housing Finance Agency shall sub-  
25 mit a report to the Congress which shall include—

1           (1) a description of the portfolio holdings of the  
2 enterprises (as such term is defined in section 1303  
3 of the Housing and Community Development Act of  
4 1992 (12 U.S.C. 4502) in mortgages (including  
5 whole loans and mortgage-backed securities), non-  
6 mortgages, and other assets;

7           (2) a description of the risk implications for the  
8 enterprises of such holdings and the consequent risk  
9 management undertaken by the enterprises (includ-  
10 ing the use of derivatives for hedging purposes),  
11 compared with off-balance sheet obligations of the  
12 enterprises (including mortgage-backed securities  
13 guaranteed by the enterprises);

14           (3) an analysis of portfolio holdings for safety  
15 and soundness purposes;

16           (4) an assessment of whether portfolio holdings  
17 fulfill the mission purposes of the enterprises under  
18 the Federal National Mortgage Association Charter  
19 Act and the Federal Home Loan Mortgage Corpora-  
20 tion Act; and

21           (5) an analysis of the potential systemic risk  
22 implications for the enterprises, the housing and  
23 capital markets, and the financial system of portfolio  
24 holdings, and whether such holdings should be lim-  
25 ited or reduced over time.

1 **SEC. 183. CONFORMING AND TECHNICAL AMENDMENTS.**

2 (a) AMENDMENT TO 1992 ACT.—Title XIII of the  
3 Housing and Community Development Act of 1992 is  
4 amended by striking section 1383 (12 U.S.C. 1451 note).

5 (b) AMENDMENT TO TITLE 18, UNITED STATES  
6 CODE.—Section 1905 of title 18, United States Code, is  
7 amended by striking “Office of Federal Housing Enter-  
8 prise Oversight” and inserting “Federal Housing Finance  
9 Agency” .

10 (c) AMENDMENTS TO FLOOD DISASTER PROTECTION  
11 ACT OF 1973.—Section 102(f)(3)(A) of the Flood Dis-  
12 aster Protection Act of 1973 (42 U.S.C. 4012a(f)(3)(A))  
13 is amended by striking “Director of the Office of Federal  
14 Housing Enterprise Oversight of the Department of Hous-  
15 ing and Urban Development” and inserting “Director of  
16 the Federal Housing Finance Agency”.

17 (d) AMENDMENT TO DEPARTMENT OF HOUSING AND  
18 URBAN DEVELOPMENT ACT.—Section 5 of the Depart-  
19 ment of Housing and Urban Development Act (42 U.S.C.  
20 3534) is amended by striking subsection (d).

21 (e) AMENDMENT TO TITLE 5, UNITED STATES  
22 CODE.—Section 5313 of title 5, United States Code, is  
23 amended by striking the item relating to the Director of  
24 the Office of Federal Housing Enterprise Oversight, De-  
25 partment of Housing and Urban Development and insert-  
26 ing the following new item:

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

2 **SEC. 184. EFFECTIVE DATE.**

3 Except as specifically provided otherwise in this title,  
4 the amendments made by this title shall take effect on,  
5 and shall apply beginning on, the expiration of the 1-year  
6 period beginning on the date of the enactment of this Act.

7 **TITLE II—FEDERAL HOME LOAN**  
8 **BANKS**

9 **SEC. 201. DEFINITIONS.**

10 Section 2 of the Federal Home Loan Bank Act (12  
11 U.S.C. 1422) is amended—

12 (1) by striking paragraphs (1) and (10);

13 (2) by redesignating paragraphs (2) through  
14 (9) as paragraphs (1) through (8), respectively;

15 (3) by redesignating paragraphs (11) through  
16 (13) as paragraphs (9) through (11), respectively;

17 and

18 (4) by adding at the end the following:

19 “(12) DIRECTOR.—The term ‘Director’ means  
20 the Director of the Federal Housing Finance Agen-  
21 cy.

22 “(13) AGENCY.—The term ‘Agency’ means the  
23 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.—Subject to paragraph (2),  
9 and except to the extent that action under section  
10 1377 of the Federal Housing Enterprises Financial  
11 Safety and Soundness Act of 1992 results in a lesser  
12 number, the management of each Federal Home  
13 Loan Bank shall be vested in a board of 13 direc-  
14 tors, or such other number as the Director deter-  
15 mines appropriate, each of whom—

16 “(A) shall be elected by the members; and

17 “(B) shall be either a bona fide resident of  
18 the district in which such bank is located or an  
19 officer or director of a member of such bank lo-  
20 cated in that district.

21 “(2) PUBLIC INTEREST.—At least 2 directors  
22 elected under paragraph (1) shall be representatives  
23 chosen from organizations with more than a 2-year  
24 history of representing consumer or community in-  
25 terests on banking services, credit needs, housing, or  
26 financial consumer protections.”;

1 (2) in subsection (d)—

2 (A) in the first sentence, by striking “,  
3 whether elected or appointed,”;

4 (B) in the second sentence, by striking “or  
5 appointed”; and

6 (C) in the third sentence, by striking “an  
7 elective” each place such term appears and in-  
8 serting “a”;

9 (3) by striking “elective” each place such term  
10 appears (except in subsection (e)); and

11 (4) in subsection (f), by striking “appointed or”  
12 each place that term appears.

13 (b) TERMS.—

14 (1) IN GENERAL.—Section 7(d) of the Federal  
15 Home Loan Bank Act (12 U.S.C. 1427(i)) is  
16 amended—

17 (A) in the first sentence, by striking “3  
18 years” and inserting “4 years”; and

19 (B) in the second sentence—

20 (i) by striking “Federal Home Loan  
21 Bank System Modernization Act of 1999”  
22 and inserting “Federal Housing Finance  
23 Reform Act of 2005”; and

24 (ii) by striking “1/3” and inserting  
25 “1/4”.

1           (2) SAVINGS PROVISION.—The amendments  
2           made by paragraph (1) shall not apply to the term  
3           of office of any director of a Federal home loan bank  
4           who is serving as of the effective date of this Act  
5           under section 184, including any director elected to  
6           fill a vacancy in any such office.

7           (c) COMPENSATION.—Subsection (i) of section 7 of  
8           the Federal Home Loan Bank Act (12 U.S.C. 1427(i))  
9           is amended to read as follows:

10          “(i) DIRECTORS’ COMPENSATION.—

11                 “(1) IN GENERAL.—Each Federal home loan  
12                 bank may pay the directors on the board of directors  
13                 for the bank reasonable compensation for the time  
14                 required of such directors, and reasonable expenses  
15                 incurred by such directors, in connection with service  
16                 on the board of directors, in accordance with resolu-  
17                 tions adopted by the board of directors and subject  
18                 to the approval of the board.

19                 “(2) ANNUAL REPORT BY THE BOARD.—The  
20                 Director shall include, in the annual report sub-  
21                 mitted to the Congress pursuant to section 1319B of  
22                 the Federal Housing Enterprises Financial Safety  
23                 and Soundness Act of 1992, information regarding  
24                 the compensation and expenses paid by the Federal

1 home loan banks to the directors on the boards of  
2 directors of the banks.”.

3 **SEC. 203. FEDERAL HOUSING FINANCE AGENCY OVER-**  
4 **SIGHT OF FEDERAL HOME LOAN BANKS.**

5 The Federal Home Loan Bank Act (12 U.S.C. 1421  
6 et seq.), other than in provisions of that Act added or  
7 amended otherwise by this Act, is amended—

8 (1) by striking sections 2A and 2B (12 U.S.C.  
9 1422a, 1422b);

10 (2) in section 6 (12 U.S.C. 1426(b)(1))—

11 (A) in subsection (b)(1), in the matter pre-  
12 ceding subparagraph (A), by striking “Finance  
13 Board approval” and inserting “approval by the  
14 Director”; and

15 (B) in each of subsections (c)(4)(B) and  
16 (d)(2), by striking “Finance Board regulations”  
17 each place that term appears and inserting  
18 “regulations of the Director”;

19 (3) in section 8 (12 U.S.C. 1428), in the sec-  
20 tion heading, by striking “BY THE BOARD”;

21 (4) in section 10(b) (12 U.S.C. 1430), by strik-  
22 ing “by formal resolution”;

23 (5) in section 18 (12 U.S.C. 1438), by striking  
24 subsection (b);

25 (6) in section 21 (12 U.S.C. 1441)—



1 (A) in subsection (b)—

2 (i) in paragraph (5), by striking  
3 “Chairperson of the Federal Housing Fi-  
4 nance Board” and inserting “Director”;  
5 and

6 (ii) in the heading for paragraph (8),  
7 by striking “FEDERAL HOUSING FINANCE  
8 BOARD” and inserting “DIRECTOR”; and

9 (B) in subsection (i), in the heading for  
10 paragraph (2), by striking “FEDERAL HOUSING  
11 FINANCE BOARD” and inserting “DIRECTOR”;

12 (7) in section 23 (12 U.S.C. 1443), by striking  
13 “Board of Directors of the Federal Housing Finance  
14 Board” and inserting “Director”;

15 (8) by striking “the Board” each place such  
16 term appears in such Act (except in subsections (a),  
17 (b), and (c) of section 11 (12 U.S.C. 1431), section  
18 15 (12 U.S.C. 1435), section 21(f)(2) (12 U.S.C.  
19 1441(f)(2)), subsections (a), (k)(2)(B)(i), and  
20 (n)(6)(C)(ii) of section 21A (12 U.S.C. 1441a), sub-  
21 sections (e)(7), (f)(2)(C), and (k)(7)(B)(ii) of section  
22 21B (12 U.S.C. 1441b), the first two places such  
23 term appears in section 22 (12 U.S.C. 1442), and  
24 section 25 (12 U.S.C. 1445)) and inserting “the Di-  
25 rector”;

1           (9) by striking “The Board” each place such  
2 term appears in such Act (except in sections 7(e)  
3 (12 U.S.C. 1427(e)), and 11(b) (12 U.S.C. 1431(b))  
4 and inserting “The Director”;

5           (10) by striking “the Board’s” each place such  
6 term appears in such Act and inserting “the Direc-  
7 tor’s”;

8           (11) by striking “The Board’s” each place such  
9 term appears in such Act and inserting “The Direc-  
10 tor’s”;

11          (12) by striking “The Finance Board” each  
12 place such term appears in such Act and inserting  
13 “The Director”;

14          (13) by striking “the Finance Board” each  
15 place such term appears in such Act and inserting  
16 “the Director”;

17          (14) by striking “Federal Housing Finance  
18 Board” each place such term appears and inserting  
19 “Director”;

20          (15) by striking “Federal Home Loan Bank  
21 Board” each place such term appears in such Act  
22 (except in section 21A(n)(9)(B) (12  
23 U.S.C.1441a(n)(9)(B)) and inserting “Director”;

24          (16) in section 11(i) (12 U.S.C. 1431(i), by  
25 striking “the Chairperson of”; and

1 (17) in section 21(e)(9) (12 U.S.C. 1441(e)(9)),  
2 by striking “Chairperson of the”.

3 **SEC. 204. DEBT ISSUING FACILITY.**

4 The Federal Home Loan Bank Act (12 U.S.C. 1421  
5 et seq.) is amended by inserting after section 11 the fol-  
6 lowing:

7 **“SEC. 11A. FEDERAL HOME LOAN BANK FINANCE COR-**  
8 **PORATION.**

9 “(a) ESTABLISHMENT.—

10 “(1) IN GENERAL.—There is hereby established  
11 the Federal Home Loan Bank Finance Corporation,  
12 which shall be a jointly owned subsidiary of the Fed-  
13 eral Home Loan Banks (in this section referred to  
14 as the ‘Corporation’).

15 “(2) PURPOSES.—The purpose of the Corpora-  
16 tion shall be—

17 “(A) to issue and service the consolidated  
18 obligations of the Federal Home Loan Banks in  
19 accordance with this Act; and

20 “(B) to perform all other necessary and  
21 proper functions in relation to the issuance and  
22 service of such obligations, as fiscal agent on  
23 behalf of the Federal Home Loan Banks, and  
24 any other functions performed by the Office of  
25 Finance on behalf of the Financing Corporation

1 (established under section 21) and the Resolu-  
2 tion Funding Corporation (established under  
3 section 21B).

4 “(3) TRANSFER OF FUNCTIONS.—

5 “(A) IN GENERAL.—The functions of the  
6 Office of Finance of the Federal Home Loan  
7 Banks, shall be transferred to the Corporation  
8 immediately upon the conclusion of the organi-  
9 zational meeting of the board of directors (re-  
10 ferred to in this subsection as the ‘effective  
11 time’) established under subsection (c).

12 “(B) ORGANIZATIONAL MEETING.—The  
13 organizational meeting of the board of directors  
14 of the Corporation shall occur as soon as prac-  
15 ticable after the date of enactment of the Fed-  
16 eral Housing Finance Reform Act of 2005.

17 “(C) INTERIM PROCEDURES.—Until the  
18 transfer under subparagraph (A), the Office of  
19 Finance established as a joint office of the Fed-  
20 eral Home Loan Banks (referred to in this sub-  
21 section as the ‘predecessor office’) shall con-  
22 tinue to operate as if this section had not been  
23 enacted.

24 “(D) REFERENCES.—After the transfer  
25 under subparagraph (A), any reference under

1 any Federal law to the Office of Finance and  
2 the Managing Director of the Office of Finance  
3 shall be deemed to be references to the Cor-  
4 poration and the chief executive officer of the  
5 Corporation, respectively.

6 “(4) SUCCESSION.—

7 “(A) ASSETS AND LIABILITIES.—At the  
8 transfer under paragraph (3)(A), the Corpora-  
9 tion shall, by operation of law and without any  
10 further action by the Federal Housing Finance  
11 Board, the predecessor office, or any court, suc-  
12 ceed to the assets of, and assume all debts, obli-  
13 gations, contracts, and other liabilities of the  
14 predecessor office, matured or unmatured, ac-  
15 crued or absolute, contingent or otherwise, and  
16 whether or not reflected or reserved against on  
17 balance sheets, books of account, or records of  
18 the predecessor office.

19 “(B) CONTRACTS.—At the time of the  
20 transfer under paragraph (3)(A), the existing  
21 contractual obligations of the Federal Housing  
22 Finance Board, solely in its capacity as issuer  
23 of consolidated obligations of the Federal Home  
24 Loan Banks and the predecessor office shall, by  
25 operation of law and without any further action

1 by the Federal Housing Finance Board, the  
2 predecessor office, or any court, become obliga-  
3 tions, entitlements, and instruments of the Cor-  
4 poration.

5 “(C) TAXATION.—The succession to as-  
6 sets, assumption of liabilities, conversion of ob-  
7 ligations and instruments, and effectuation of  
8 any other transaction by the Corporation to  
9 carry out this subsection shall not be treated as  
10 a taxable event under the laws of any State, or  
11 any political subdivision thereof.

12 “(b) POWERS.—Subject to the provisions of this Act,  
13 and such regulations as the Director may prescribe, the  
14 Corporation shall have the power to—

15 “(1) issue voting capital stock to the Federal  
16 Home Loan Banks;

17 “(2) issue and service Federal Home Loan  
18 Bank consolidated notes, consolidated bonds, con-  
19 solidated debentures and other consolidated obliga-  
20 tions under section 11 of this Act on behalf of the  
21 Federal Home Loan Banks;

22 “(3) determine the amount, maturities, rate of  
23 interest, terms, and other conditions of Federal  
24 Home Loan Bank consolidated obligations;

25 “(4) adopt, alter, and use a corporate seal;

1           “(5) make contracts;

2           “(6) sue and be sued in the corporate capacity  
3 of the Corporation, and to complain and defend in  
4 any action brought by or against the Corporation in  
5 any court of competent jurisdiction;

6           “(7) determine the terms and conditions under  
7 which the Corporation may indemnify its directors,  
8 officers, employees, and agents;

9           “(8) determine and implement the methodology  
10 for assessments of the Federal Home Loan Banks to  
11 fund all of the expenses of the Corporation; and

12           “(9) exercise such incidental powers not incon-  
13 sistent with the provisions of this Act as are nec-  
14 essary or advisable to carry out the purposes of the  
15 Corporation.

16           “(c) BOARD OF DIRECTORS.—

17           “(1) ESTABLISHMENT.—The management of  
18 the Corporation shall be vested in a board of direc-  
19 tors composed of the president of each of the Fed-  
20 eral Home Loan Banks, ex officio.

21           “(2) DUTIES.—The board of directors shall ad-  
22 minister the affairs of the Corporation in accordance  
23 with the provisions of this Act.

24           “(3) INTERIM APPOINTMENTS.—If the presi-  
25 dent of any Federal Home Loan Bank is vacant, the

1 person serving in such capacity on an acting basis  
2 shall serve on the board of directors of the Corpora-  
3 tion until replaced by the next person to fill the of-  
4 fice of president of the Federal Home Loan Bank.

5 “(4) POWERS.—The board of directors shall ex-  
6 ercise such powers as may be necessary or advisable  
7 to carry out the purposes of this section, including  
8 the power to—

9 “(A) set policies for the management and  
10 operation of the Corporation;

11 “(B) approve a strategic business plan for  
12 the Corporation;

13 “(C) review, adopt and monitor annual op-  
14 eration and capital budgets of the Corporation;

15 “(D) constitute and perform the duties of  
16 an audit committee, which to the extent pos-  
17 sible shall operate consistent with—

18 “(i) the requirements established for  
19 the Federal Home Loan Banks; and

20 “(ii) the requirements pertaining to  
21 audit committee reports set forth in the  
22 rules of Securities and Exchange Commis-  
23 sion;

24 “(E) select, employ, determine the com-  
25 pensation for, and assign the duties and func-



1           tions of the president of the Corporation, who  
2           shall—

3                   “(i) be the chief executive officer for  
4                   the Corporation and shall direct the imple-  
5                   mentation of the policies adopted by the  
6                   board of directors of the Corporation;

7                   “(ii) serve as a member of the Direc-  
8                   torate of the Financing Corporation, under  
9                   section 21(b)(1)(A); and

10                   “(iii) serve as a member of the Direc-  
11                   torate of the Resolution Funding Corpora-  
12                   tion, under section 21B(e)(1)(A);

13                   “(F) provide for the review and approval  
14                   of all contracts of the Corporation;

15                   “(G) have the exclusive authority to em-  
16                   ploy and contract for the services of an inde-  
17                   pendent, external auditor for the annual and  
18                   quarterly combined financial statements of the  
19                   Federal Home Loan Banks; and

20                   “(H) select, evaluate, determine the com-  
21                   pensation of, and, as appropriate, replace the  
22                   internal auditor of the Corporation, who may be  
23                   removed only by vote of the board of directors  
24                   of the Corporation.

1           “(5) PAY.—The members of the board of direc-  
2           tors of the Corporation shall not receive compensa-  
3           tion for their services as members of the board of di-  
4           rectors.

5           “(6) QUORUM REQUIREMENT.—

6           “(A) IN GENERAL.—No business of the  
7           Corporation may be conducted by the board of  
8           directors unless a quorum of the members of  
9           the board of directors is present in person or by  
10          telephone, or through action taken by written  
11          consent executed by all of the directors.

12          “(B) NUMBER.—Directors representing a  
13          majority of the members of the board of direc-  
14          tors shall constitute a quorum.

15          “(C) VOTE REQUIRED.—Action taken by  
16          the board of directors shall be approved by a  
17          majority of the directors in attendance at any  
18          meeting at which a quorum is present, unless  
19          the board of directors adopts procedures requir-  
20          ing a greater voting requirement.

21          “(7) APPOINTMENT OF OFFICERS AND ADOP-  
22          TION OF RULES OF PROCEDURE.—The board of di-  
23          rectors of the Corporation shall—

1           “(A) select, from among the members of  
2           such board, a Chairperson and a Vice Chair-  
3           person; and

4           “(B) adopt by-laws and other rules of pro-  
5           cedure for actions before the board of directors,  
6           including the establishment of 1 or more com-  
7           mittees to take action on behalf of the board of  
8           directors, and the delegation of powers of the  
9           board of directors to any committee or officer  
10          of the Corporation.

11         “(d) STOCK.—

12           “(1) ISSUANCE OF EQUAL AMOUNT TO EACH  
13           BANK.—The Corporation shall issue to each Federal  
14           home loan bank one share of voting capital stock,  
15           with a par value of \$100 per share.

16           “(2) RESTRICTED TRANSFERABILITY.—Stock  
17           issued under paragraph (1) may be owned and held  
18           only by the Federal Home Loan Banks.

19           “(3) PAYMENT UPON ISSUANCE.—Upon  
20           issuance of any share of stock under this subsection  
21           to any Federal Home Loan Bank, the bank shall  
22           pay to the Corporation the total amount due for  
23           such stock.

24           “(4) DISTRIBUTION REQUIREMENT.—

1           “(A) IN GENERAL.—The total amount of  
2           outstanding stock of the Corporation shall, at  
3           all times, be distributed equally among all the  
4           Federal Home Loan Banks.

5           “(B) PROCEDURES.—The board of direc-  
6           tors of the Corporation shall adopt procedures  
7           to implement subparagraph (A).

8           “(e) STATUS.—Except to the extent expressly pro-  
9           vided in this Act, or in rules and regulations promulgated  
10          by the Director, or unless the context clearly indicates oth-  
11          erwise, the Corporation shall be accorded the same status  
12          as a Federal Home Loan Bank for purposes of any law,  
13          including sections 2B and 13 of this Act.”.

14   **SEC. 205. SECURITIES AND EXCHANGE COMMISSION DIS-**  
15                           **CLOSURE.**

16          (a) IN GENERAL.—The Federal Home Loan Banks  
17          shall be exempt from compliance with—

18               (1) sections 13(e), 14(a), 14(c), and 17A of the  
19          Securities Exchange Act of 1934 and related Com-  
20          mission regulations; and

21               (2) section 15 of that Act and related Securities  
22          and Exchange Commission regulations with respect  
23          to transactions in capital stock of the Banks.

24          (b) MEMBER EXEMPTION.—The members of the  
25          Federal Home Loan Banks shall be exempt from compli-

1 ance with sections 13(d), 13(f), 13(g), 14(d), and 16 of  
2 the Securities Exchange Act of 1934 and related Securi-  
3 ties and Exchange Commission regulations with respect  
4 to their ownership of, or transactions in, capital stock of  
5 the Federal Home Loan Banks.

6 (c) EXEMPTED AND GOVERNMENT SECURITIES.—

7 (1) CAPITAL STOCK.—The capital stock issued  
8 by each of the Federal Home Loan Banks under  
9 section 6 of the Federal Home Loan Bank Act are—

10 (A) exempted securities within the mean-  
11 ing of section 3(a)(2) of the Securities Act of  
12 1933; and

13 (B) “exempted securities” within the  
14 meaning of section 3(a)(12)(A) of the Securities  
15 Exchange Act of 1934.

16 (2) OTHER OBLIGATIONS.—The debentures,  
17 bonds, and other obligations issued under section 11  
18 of the Federal Home Loan Bank Act are—

19 (A) exempted securities within the mean-  
20 ing of section 3(a)(2) of the Securities Act of  
21 1933;

22 (B) “government securities” within the  
23 meaning of section 3(a)(42) of the Securities  
24 Exchange Act of 1934;

1 (C) excluded from the definition of “gov-  
2 ernment securities broker” within section  
3 3(a)(43) of the Securities Exchange Act of  
4 1934;

5 (D) excluded from the definition of “gov-  
6 ernment securities dealer” within section  
7 3(a)(44) of the Securities Exchange Act of  
8 1934; and

9 (E) “government securities” within the  
10 meaning of section 2(a)(16) of the Investment  
11 Company Act of 1940.

12 (d) EXEMPTION FROM REPORTING REQUIRE-  
13 MENTS.—The Federal Home Loan Banks shall be exempt  
14 from periodic reporting requirements pertaining to—

15 (1) the disclosure of related party transactions  
16 that occur in the ordinary course of business of the  
17 Banks with their members; and

18 (2) the disclosure of unregistered sales of equity  
19 securities.

20 (e) TENDER OFFERS.—The Securities and Exchange  
21 Commission’s rules relating to tender offers shall not  
22 apply in connection with transactions in capital stock of  
23 the Federal Home Loan Banks.

24 (f) REGULATIONS.—In issuing final regulations to  
25 implement provisions of this section, the Securities and

1 Exchange Commission shall consider the distinctive char-  
2 acteristics of the Federal Home Loan Banks when evalu-  
3 ating the accounting treatment with respect to the pay-  
4 ment to REFCORP, the role of the combined financial  
5 statements of the twelve Banks, the accounting classifica-  
6 tion of redeemable capital stock, and the accounting treat-  
7 ment related to the joint and several nature of the obliga-  
8 tions of the Banks.

9 **SEC. 206. COMMUNITY FINANCIAL INSTITUTION MEMBERS.**

10 (a) TOTAL ASSET REQUIREMENT.—Paragraph (12)  
11 of section 2 of the Federal Home Loan Bank Act (12  
12 U.S.C. 1422(12)), as so redesignated by section 202(2) of  
13 this Act, is amended by striking “\$500,000,000” each  
14 place such term appears and inserting “\$1,000,000,000”.

15 (b) USE OF ADVANCES FOR COMMUNITY DEVELOP-  
16 MENT ACTIVITIES.—Section 10(a) of the Federal Home  
17 Loan Bank Act (12 U.S.C. 1430(a)) is amended—

18 (1) in paragraph (2)(B)—

19 (A) by striking “and”; and

20 (B) by inserting “, and community devel-  
21 opment activities” before the period at the end;

22 and

23 (2) in paragraph (6)—

24 (A) by striking “and”; and

1 (B) by inserting “and ‘community develop-  
2 ment activities’” before “shall”.

3 **TITLE III—TRANSFER OF FUNC-**  
4 **TIONS, PERSONNEL, AND**  
5 **PROPERTY OF OFFICE OF**  
6 **FEDERAL HOUSING ENTER-**  
7 **PRISE OVERSIGHT AND FED-**  
8 **ERAL HOUSING FINANCE**  
9 **BOARD**

10 **Subtitle A—Office of Federal**  
11 **Housing Enterprise Oversight**

12 **SEC. 301. ABOLISHMENT OF OFHEO.**

13 (a) **IN GENERAL.**—Effective at the end of the 1-year  
14 period beginning on the date of the enactment of this Act,  
15 the Office of Federal Housing Enterprise Oversight of the  
16 Department of Housing and Urban Development and the  
17 positions of the Director and Deputy Director of such Of-  
18 fice are abolished.

19 (b) **DISPOSITION OF AFFAIRS.**—During the 1-year  
20 period beginning on the date of the enactment of this Act,  
21 the Director of the Office of Federal Housing Enterprise  
22 Oversight shall, solely for the purpose of winding up the  
23 affairs of the Office of Federal Housing Enterprise Over-  
24 sight—



1           (1) manage the employees of such Office and  
2           provide for the payment of the compensation and  
3           benefits of any such employee which accrue before  
4           the effective date of the transfer of such employee  
5           pursuant to section 303; and

6           (2) may take any other action necessary for the  
7           purpose of winding up the affairs of the Office.

8           (c) STATUS OF EMPLOYEES BEFORE TRANSFER.—

9           The amendments made by title I and the abolishment of  
10          the Office of Federal Housing Enterprise Oversight under  
11          subsection (a) of this section may not be construed to af-  
12          fect the status of any employee of such Office as employ-  
13          ees of an agency of the United States for purposes of any  
14          other provision of law before the effective date of the  
15          transfer of any such employee pursuant to section 303.

16          (d) USE OF PROPERTY AND SERVICES.—

17                 (1) PROPERTY.—The Director of the Federal  
18                 Housing Finance Agency may use the property of  
19                 the Office of Federal Housing Enterprise Oversight  
20                 to perform functions which have been transferred to  
21                 the Director of the Federal Housing Finance Agency  
22                 for such time as is reasonable to facilitate the or-  
23                 derly transfer of functions transferred pursuant to  
24                 any other provision of this Act or any amendment  
25                 made by this Act to any other provision of law.

1           (2) AGENCY SERVICES.—Any agency, depart-  
2           ment, or other instrumentality of the United States,  
3           and any successor to any such agency, department,  
4           or instrumentality, which was providing supporting  
5           services to the Office of Federal Housing Enterprise  
6           Oversight before the expiration of the period under  
7           subsection (a) in connection with functions that are  
8           transferred to the Director of the Federal Housing  
9           Finance Agency shall—

10                   (A) continue to provide such services, on a  
11                   reimbursable basis, until the transfer of such  
12                   functions is complete; and

13                   (B) consult with any such agency to co-  
14                   ordinate and facilitate a prompt and reasonable  
15                   transition.

16           (e) SAVINGS PROVISIONS.—

17                   (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-  
18                   TIONS NOT AFFECTED.—Subsection (a) shall not af-  
19                   fect the validity of any right, duty, or obligation of  
20                   the United States, the Director of the Office of Fed-  
21                   eral Housing Enterprise Oversight, or any other per-  
22                   son, which—

23                   (A) arises under or pursuant to the title  
24                   XIII of the Housing and Community Develop-  
25                   ment Act of 1992, the Federal National Mort-

1           gage Association Charter Act, the Federal  
2           Home Loan Mortgage Corporation Act, or any  
3           other provision of law applicable with respect to  
4           such Office; and

5                   (B) existed on the day before the abolish-  
6           ment under subsection (a) of this section.

7           (2) CONTINUATION OF SUITS.—No action or  
8           other proceeding commenced by or against the Di-  
9           rector of the Office of Federal Housing Enterprise  
10          Oversight in connection with functions that are  
11          transferred to the Director of the Federal Housing  
12          Finance Agency shall abate by reason of the enact-  
13          ment of this Act, except that the Director of the  
14          Federal Housing Finance Agency shall be sub-  
15          stituted for the Director of the Office of Federal  
16          Housing Enterprise Oversight as a party to any  
17          such action or proceeding.

18 **SEC. 302. CONTINUATION AND COORDINATION OF CERTAIN**  
19 **REGULATIONS.**

20          All regulations, orders, determinations, and resolu-  
21          tions that—

22                   (1) were issued, made, prescribed, or allowed to  
23          become effective by—

24                           (A) the Office of Federal Housing Enter-  
25          prise Oversight;

1 (B) the Secretary of Housing and Urban  
2 Development and that relate to the Secretary's  
3 authority under—

4 (i) title XIII of the Housing and Com-  
5 munity Development Act of 1992;

6 (ii) under the Federal National Mort-  
7 gage Association Charter Act, with respect  
8 to the Federal National Mortgage Associa-  
9 tion; or

10 (iii) the Federal Home Loan Mort-  
11 gage Corporation Act; or

12 (C) a court of competent jurisdiction and  
13 that relate to functions transferred by this Act;  
14 and

15 (2) are in effect on the date of the abolishment  
16 under section 301(a) of this Act,

17 shall remain in effect according to the terms of such regu-  
18 lations, orders, determinations, and resolutions, and shall  
19 be enforceable by or against the Director of the Federal  
20 Housing Finance Agency until modified, terminated, set  
21 aside, or superseded in accordance with applicable law by  
22 such Director, as the case may be, any court of competent  
23 jurisdiction, or operation of law.

1 **SEC. 303. TRANSFER AND RIGHTS OF EMPLOYEES OF**  
2 **OFHEO.**

3 (a) TRANSFER.—Each employee of the Office of Fed-  
4 eral Housing Enterprise Oversight shall be transferred to  
5 the Federal Housing Finance Agency for employment no  
6 later than the date of the abolishment under section  
7 301(a) of this Act and such transfer shall be deemed a  
8 transfer of function for purposes of section 3503 of title  
9 5, United States Code.

10 (b) GUARANTEED POSITIONS.—Each employee trans-  
11 ferred under subsection (a) shall be guaranteed a position  
12 with the same status, tenure, grade, and pay as that held  
13 on the day immediately preceding the transfer. Each such  
14 employee holding a permanent position shall not be invol-  
15 untarily separated or reduced in grade or compensation  
16 for 12 months after the date of transfer, except for cause  
17 or, if the employee is a temporary employee, separated in  
18 accordance with the terms of the appointment.

19 (c) APPOINTMENT AUTHORITY FOR EXCEPTED  
20 SERVICE EMPLOYEES.—

21 (1) IN GENERAL.—In the case of employees oc-  
22 cupying positions in the excepted service, any ap-  
23 pointment authority established pursuant to law or  
24 regulations of the Office of Personnel Management  
25 for filling such positions shall be transferred, subject  
26 to paragraph (2).

1           (2) DECLINE OF TRANSFER.—The Director of  
2           the Federal Housing Finance Agency may decline a  
3           transfer of authority under paragraph (1) (and the  
4           employees appointed pursuant thereto) to the extent  
5           that such authority relates to positions excepted  
6           from the competitive service because of their con-  
7           fidential, policy-making, policy-determining, or pol-  
8           icy-advocating character.

9           (d) REORGANIZATION.—If the Director of the Fed-  
10          eral Housing Finance Agency determines, after the end  
11          of the 1-year period beginning on the date of the abolish-  
12          ment under section 201(a), that a reorganization of the  
13          combined work force is required, that reorganization shall  
14          be deemed a major reorganization for purposes of afford-  
15          ing affected employees retirement under section  
16          8336(d)(2) or 8414(b)(1)(B) of title 5, United States  
17          Code.

18          (e) EMPLOYEE BENEFIT PROGRAMS.—Any employee  
19          of the Office of Federal Housing Enterprise Oversight ac-  
20          cepting employment with the Director of the Federal  
21          Housing Finance Agency as a result of a transfer under  
22          subsection (a) may retain for 12 months after the date  
23          such transfer occurs membership in any employee benefit  
24          program of the Federal Housing Finance Agency or the  
25          Office of Federal Housing Enterprise Oversight, as appli-

1 cable, including insurance, to which such employee belongs  
2 on the date of the abolishment under section 201(a) if—

3 (1) the employee does not elect to give up the  
4 benefit or membership in the program; and

5 (2) the benefit or program is continued by the  
6 Director of the Federal Housing Finance Agency;

7 The difference in the costs between the benefits which  
8 would have been provided by such agency and those pro-  
9 vided by this section shall be paid by the Director of the  
10 Federal Housing Finance Agency. If any employee elects  
11 to give up membership in a health insurance program or  
12 the health insurance program is not continued by such Di-  
13 rector, the employee shall be permitted to select an alter-  
14 nate Federal health insurance program within 30 days of  
15 such election or notice, without regard to any other regu-  
16 larly scheduled open season.

17 **SEC. 304. TRANSFER OF PROPERTY AND FACILITIES.**

18 Upon the abolishment under section 301(a), all prop-  
19 erty of the Office of Federal Housing Enterprise Oversight  
20 shall transfer to the Director of the Federal Housing Fi-  
21 nance Agency.

1           **Subtitle B—Federal Housing**  
2                           **Finance Board**

3   **SEC. 321. ABOLISHMENT OF THE FEDERAL HOUSING FI-**  
4                           **NANCE BOARD.**

5           (a) **IN GENERAL.**—Effective at the end of the 1-year  
6 period beginning on the date of enactment of this Act, the  
7 Federal Housing Finance Board (in this title referred to  
8 as the “Board”) is abolished.

9           (b) **DISPOSITION OF AFFAIRS.**—During the 1-year  
10 period beginning on the date of enactment of this Act, the  
11 Board, solely for the purpose of winding up the affairs  
12 of the Board—

13                   (1) shall manage the employees of such Board  
14 and provide for the payment of the compensation  
15 and benefits of any such employee which accrue be-  
16 fore the effective date of the transfer of such em-  
17 ployee under section 323; and

18                   (2) may take any other action necessary for the  
19 purpose of winding up the affairs of the Board.

20           (c) **STATUS OF EMPLOYEES BEFORE TRANSFER.**—  
21 The amendments made by titles I and II and the abolish-  
22 ment of the Board under subsection (a) may not be con-  
23 strued to affect the status of any employee of such Board  
24 as employees of an agency of the United States for pur-  
25 poses of any other provision of law before the effective



1 date of the transfer of any such employee under section  
2 403.

3 (d) USE OF PROPERTY AND SERVICES.—

4 (1) PROPERTY.—The Director of the Federal  
5 Housing Finance Agency may use the property of  
6 the Board to perform functions which have been  
7 transferred to the Director of the Federal Housing  
8 Finance Agency for such time as is reasonable to fa-  
9 cilitate the orderly transfer of functions transferred  
10 under any other provision of this Act or any amend-  
11 ment made by this Act to any other provision of law.

12 (2) AGENCY SERVICES.—Any agency, depart-  
13 ment, or other instrumentality of the United States,  
14 and any successor to any such agency, department,  
15 or instrumentality, which was providing supporting  
16 services to the Board before the expiration of the 1-  
17 year period under subsection (a) in connection with  
18 functions that are transferred to the Director of the  
19 Federal Housing Finance Agency shall—

20 (A) continue to provide such services, on a  
21 reimbursable basis, until the transfer of such  
22 functions is complete; and

23 (B) consult with any such agency to co-  
24 ordinate and facilitate a prompt and reasonable  
25 transition.

1 (e) SAVINGS PROVISIONS.—

2 (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-  
3 TIONS NOT AFFECTED.—Subsection (a) shall not af-  
4 fect the validity of any right, duty, or obligation of  
5 the United States, a member of the Board, or any  
6 other person, which—

7 (A) arises under title XIII of the Housing  
8 and Community Development Act of 1992, the  
9 Federal National Mortgage Association Charter  
10 Act, the Federal Home Loan Mortgage Cor-  
11 poration Act, the Federal Home Loan Bank  
12 Act, or any other provision of law applicable  
13 with respect to such Board; and

14 (B) existed on the day before the effective  
15 date of the abolishment under subsection (a).

16 (2) CONTINUATION OF SUITS.—No action or  
17 other proceeding commenced by or against the  
18 Board in connection with functions that are trans-  
19 ferred to the Director of the Federal Housing Fi-  
20 nance Agency shall abate by reason of the enactment  
21 of this Act, except that the Director of the Federal  
22 Housing Finance Agency shall be substituted for the  
23 Board or any member thereof as a party to any such  
24 action or proceeding.

1 **SEC. 322. CONTINUATION AND COORDINATION OF CERTAIN**  
2 **REGULATIONS.**

3 (a) IN GENERAL.—All regulations, orders, and deter-  
4 minations described under subsection (b) shall remain in  
5 effect according to the terms of such regulations, orders,  
6 determinations, and resolutions, and shall be enforceable  
7 by or against the Director of the Federal Housing Finance  
8 Agency until modified, terminated, set aside, or super-  
9 seded in accordance with applicable law by such Director,  
10 any court of competent jurisdiction, or operation of law.

11 (b) APPLICABILITY.—A regulation, order, or deter-  
12 mination is described under this subsection if it—

13 (1) was issued, made, prescribed, or allowed to  
14 become effective by—

15 (A) the Board; or

16 (B) a court of competent jurisdiction and  
17 that relate to functions transferred by this Act;  
18 and

19 (2) is in effect on the effective date of the abol-  
20 ishment under section 321(a).

21 **SEC. 323. TRANSFER AND RIGHTS OF EMPLOYEES OF THE**  
22 **FEDERAL HOUSING FINANCE BOARD.**

23 (a) TRANSFER.—Each employee of the Board shall  
24 be transferred to the Federal Housing Finance Agency for  
25 employment not later than the effective date of the abol-  
26 ishment under section 321(a), and such transfer shall be

1 deemed a transfer of function for purposes of section 3503  
2 of title 5, United States Code.

3 (b) GUARANTEED POSITIONS.—Each employee trans-  
4 ferred under subsection (a) shall be guaranteed a position  
5 with the same status, tenure, grade, and pay as that held  
6 on the day immediately preceding the transfer. Each such  
7 employee holding a permanent position shall not be invol-  
8 untarily separated or reduced in grade or compensation  
9 for 12 months after the date of transfer, except for cause  
10 or, if the employee is a temporary employee, separated in  
11 accordance with the terms of the appointment.

12 (c) APPOINTMENT AUTHORITY FOR EXCEPTED AND  
13 SENIOR EXECUTIVE SERVICE EMPLOYEES.—

14 (1) IN GENERAL.—In the case of employees oc-  
15 cupying positions in the excepted service or the Sen-  
16 ior Executive Service, any appointment authority es-  
17 tablished under law or by regulations of the Office  
18 of Personnel Management for filling such positions  
19 shall be transferred, subject to paragraph (2).

20 (2) DECLINE OF TRANSFER.—The Director of  
21 the Federal Housing Finance Agency may decline a  
22 transfer of authority under paragraph (1) to the ex-  
23 tent that such authority relates to positions excepted  
24 from the competitive service because of their con-  
25 fidential, policymaking, policy-determining, or policy-

1       advocating character, and noncareer positions in the  
2       Senior Executive Service (within the meaning of sec-  
3       tion 3132(a)(7) of title 5, United States Code).

4       (d) REORGANIZATION.—If the Director of the Fed-  
5       eral Housing Finance Agency determines, after the end  
6       of the 1-year period beginning on the effective date of the  
7       abolishment under section 321(a), that a reorganization  
8       of the combined workforce is required, that reorganization  
9       shall be deemed a major reorganization for purposes of  
10      affording affected employees retirement under section  
11      8336(d)(2) or 8414(b)(1)(B) of title 5, United States  
12      Code.

13      (e) EMPLOYEE BENEFIT PROGRAMS.—

14           (1) IN GENERAL.—Any employee of the Board  
15      accepting employment with the Federal Housing Fi-  
16      nance Agency as a result of a transfer under sub-  
17      section (a) may retain for 12 months after the date  
18      on which such transfer occurs membership in any  
19      employee benefit program of the Federal Housing  
20      Finance Agency or the Board, as applicable, includ-  
21      ing insurance, to which such employee belongs on  
22      the effective date of the abolishment under section  
23      321(a) if—

24           (A) the employee does not elect to give up  
25      the benefit or membership in the program; and

1           (B) the benefit or program is continued by  
2           the Director of the Federal Housing Finance  
3           Agency.

4           (2) COST DIFFERENTIAL.—The difference in  
5           the costs between the benefits which would have  
6           been provided by the Board and those provided by  
7           this section shall be paid by the Director of the Fed-  
8           eral Housing Finance Agency. If any employee elects  
9           to give up membership in a health insurance pro-  
10          gram or the health insurance program is not contin-  
11          ued by such Director, the employee shall be per-  
12          mitted to select an alternate Federal health insur-  
13          ance program within 30 days after such election or  
14          notice, without regard to any other regularly sched-  
15          uled open season.

16 **SEC. 324. TRANSFER OF PROPERTY AND FACILITIES.**

17          Upon the effective date of the abolishment under sec-  
18          tion 321(a), all property of the Board shall transfer to  
19          the Director of the Federal Housing Finance Agency.

○