

FEDERAL HOUSING FINANCE REFORM ACT OF 2007

MAY 9, 2007.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. FRANK of Massachusetts, from the Committee on Financial Services, submitted the following

R E P O R T

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 1427]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 1427) to reform the regulation of certain housing-related Government-sponsored enterprises, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Federal Housing Finance Reform Act of 2007”.

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

- Sec. 1. Short title and table of contents.
 Sec. 2. Definitions.

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

Subtitle A—Improvement of Safety and Soundness

- Sec. 101. Establishment of the Federal Housing Finance Agency.
 Sec. 102. Duties and authorities of Director.
 Sec. 103. Federal Housing Enterprise Board.
 Sec. 104. Authority to require reports by regulated entities.
 Sec. 105. Disclosure of income and charitable contributions by enterprises.
 Sec. 106. Assessments.
 Sec. 107. Examiners and accountants.
 Sec. 108. Prohibition and withholding of executive compensation.
 Sec. 109. Reviews of regulated entities.
 Sec. 110. Inclusion of minorities and women; diversity in Agency workforce.
 Sec. 111. Regulations and orders.
 Sec. 112. Non-waiver of privileges.
 Sec. 113. Risk-Based capital requirements.
 Sec. 114. Minimum and critical capital levels.
 Sec. 115. Review of and authority over enterprise assets and liabilities.
 Sec. 116. Corporate governance of enterprises.
 Sec. 117. Required registration under Securities Exchange Act of 1934.
 Sec. 118. Liaison with Financial Institutions Examination Council.
 Sec. 119. Guarantee fee study.
 Sec. 120. Conforming amendments.

Subtitle B—Improvement of Mission Supervision

- Sec. 131. Transfer of product approval and housing goal oversight.
 Sec. 132. Review of enterprise products.
 Sec. 133. Conforming loan limits.
 Sec. 134. Annual housing report regarding regulated entities.
 Sec. 135. Annual reports by regulated entities on affordable housing stock.
 Sec. 136. Revision of housing goals.
 Sec. 137. Duty to serve underserved markets.
 Sec. 138. Monitoring and enforcing compliance with housing goals.
 Sec. 139. Affordable Housing Fund.
 Sec. 140. Consistency with mission.
 Sec. 141. Enforcement.
 Sec. 142. Conforming amendments.

Subtitle C—Prompt Corrective Action

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

Subtitle D—Enforcement Actions

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

Subtitle E—General Provisions

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

TITLE II—FEDERAL HOME LOAN BANKS

- Sec. 201. Definitions.
 Sec. 202. Directors.
 Sec. 203. Federal Housing Finance Agency oversight of Federal Home Loan Banks.
 Sec. 204. Joint activities of Banks.
 Sec. 205. Sharing of information between Federal Home Loan Banks.

- Sec. 206. Reorganization of Banks and voluntary merger.
- Sec. 207. Securities and Exchange Commission disclosure.
- Sec. 208. Community financial institution members.
- Sec. 209. Technical and conforming amendments.
- Sec. 210. Study of affordable housing program use for long-term care facilities.
- Sec. 211. Effective date.

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

Subtitle A—Office of Federal Housing Enterprise Oversight

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

Subtitle B—Federal Housing Finance Board

- Sec. 321. Abolishment of the Federal Housing Finance Board.
- Sec. 322. Continuation and coordination of certain regulations.
- Sec. 323. Transfer and rights of employees of the Federal Housing Finance Board.
- Sec. 324. Transfer of property and facilities.

Subtitle C—Department of Housing and Urban Development

- Sec. 341. Termination of enterprise-related functions.
- Sec. 342. Continuation and coordination of certain regulations.
- Sec. 343. Transfer and rights of employees of Department of Housing and Urban Development.
- Sec. 344. Transfer of appropriations, property, and facilities.

SEC. 2. DEFINITIONS.

Section 1303 of the Housing and Community Development Act of 1992 (12 U.S.C. 4502) is amended—

(1) in paragraph (7), by striking “an enterprise” and inserting “a regulated entity”;

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

(3) in paragraph (5), by striking “Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development” and inserting “Federal Housing Finance Agency”;

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

(5) in paragraph (13), by inserting “, with respect to an enterprise,” after “means”;

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

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

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

“(A) the Federal National Mortgage Association and any affiliate thereof;

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

“(C) each Federal home loan bank.

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

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

“(B) any shareholder, affiliate, consultant, or joint venture partner of a regulated entity, and any other person, as determined by the Director (by regulation or on a case-by-case basis) that participates in the conduct of the affairs of a regulated entity, except that a shareholder of a regulated entity shall not be considered to have participated in the affairs of that regulated entity solely by reason of being a member or customer of the regulated entity;

“(C) any independent contractor for a regulated entity (including any attorney, appraiser, or accountant), if—

“(i) the independent contractor knowingly or recklessly participates in—

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

“(II) any breach of fiduciary duty; or

“(III) any unsafe or unsound practice; and

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

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

- (8) by redesignating paragraphs (8) through (13) as paragraphs (12) through (17), respectively; and
- (9) by inserting after paragraph (7) the following new paragraph:
“(11) FEDERAL HOME LOAN BANK.—The term ‘Federal home loan bank’ means a bank established under the authority of the Federal Home Loan Bank Act.”;
- (10) by redesignating paragraphs (2) through (7) as paragraphs (5) through (10), respectively; and
- (11) by inserting after paragraph (1) the following new paragraphs:
“(2) AGENCY.—The term ‘Agency’ means the Federal Housing Finance Agency.
“(3) AUTHORIZING STATUTES.—The term ‘authorizing statutes’ means—
“(A) the Federal National Mortgage Association Charter Act;
“(B) the Federal Home Loan Mortgage Corporation Act; and
“(C) the Federal Home Loan Bank Act.
“(4) BOARD.—The term ‘Board’ means the Federal Housing Enterprise Board established under section 1313B.”.

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.

(a) IN GENERAL.—The Housing and Community Development Act of 1992 (12 U.S.C. 4501 et seq.) is amended by striking sections 1311 and 1312 and inserting the following:

“SEC. 1311. ESTABLISHMENT OF THE FEDERAL HOUSING FINANCE AGENCY.

“(a) ESTABLISHMENT.—There is established the Federal Housing Finance Agency, which shall be an independent agency of the Federal Government.

“(b) GENERAL SUPERVISORY AND REGULATORY AUTHORITY.—

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

“(2) AUTHORITY OVER FANNIE MAE, FREDDIE MAC, AND FEDERAL HOME LOAN BANKS.—The Director of the Federal Housing Finance Agency shall have general supervisory and regulatory authority over each regulated entity and shall exercise such general regulatory and supervisory authority, including such duties and authorities set forth under section 1313 of this Act, to ensure that the purposes of this Act, the authorizing statutes, and any other applicable law are carried out. The Director shall have the same supervisory and regulatory authority over any joint office of the Federal home loan banks, including the Office of Finance of the Federal Home Loan Banks, as the Director has over the individual Federal home loan banks.

“(c) SAVINGS PROVISION.—The authority of the Director to take actions under subtitles B and C shall not in any way limit the general supervisory and regulatory authority granted to the Director.

“SEC. 1312. DIRECTOR.

“(a) ESTABLISHMENT OF POSITION.—There is established the position of the Director of the Federal Housing Finance Agency, who shall be the head of the Agency.

“(b) APPOINTMENT; TERM.—

“(1) APPOINTMENT.—The Director shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States, have a demonstrated understanding of financial management or oversight, and have a demonstrated understanding of capital markets, including the mortgage securities markets and housing finance.

“(2) TERM AND REMOVAL.—The Director shall be appointed for a term of 5 years and may be removed by the President only for cause.

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

“(4) SERVICE AFTER END OF TERM.—An individual may serve as the Director after the expiration of the term for which appointed until a successor has been appointed.

“(5) TRANSITIONAL PROVISION.—Notwithstanding paragraphs (1) and (2), the Director of the Office of Federal Housing Enterprise Oversight of the Depart-

ment of Housing and Urban Development shall serve as the Director until a successor has been appointed under paragraph (1).

“(c) DEPUTY DIRECTOR OF THE DIVISION OF ENTERPRISE REGULATION.—

“(1) IN GENERAL.—The Agency shall have a Deputy Director of the Division of Enterprise Regulation, who shall be appointed by the Director from among individuals who are citizens of the United States, and have a demonstrated understanding of financial management or oversight and of mortgage securities markets and housing finance.

“(2) FUNCTIONS.—The Deputy Director of the Division of Enterprise Regulation shall have such functions, powers, and duties with respect to the oversight of the enterprises as the Director shall prescribe.

“(d) DEPUTY DIRECTOR OF THE DIVISION OF FEDERAL HOME LOAN BANK REGULATION.—

“(1) IN GENERAL.—The Agency shall have a Deputy Director of the Division of Federal Home Loan Bank Regulation, who shall be appointed by the Director from among individuals who are citizens of the United States, have a demonstrated understanding of financial management or oversight and of the Federal Home Loan Bank System and housing finance.

“(2) FUNCTIONS.—The Deputy Director of the Division of Federal Home Loan Bank Regulation shall have such functions, powers, and duties with respect to the oversight of the Federal home loan banks as the Director shall prescribe.

“(e) DEPUTY DIRECTOR FOR HOUSING.—

“(1) IN GENERAL.—The Agency shall have a Deputy Director for Housing, who shall be appointed by the Director from among individuals who are citizens of the United States, and have a demonstrated understanding of the housing markets and housing finance and of community and economic development.

“(2) FUNCTIONS.—The Deputy Director for Housing shall have such functions, powers, and duties with respect to the oversight of the housing mission and goals of the enterprises, and with respect to oversight of the housing finance and community and economic development mission of the Federal home loan banks, as the Director shall prescribe.

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

“(1) have any direct or indirect financial interest in any regulated entity or regulated entity-affiliated party;

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

“(3) have served as an executive officer or director of any regulated entity, or regulated entity-affiliated party, at any time during the 3-year period ending on the date of appointment of such individual as Director or Deputy Director.

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

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

SEC. 102. DUTIES AND AUTHORITIES OF DIRECTOR.

(a) IN GENERAL.—The Housing and Community Development Act of 1992 (12 U.S.C. 4513) is amended by striking section 1313 and inserting the following new sections:

“SEC. 1313. DUTIES AND AUTHORITIES OF DIRECTOR.

“(a) DUTIES.—

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

“(A) to oversee the operations of each regulated entity and any joint office of the Federal Home Loan Banks; and

“(B) to ensure that—

“(i) each regulated entity operates in a safe and sound manner, including maintenance of adequate capital and internal controls;

“(ii) the operations and activities of each regulated entity foster liquid, efficient, competitive, and resilient national housing finance markets that minimize the cost of housing finance (including activities relating to mortgages on housing for low- and moderate- income families involving a reasonable economic return that may be less than the return earned on other activities);

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

“(iv) each regulated entity carries out its statutory mission only through activities that are consistent with this title and the authorizing statutes.

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

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

“(B) to exercise such incidental powers as may be necessary or appropriate to fulfill the duties and responsibilities of the Director in the supervision and regulation of each regulated entity.

“(b) DELEGATION OF AUTHORITY.—The Director may delegate to officers or employees of the Agency, including each of the Deputy Directors, any of the functions, powers, or duties of the Director, as the Director considers appropriate.

“(c) LITIGATION AUTHORITY.—

“(1) IN GENERAL.—In enforcing any provision of this title, any regulation or order prescribed under this title, or any other provision of law, rule, regulation, or order, or in any other action, suit, or proceeding to which the Director is a party or in which the Director is interested, and in the administration of conservatorships and receiverships, the Director may act in the Director’s own name and through the Director’s own attorneys, or request that the Attorney General of the United States act on behalf of the Director.

“(2) CONSULTATION WITH ATTORNEY GENERAL.—The Director shall provide notice to, and consult with, the Attorney General of the United States before taking an action under paragraph (1) of this subsection or under section 1344(a), 1345(d), 1348(c), 1372(e), 1375(a), 1376(d), or 1379D(c), except that, if the Director determines that any delay caused by such prior notice and consultation may adversely affect the safety and soundness responsibilities of the Director under this title, the Director shall notify the Attorney General as soon as reasonably possible after taking such action.

“(3) SUBJECT TO SUIT.—Except as otherwise provided by law, the Director shall be subject to suit (other than suits on claims for money damages) by a regulated entity or director or officer thereof with respect to any matter under this title or any other applicable provision of law, rule, order, or regulation under this title, in the United States district court for the judicial district in which the regulated entity has its principal place of business, or in the United States District Court for the District of Columbia, and the Director may be served with process in the manner prescribed by the Federal Rules of Civil Procedure.

“SEC. 1313A. PRUDENTIAL MANAGEMENT AND OPERATIONS STANDARDS.

“(a) STANDARDS.—The Director shall establish standards, by regulation, guideline, or order, for each regulated entity relating to—

“(1) adequacy of internal controls and information systems, including information security and privacy policies and practices, taking into account the nature and scale of business operations;

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

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

“(4) management of interest rate risk exposure;

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

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

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

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

“(9) maintenance of adequate records, in accordance with consistent accounting policies and practices that enable the Director to evaluate the financial condition of the regulated entity;

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

“(11) overall risk management processes, including adequacy of oversight by senior management and the board of directors and of processes and policies to identify, measure, monitor, and control material risks, including reputational

risks, and for adequate, well-tested business resumption plans for all major systems with remote site facilities to protect against disruptive events; and
“(12) such other operational and management standards as the Director determines to be appropriate.

“(b) FAILURE TO MEET STANDARDS.—

“(1) PLAN REQUIREMENT.—

“(A) IN GENERAL.—If the Director determines that a regulated entity fails to meet any standard established under subsection (a)—

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

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

“(B) CONTENTS.—Any plan required under subparagraph (A) shall specify the actions that the regulated entity will take to correct the deficiency. If the regulated entity is undercapitalized, the plan may be a part of the capital restoration plan for the regulated entity under section 1369C.

“(C) DEADLINES FOR SUBMISSION AND REVIEW.—The Director shall by regulation establish deadlines that—

“(i) provide the regulated entities with reasonable time to submit plans required under subparagraph (A), and generally require a regulated entity to submit a plan not later than 30 days after the Director determines that the entity fails to meet any standard established under subsection (a); and

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

“(2) REQUIRED ORDER UPON FAILURE TO SUBMIT OR IMPLEMENT PLAN.—If a regulated entity fails to submit an acceptable plan within the time allowed under paragraph (1)(C), or fails in any material respect to implement a plan accepted by the Director, the following shall apply:

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

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

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

“(ii) Require the regulated entity—

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

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

“(iii) Require the regulated entity to take any other action that the Director determines will better carry out the purposes of this section than any of the actions described in this subparagraph.

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

“(A) the Director determines that the regulated entity fails to meet any standard prescribed under subsection (a);

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

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

“(c) OTHER ENFORCEMENT AUTHORITY NOT AFFECTED.—The authority of the Director under this section is in addition to any other authority of the Director.”.

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

SEC. 103. FEDERAL HOUSING ENTERPRISE BOARD.

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

“SEC. 1313B. FEDERAL HOUSING ENTERPRISE BOARD.

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

“(b) **LIMITATIONS.**—The Board may not exercise any executive authority, and the Director may not delegate to the Board any of the functions, powers, or duties of the Director.

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

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

“(2) one member shall be the Secretary of Housing and Urban Development;

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

“(4) two members, who shall be appointed by the President, by and with the advise and consent of the Senate, who are experts or experienced in the field of financial services, housing finance, affordable housing, or mortgage lending. The members pursuant to paragraph (4) shall be appointed for a term of four years. The Board may not, at any time, have more than three members of the same political party.

“(d) **MEETINGS.**—

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

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

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

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

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

“(3) the overall operational status of the regulated entities;

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

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

“(6) such other matters relating to the Agency and its fulfillment of its mission, as the Board determines appropriate.”

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

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

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

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

“(A) the safety and soundness of the regulated entities;

“(B) any material deficiencies in the conduct of the operations of the regulated entities;

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

“(D) an evaluation of the performance of the regulated entities in carrying out their missions;

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

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

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

SEC. 104. AUTHORITY TO REQUIRE REPORTS BY REGULATED ENTITIES.

Section 1314 of the Housing and Community Development Act of 1992 (12 U.S.C. 4514) is amended—

(1) in the section heading, by striking “**ENTERPRISES**” and inserting “**REGULATED ENTITIES**”;

(2) in subsection (a)—

(A) in the subsection heading, by striking “**SPECIAL REPORTS AND REPORTS OF FINANCIAL CONDITION**” and inserting “**REGULAR AND SPECIAL REPORTS**”;

(B) in paragraph (1)—

(i) in the paragraph heading, by striking “**FINANCIAL CONDITION**” and inserting “**REGULAR REPORTS**”; and

(ii) by striking “reports of financial condition and operations” and inserting “regular reports on the condition (including financial condition), management, activities, or operations of the regulated entity, as the Director considers appropriate”; and

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

(3) by adding at the end the following new subsection:

“(c) REPORTS OF FRAUDULENT FINANCIAL TRANSACTIONS.—

“(1) REQUIREMENT TO REPORT.—The Director shall require a regulated entity to submit to the Director a timely report upon discovery by the regulated entity that it has purchased or sold a fraudulent loan or financial instrument or suspects a possible fraud relating to a purchase or sale of any loan or financial instrument. The Director shall require the regulated entities to establish and maintain procedures designed to discover any such transactions.

“(2) PROTECTION FROM LIABILITY FOR REPORTS.—

“(A) IN GENERAL.—If a regulated entity makes a report pursuant to paragraph (1), or a regulated entity-affiliated party makes, or requires another to make, such a report, and such report is made in a good faith effort to comply with the requirements of paragraph (1), such regulated entity or regulated entity-affiliated party shall not be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such report or for any failure to provide notice of such report to the person who is the subject of such report or any other person identified in the report.

“(B) RULE OF CONSTRUCTION.—Subparagraph (A) shall not be construed as creating—

“(i) any inference that the term ‘person’, as used in such subparagraph, may be construed more broadly than its ordinary usage so as to include any government or agency of government; or

“(ii) any immunity against, or otherwise affecting, any civil or criminal action brought by any government or agency of government to enforce any constitution, law, or regulation of such government or agency.”

SEC. 105. DISCLOSURE OF INCOME AND CHARITABLE CONTRIBUTIONS BY ENTERPRISES.

Section 1314 of the Housing and Community Development Act of 1992 (12 U.S.C. 4514), as amended by the preceding provisions of this Act, is further amended by adding at the end the following new subsections:

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

“(1) REQUIRED DISCLOSURE.—The Director shall, by regulation, require each enterprise to submit a report annually, in a format designated by the Director, containing the following information:

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

“(B) SUBSTANTIAL CONTRIBUTIONS.—If the value of contributions made by the enterprise to any nonprofit organization during its previous fiscal year exceeds the designated amount, the name of that organization and the value of contributions.

“(C) SUBSTANTIAL CONTRIBUTIONS TO INSIDER-AFFILIATED CHARITIES.—Identification of each contribution whose value exceeds the designated amount that were made by the enterprise during the enterprise’s previous fiscal year to any nonprofit organization of which a director, officer, or controlling person of the enterprise, or a spouse thereof, was a director or trustee, the name of such nonprofit organization, and the value of the contribution.

“(2) DEFINITIONS.—For purposes of this subsection—

“(A) the term ‘designated amount’ means such amount as may be designated by the Director by regulation, consistent with the public interest and the protection of investors for purposes of this subsection; and

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

“(3) PUBLIC AVAILABILITY.—The Director shall make the information submitted pursuant to this subsection publicly available.

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

“(1) be presented in a prominent location in each such report and in a manner that permits a ready comparison of such income to income otherwise required to be included in such reports under regulations issued under such section; and

“(2) be submitted to the Securities and Exchange Commission in a form and manner suitable for entry into the EDGAR system of such Commission for public availability under such system.”.

SEC. 106. ASSESSMENTS.

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

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

“(a) ANNUAL ASSESSMENTS.—The Director shall establish and collect from the regulated entities annual assessments in an amount not exceeding the amount sufficient to provide for reasonable costs and expenses of the Agency, including—

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

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

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

“(4) the wind up of the affairs of the Office of Federal Housing Enterprise Oversight and the Federal Housing Finance Board under title III of the Federal Housing Finance Reform Act of 2007.”;

(2) in subsection (b)—

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

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

(C) in paragraph (1)—

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

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

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

(D) in paragraph (3)—

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

(ii) by redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii) and (iii), respectively, and realigning such clauses, as so redesignated, so as to be indented 6 ems from the left margin;

(iii) by striking the matter that precedes clause (i), as so redesignated, and inserting the following:

“(3) DEFINITION OF TOTAL ASSETS.—For purposes of this section, the term ‘total assets’ means as follows:

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

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

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

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

“(c) INCREASED COSTS OF REGULATION.—

“(1) INCREASE FOR INADEQUATE CAPITALIZATION.—The semiannual payments made pursuant to subsection (b) by any regulated entity that is not classified (for purposes of subtitle B) as adequately capitalized may be increased, as necessary, in the discretion of the Director to pay additional estimated costs of regulation of the regulated entity.

“(2) ADJUSTMENT FOR ENFORCEMENT ACTIVITIES.—The Director may adjust the amounts of any semiannual payments for an assessment under subsection (a) that are to be paid pursuant to subsection (b) by a regulated entity, as necessary in the discretion of the Director, to ensure that the costs of enforcement activities under this Act for a regulated entity are borne only by such regulated entity.

“(3) ADDITIONAL ASSESSMENT FOR DEFICIENCIES.—If at any time, as a result of increased costs of regulation of a regulated entity that is not classified (for purposes of subtitle B) as adequately capitalized or as the result of supervisory or enforcement activities under this Act for a regulated entity, the amount available from any semiannual payment made by such regulated entity pursuant to subsection (b) is insufficient to cover the costs of the Agency with respect to such entity, the Director may make and collect from such regulated entity

an immediate assessment to cover the amount of such deficiency for the semi-annual period. If, at the end of any semiannual period during which such an assessment is made, any amount remains from such assessment, such remaining amount shall be deducted from the assessment for such regulated entity for the following semiannual period.”;

(4) in subsection (d), by striking “If” and inserting “Except with respect to amounts collected pursuant to subsection (a)(3), if”; and

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

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

“(f) TREATMENT OF ASSESSMENTS.—

“(1) DEPOSIT.—Amounts received by the Director from assessments under this section may be deposited by the Director in the manner provided in section 5234 of the Revised Statutes (12 U.S.C. 192) for monies deposited by the Comptroller of the Currency.

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

“(3) NO APPORTIONMENT OF FUNDS.—Notwithstanding any other provision of law, the amounts received by the Director from any assessment under this section shall not be subject to apportionment for the purpose of chapter 15 of title 31, United States Code, or under any other authority.

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

“(5) AVAILABILITY OF OVERSIGHT FUND AMOUNTS.—Notwithstanding any other provision of law, any amounts remaining in the Federal Housing Enterprises Oversight Fund established under this section (as in effect before the effective date under section 185 of the Federal Housing Finance Reform Act of 2007), and any amounts remaining from assessments on the Federal Home Loan banks pursuant to section 18(b) of the Federal Home Loan Bank Act (12 U.S.C. 1438(b)), shall, upon such effective date, be treated for purposes of this subsection as amounts received from assessments under this section.

“(6) TREASURY INVESTMENTS.—

“(A) AUTHORITY.—The Director may request the Secretary of the Treasury to invest such portions of amount received by the Director from assessments paid under this section that, in the Director’s discretion, are not required to meet the current working needs of the Agency.

“(B) GOVERNMENT OBLIGATIONS.—Pursuant to a request under subparagraph (A), the Secretary of the Treasury shall invest such amounts in government obligations guaranteed as to principal and interest by the United States with maturities suitable to the needs of Agency and bearing interest at a rate determined by the Secretary of the Treasury taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity.

“(g) BUDGET AND FINANCIAL MANAGEMENT.—

“(1) FINANCIAL OPERATING PLANS AND FORECASTS.—The Director shall provide to the Director of the Office of Management and Budget copies of the Director’s financial operating plans and forecasts as prepared by the Director in the ordinary course of the Agency’s operations, and copies of the quarterly reports of the Agency’s financial condition and results of operations as prepared by the Director in the ordinary course of the Agency’s operations.

“(2) FINANCIAL STATEMENTS.—The Agency shall prepare annually a statement of assets and liabilities and surplus or deficit; a statement of income and expenses; and a statement of sources and application of funds.

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

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

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

“(h) AUDIT OF AGENCY.—

“(1) IN GENERAL.—The Comptroller General shall annually audit the financial transactions of the Agency in accordance with the U.S. generally accepted government auditing standards as may be prescribed by the Comptroller General of the United States. The audit shall be conducted at the place or places where accounts of the Agency are normally kept. The representatives of the Government Accountability Office shall have access to the personnel and to all books, accounts, documents, papers, records (including electronic records), reports, files, and all other papers, automated data, things, or property belonging to or under the control of or used or employed by the Agency pertaining to its financial transactions and necessary to facilitate the audit, and such representatives shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. All such books, accounts, documents, records, reports, files, papers, and property of the Agency shall remain in possession and custody of the Agency. The Comptroller General may obtain and duplicate any such books, accounts, documents, records, working papers, automated data and files, or other information relevant to such audit without cost to the Comptroller General and the Comptroller General’s right of access to such information shall be enforceable pursuant to section 716(c) of title 31, United States Code.

“(2) REPORT.—The Comptroller General shall submit to the Congress a report of each annual audit conducted under this subsection. The report to the Congress shall set forth the scope of the audit and shall include the statement of assets and liabilities and surplus or deficit, the statement of income and expenses, the statement of sources and application of funds, and such comments and information as may be deemed necessary to inform Congress of the financial operations and condition of the Agency, together with such recommendations with respect thereto as the Comptroller General may deem advisable. A copy of each report shall be furnished to the President and to the Agency at the time submitted to the Congress.

“(3) ASSISTANCE AND COSTS.—For the purpose of conducting an audit under this subsection, the Comptroller General may, in the discretion of the Comptroller General, employ by contract, without regard to section 5 of title 41, United States Code, professional services of firms and organizations of certified public accountants for temporary periods or for special purposes. Upon the request of the Comptroller General, the Director of the Agency shall transfer to the Government Accountability Office from funds available, the amount requested by the Comptroller General to cover the full costs of any audit and report conducted by the Comptroller General. The Comptroller General shall credit funds transferred to the account established for salaries and expenses of the Government Accountability Office, and such amount shall be available upon receipt and without fiscal year limitation to cover the full costs of the audit and report.”

SEC. 107. EXAMINERS AND ACCOUNTANTS.

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

(1) in subsection (a), by adding after the period at the end the following: “Each examination under this subsection of a regulated entity shall include a review of the procedures required to be established and maintained by the regulated entity pursuant to section 1314(c) (relating to fraudulent financial transactions) and the report regarding each such examination shall describe any problems with such procedures maintained by the regulated entity.”;

(2) in subsection (b)—

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

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

(3) in subsection (c)—

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

(B) in the third sentence, by striking “from amounts available in the Federal Housing Enterprises Oversight Fund”.

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

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

“(1) APPLICABILITY.—This section applies with respect to any position of examiner, accountant, specialist in financial markets, specialist in information technology, and economist at the Agency, with respect to supervision and regulation of the regulated entities, that is in the competitive service.

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

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

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

“(3) RULE OF CONSTRUCTION.—The appointment of a candidate to a position under the authority of this subsection shall not be considered to cause such position to be converted from the competitive service to the excepted service.”.

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

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

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

(3) by striking the first two sentences and inserting the following: “The Federal home loan banks shall be subject to examinations by the Director to the extent provided in section 1317 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4517).”.

SEC. 108. PROHIBITION AND WITHHOLDING OF EXECUTIVE COMPENSATION.

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

(1) in the section heading, by striking “OF EXCESSIVE” and inserting “AND WITHHOLDING OF EXECUTIVE”;

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

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

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

“(c) WITHHOLDING OF COMPENSATION.—In carrying out subsection (a), the Director may require a regulated entity to withhold any payment, transfer, or disbursement of compensation to an executive officer, or to place such compensation in an escrow account, during the review of the reasonableness and comparability of compensation.”.

(b) CONFORMING AMENDMENTS.—

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

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

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

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

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

“(l) **WITHHOLDING OF COMPENSATION.**—Notwithstanding any other provision of this section, a Federal home loan bank shall not transfer, disburse, or pay compensation to any executive officer, or enter into an agreement with such executive officer, without the approval of the Director, for matters being reviewed under section 1318 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4518).”.

SEC. 109. REVIEWS OF REGULATED ENTITIES.

Section 1319 of the Housing and Community Development Act of 1992 (12 U.S.C. 4519) is amended—

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

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

and

(2) by striking “is a nationally recognized” and all that follows through “1934” and inserting the following: “the Director considers appropriate, including an entity that is registered under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78a) as a nationally registered statistical rating organization”.

SEC. 110. INCLUSION OF MINORITIES AND WOMEN; DIVERSITY IN AGENCY WORKFORCE.

Section 1319A of the Housing and Community Development Act of 1992 (12 U.S.C. 4520) is amended—

(1) in the section heading, by striking “**EQUAL OPPORTUNITY IN SOLICITATION OF CONTRACTS**” and inserting “**MINORITY AND WOMEN INCLUSION; DIVERSITY REQUIREMENTS**”;

(2) in subsection (a), by striking “(a) **IN GENERAL.**—Each enterprise” and inserting “(e) **OUTREACH.**—Each regulated entity”; and

(3) by striking subsection (b);

(4) by inserting before subsection (e), as so redesignated by paragraph (2) of this section, the following new subsections:

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

“(b) **INCLUSION IN ALL LEVELS OF BUSINESS ACTIVITIES.**—Each regulated entity shall develop and implement standards and procedures to ensure, to the maximum extent possible, the inclusion and utilization of minorities (as such term is defined in section 1204(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1811 note)) and women, and minority- and women-owned businesses (as such terms are defined in section 21A(r)(4) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(r)(4)) (including financial institutions, investment banking firms, mortgage banking firms, asset management firms, broker-dealers, financial services firms, underwriters, accountants, brokers, investment consultants, and providers of legal services) in all business and activities of the regulated entity at all levels, including in procurement, insurance, and all types of contracts (including contracts for the issuance or guarantee of any debt, equity, or mortgage-related securities, the management of its mortgage and securities portfolios, the making of its equity investments, the purchase, sale and servicing of single- and multi-family mortgage loans, and the implementation of its affordable housing program and initiatives). The processes established by each regulated entity for review and evaluation for contract proposals and to hire service providers shall include a component that gives consideration to the diversity of the applicant.

“(c) **APPLICABILITY.**—This section shall apply to all contracts of a regulated entity for services of any kind, including services that require the services of investment banking, asset management entities, broker-dealers, financial services entities, underwriters, accountants, investment consultants, and providers of legal services.

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

(5) by adding at the end the following new subsection:

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

“(1) heavily recruiting at historically Black colleges and universities, Hispanic-serving institutions, women’s colleges, and colleges that typically serve majority minority populations;

“(2) sponsoring and recruiting at job fairs in urban communities, and placing employment advertisements in newspapers and magazines oriented toward women and people of color;

“(3) partnering with organizations that are focused on developing opportunities for minorities and women to place talented young minorities and women in industry internships, summer employment, and full-time positions; and

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

SEC. 111. REGULATIONS AND ORDERS.

Section 1319G of the Housing and Community Development Act of 1992 (12 U.S.C. 4526) is amended—

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

“(a) AUTHORITY.—The Director shall issue any regulations, guidelines, and orders necessary to carry out the duties of the Director under this title and each of the authorizing statutes to ensure that the purposes of this title and such statutes are accomplished.”;

(2) in subsection (b), by inserting “, this title, or any of the authorizing statutes” after “under this section”; and

(3) by striking subsection (c).

SEC. 112. NON-WAIVER OF PRIVILEGES.

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

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

“(a) IN GENERAL.—The submission by any person of any information to the Agency for any purpose in the course of any supervisory or regulatory process of the Agency shall not be construed as waiving, destroying, or otherwise affecting any privilege such person may claim with respect to such information under Federal or State law as to any person or entity other than the Agency.

“(b) RULE OF CONSTRUCTION.—No provision of subsection (a) may be construed as implying or establishing that—

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

“(2) any person would waive any privilege applicable to any information by submitting the information to the Agency, but for this subsection.”.

SEC. 113. RISK-BASED CAPITAL REQUIREMENTS.

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

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

“(a) IN GENERAL.—

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

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

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

“(1) maintain the confidentiality of the book, record, or information in a manner that is generally consistent with the level of confidentiality established for the material by the Director or the regulated entity; and

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

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

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

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

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

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

SEC. 114. MINIMUM AND CRITICAL CAPITAL LEVELS.

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

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

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

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

“(c) **ESTABLISHMENT OF REVISED MINIMUM CAPITAL LEVELS.**—Notwithstanding subsections (a) and (b) and notwithstanding the capital classifications of the regulated entities, the Director may, by regulations issued under section 1319G, establish a minimum capital level for the enterprises, for the Federal home loan banks, or for both the enterprises and the banks, that is higher than the level specified in subsection (a) for the enterprises or the level specified in subsection (b) for the Federal home loan banks, to the extent needed to ensure that the regulated entities operate in a safe and sound manner.

“(d) **AUTHORITY TO REQUIRE TEMPORARY INCREASE.**—Notwithstanding subsections (a) and (b) and any minimum capital level established pursuant to subsection (c), the Director may, by order, increase the minimum capital level for a regulated entity on a temporary basis for such period as the Director may provide if the Director—

“(1) makes any determination specified in subparagraphs (A) through (C) of section 1364(c)(1);

“(2) determines that the regulated entity has violated any of the prudential standards established pursuant to section 1313A and, as a result of such violation, determines that an unsafe and unsound condition exists; or

“(3) determines that an unsafe and unsound condition exists, except that a temporary increase in minimum capital imposed on a regulated entity pursuant to this paragraph shall not remain in place for a period of more than 6 months unless the Director makes a renewed determination of the existence of an unsafe and unsound condition.

“(e) **AUTHORITY TO ESTABLISH ADDITIONAL CAPITAL AND RESERVE REQUIREMENTS FOR PARTICULAR PROGRAMS.**—The Director may, at any time by order or regulation, establish such capital or reserve requirements with respect to any program or activity of a regulated entity as the Director considers appropriate to ensure that the regulated entity operates in a safe and sound manner, with sufficient capital and reserves to support the risks that arise in the operations and management of the regulated entity.

“(f) **PERIODIC REVIEW.**—The Director shall periodically review the amount of core capital maintained by the enterprises, the amount of capital retained by the Federal home loan banks, and the minimum capital levels established for such regulated entities pursuant to this section. The Director shall rescind any temporary minimum capital level increase if the Director determines that the circumstances or facts justifying the temporary increase are no longer present.”.

(b) **CRITICAL CAPITAL LEVELS.**—

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

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

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

“(b) **FEDERAL HOME LOAN BANKS.**—

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

“(2) **CONSIDERATION OF OTHER CRITICAL CAPITAL LEVELS.**—In establishing the critical capital level under paragraph (1) for the Federal home loan banks, the

Director shall take due consideration of the critical capital level established under subsection (a) for the enterprises, with such modifications as the Director determines to be appropriate to reflect the difference in operations between the banks and the enterprises.”.

(2) REGULATIONS.—Not later than the expiration of the 180-day period beginning on the effective date under section 185, the Director of the Federal Housing Finance Agency shall issue regulations pursuant to section 1363(b) of the Housing and Community Development Act of 1992 (as added by paragraph (1) of this subsection) establishing the critical capital level under such section.

SEC. 115. REVIEW OF AND AUTHORITY OVER ENTERPRISE ASSETS AND LIABILITIES.

(a) IN GENERAL.—Subtitle B of title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4611 et seq.) is amended—

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

“Subtitle B—Required Capital Levels for Regulated Entities, Special Enforcement Powers, and Reviews of Assets and Liabilities”;

and

(2) by adding at the end the following new section:

“SEC. 1369E. REVIEWS OF ENTERPRISE ASSETS AND LIABILITIES.

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

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

“(2) the need for the portfolio in maintaining liquidity or stability of the secondary mortgage market (including the market for the mortgage-backed securities the enterprises issue);

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

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

“(5) the liquidity needs of the enterprises;

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

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

“(b) TEMPORARY ADJUSTMENTS.—The Director may, by order, make temporary adjustments to the established standards for an enterprise or both enterprises, such as during times of economic distress or market disruption.

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

(b) REGULATIONS.—Not later than the expiration of the 180-day period beginning on the effective date under section 185, the Director of the Federal Housing Finance Agency shall issue regulations pursuant to section 1369E(a) of the Housing and Community Development Act of 1992 (as added by subsection (a) of this section) establishing the portfolio holdings standards under such section.

SEC. 116. CORPORATE GOVERNANCE OF ENTERPRISES.

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

“SEC. 1322A. CORPORATE GOVERNANCE OF ENTERPRISES.

“(a) BOARD OF DIRECTORS.—

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

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

“(3) NON-MANAGEMENT BOARD MEMBER MEETINGS.—The non-management directors of an enterprise shall meet at regularly scheduled executive sessions without management participation.

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

“(5) INFORMATION.—The management of an enterprise shall provide a board member of the enterprise with such adequate and appropriate information that a reasonable board member would find important to the fulfillment of his or her fiduciary duties and obligations.

“(6) ANNUAL REVIEW.—At least annually, the board of directors of each enterprise shall review, with appropriate professional assistance, the requirements of laws, rules, regulations, and guidelines that are applicable to its activities and duties.

“(b) COMMITTEES OF BOARDS OF DIRECTORS.—

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

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

“(A) Audit committee.

“(B) Compensation committee.

“(C) Nominating/corporate governance committee.

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

“(c) COMPENSATION.—

“(1) IN GENERAL.—The compensation of board members, executive officers, and employees of an enterprise—

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

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

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

“(D) shall not focus solely on earnings performance, but shall take into account risk management, operational stability and legal and regulatory compliance as well; and

“(E) shall be undertaken in a manner that complies with applicable laws, rules, and regulations.

“(2) REIMBURSEMENT.—If an enterprise is required to prepare an accounting restatement due to the material noncompliance of the enterprise, as a result of misconduct, with any financial reporting requirement under the securities laws, the chief executive officer and chief financial officer of the enterprise shall reimburse the enterprise as provided under section 304 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7243). This provision does not otherwise limit the authority of the Agency to employ remedies available to it under its enforcement authorities.

“(d) CODE OF CONDUCT AND ETHICS.—

“(1) IN GENERAL.—An enterprise shall establish and administer a written code of conduct and ethics that is reasonably designed to assure the ability of board members, executive officers, and employees of the enterprise to discharge their duties and responsibilities, on behalf of the enterprise, in an objective and impartial manner, and that includes standards required under section 406 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7264) and other applicable laws, rules, and regulations.

“(2) REVIEW.—Not less than once every three years, an enterprise shall review the adequacy of its code of conduct and ethics for consistency with practices appropriate to the enterprise and make any appropriate revisions to such code.

“(e) CONDUCT AND RESPONSIBILITIES OF BOARD OF DIRECTORS.—The board of directors of an enterprise shall be responsible for directing the conduct and affairs of the enterprise in furtherance of the safe and sound operation of the enterprise and shall remain reasonably informed of the condition, activities, and operations of the enterprise. The responsibilities of the board of directors shall include having in

place adequate policies and procedures to assure its oversight of, among other matters, the following:

“(1) Corporate strategy, major plans of action, risk policy, programs for legal and regulatory compliance and corporate performance, including prudent plans for growth and allocation of adequate resources to manage operations risk.

“(2) Hiring and retention of qualified executive officers and succession planning for such executive officers.

“(3) Compensation programs of the enterprise.

“(4) Integrity of accounting and financial reporting systems of the enterprise, including independent audits and systems of internal control.

“(5) Process and adequacy of reporting, disclosures, and communications to shareholders, investors, and potential investors.

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

“(7) Responsiveness of executive officers in providing accurate and timely reports to Federal regulators and in addressing the supervisory concerns of Federal regulators in a timely and appropriate manner.

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

“(g) CERTIFICATION OF DISCLOSURES.—The chief executive officer and the chief financial officer of an enterprise shall review each quarterly report and annual report issued by the enterprise and such reports shall include certifications by such officers as required by section 302 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7241).

“(h) CHANGE OF AUDIT PARTNER.—An enterprise may not accept audit services from an external auditing firm if the lead or coordinating audit partner who has primary responsibility for the external audit of the enterprise, or the external audit partner who has responsibility for reviewing the external audit has performed audit services for the enterprise in each of the five previous fiscal years.

“(i) COMPLIANCE PROGRAM.—

“(1) REQUIREMENT.—Each enterprise shall establish and maintain a compliance program that is reasonably designed to assure that the enterprise complies with applicable laws, rules, regulations, and internal controls.

“(2) COMPLIANCE OFFICER.—The compliance program of an enterprise shall be headed by a compliance officer, however styled, who reports directly to the chief executive officer of the enterprise. The compliance officer shall report regularly to the board of directors or an appropriate committee of the board of directors on compliance with and the adequacy of current compliance policies and procedures of the enterprise, and shall recommend any adjustments to such policies and procedures that the compliance officer considers necessary and appropriate.

“(j) RISK MANAGEMENT PROGRAM.—

“(1) REQUIREMENT.—Each enterprise shall establish and maintain a risk management program that is reasonably designed to manage the risks of the operations of the enterprise.

“(2) RISK MANAGEMENT OFFICER.—The risk management program of an enterprise shall be headed by a risk management officer, however styled, who reports directly to the chief executive officer of the enterprise. The risk management officer shall report regularly to the board of directors or an appropriate committee of the board of directors on compliance with and the adequacy of current risk management policies and procedures of the enterprise, and shall recommend any adjustments to such policies and procedures that the risk management officer considers necessary and appropriate.

“(k) COMPLIANCE WITH OTHER LAWS.—

“(1) DEREGISTERED OR UNREGISTERED COMMON STOCK.—If an enterprise deregisters or has not registered its common stock with the Securities and Exchange Commission under the Securities Exchange Act of 1934, the enterprise shall comply or continue to comply with sections 10A(m) and 13(k) of the Securities Exchange Act of 1934 (15 U.S.C. 78j–1(m), 78m(k)) and sections 302, 304, and 406 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7241, 7243, 7264), subject to such requirements as provided by subsection (1) of this section.

“(2) REGISTERED COMMON STOCK.—An enterprise that has its common stock registered with the Securities and Exchange Commission shall maintain such registered status, unless it provides 60 days prior written notice to the Director stating its intent to deregister and its understanding that it will remain subject to the requirements of the sections of the Securities Exchange Act of 1934 and the Sarbanes-Oxley Act of 2002, subject to such requirements as provided by subsection (1) of this section.

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

“(m) MODIFICATION OF STANDARDS.—In connection with standards of Federal or State law (including the Revised Model Corporation Act) or New York Stock Exchange rules that are made applicable to an enterprise by section 1710.10 of the Director’s rules (12 C.F.R. 1710.10) and by subsections (a), (b), (g), (i), (j), and (k) of this section, the Director, in the Director’s sole discretion, may modify the standards contained in this section or in part 1710 of the Director’s rules (12 C.F.R. Part 1710) in accordance with section 553 of title 5, United States Code, and upon written notice to the enterprise.”.

SEC. 117. REQUIRED REGISTRATION UNDER SECURITIES EXCHANGE ACT OF 1934.

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

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

“(a) IN GENERAL.—Each regulated entity shall register at least one class of the capital stock of such regulated entity, and maintain such registration with the Securities and Exchange Commission, under the Securities Exchange Act of 1934.

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

SEC. 118. LIAISON WITH FINANCIAL INSTITUTIONS EXAMINATION COUNCIL.

Section 1007 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3306) is amended—

(1) in the section heading, by inserting after “STATE” the following: “AND FEDERAL HOUSING FINANCE AGENCY”; and

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

SEC. 119. GUARANTEE FEE STUDY.

(a) IN GENERAL.—The Director of the Federal Housing Finance Agency, in consultation with the heads of the federal banking agencies, shall, not later than 18 months after the date of the enactment of this Act, submit to the Congress a study concerning the pricing, transparency and reporting of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal home loan banks with regard to guarantee fees and concerning analogous practices, transparency and reporting requirements (including advances pricing practices by the Federal Home Loan Banks) of other participants in the business of mortgage purchases and securitization.

(b) FACTORS.—The study required by this section shall examine various factors such as credit risk, counterparty risk considerations, economic value considerations, and volume considerations used by the regulated entities (as such term is defined in section 1303 of the Housing and Community Development Act of 1992) included in the study in setting the amount of fees they charge.

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

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

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

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

(4) the average guarantee fee charged by the enterprises;

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

(6) a breakdown of the revenue and costs associated with providing guarantees, based on product type and risk classifications; and

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

(d) PROTECTION OF INFORMATION.—Nothing in this section may be construed to require or authorize the Director of the Federal Housing Finance Agency, in connection with the study mandated by this section, to disclose information of the enterprises or other organization that is confidential or proprietary.

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

SEC. 120. CONFORMING AMENDMENTS.

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

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

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

(3) by striking “the enterprises” each place such term appears in such part (except in sections 1312(c)(2), and 1312(e)(2)) and inserting “the regulated entities”;

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

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

(6) in section 1315 (12 U.S.C. 4515)—

(A) in subsection (a)—

(i) in the subsection heading, by striking “OFFICE PERSONNEL” and inserting “IN GENERAL”; and

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

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

(C) by redesignating subsection (e) as subsection (d);

(7) in section 1319B (12 U.S.C. 4521), by striking “Committee on Banking, Finance and Urban Affairs” each place such term appears and inserting “Committee on Financial Services”; and

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

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

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

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

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

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

(2) in section 309—

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

(B) in subsection (m)—

(i) in paragraph (1), by striking “Secretary” the second place such term appears and inserting “Director”;

(ii) in paragraph (2), by striking “Secretary” the second place such term appears and inserting “Director”; and

(iii) by striking “Secretary” each other place such term appears and inserting “Director of the Federal Housing Finance Agency”; and

(C) in subsection (n), by striking “Secretary” each place such term appears and inserting “Director of the Federal Housing Finance Agency”.

(c) AMENDMENTS TO FREDDIE MAC ACT.—The Federal Home Loan Mortgage Corporation Act is amended—

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

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

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

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

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

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

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

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

(4) in section 307 (12 U.S.C. 1456)—

(A) in subsection (e)—

- (i) in paragraph (1), by striking “Secretary” the second place such term appears and inserting “Director”;
 - (ii) in paragraph (2), by striking “Secretary” the second place such term appears and inserting “Director”; and
 - (iii) by striking “Secretary” each other place such term appears and inserting “Director of the Federal Housing Finance Agency”; and
- (B) in subsection (f), by striking “Secretary” each place such term appears and inserting “Director of the Federal Housing Finance Agency”.

Subtitle B—Improvement of Mission Supervision

SEC. 131. TRANSFER OF PRODUCT APPROVAL AND HOUSING GOAL OVERSIGHT.

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

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

“PART 2—PRODUCT APPROVAL BY DIRECTOR, CORPORATE GOVERNANCE, AND ESTABLISHMENT OF HOUSING GOALS”;

and

- (2) by striking sections 1321 and 1322.

SEC. 132. REVIEW OF ENTERPRISE PRODUCTS.

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

“SEC. 1321. PRIOR APPROVAL AUTHORITY FOR PRODUCTS OF ENTERPRISES.

“(a) IN GENERAL.—The Director shall require each enterprise to obtain the approval of the Director for any product of the enterprise before initially offering the product.

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

- “(1) in the case of a product of the Federal National Mortgage Association, the Director determines that the product is authorized under paragraph (2), (3), (4), or (5) of section 302(b) or section 304 of the Federal National Mortgage Association Charter Act, (12 U.S.C. 1717(b), 1719);
- “(2) in the case of a product of the Federal Home Loan Mortgage Corporation, the Director determines that the product is authorized under paragraph (1), (4), or (5) of section 305(a) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a));
- “(3) the product is in the public interest;
- “(4) the product is consistent with the safety and soundness of the enterprise or the mortgage finance system; and
- “(5) the product does not materially impair the efficiency of the mortgage finance system.

“(c) PROCEDURE FOR APPROVAL.—

“(1) SUBMISSION OF REQUEST.—An enterprise shall submit to the Director a written request for approval of a product that describes the product in such form as prescribed by order or regulation of the Director.

“(2) REQUEST FOR PUBLIC COMMENT.—Immediately upon receipt of a request for approval of a product, as required under paragraph (1), the Director shall publish notice of such request and of the period for public comment pursuant to paragraph (3) regarding the product, and a description of the product proposed by the request. The Director shall give interested parties the opportunity to respond in writing to the proposed product.

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

“(4) OFFERING OF PRODUCT.—

- “(A) IN GENERAL.—Not later than 30 days after the close of the public comment period described in paragraph (3), the Director shall approve or deny the product, specifying the grounds for such decision in writing.

“(B) FAILURE TO ACT.—If the Director fails to act within the 30-day period described in subparagraph (A), the enterprise may offer the product.

“(d) EXPEDITED REVIEW.—

“(1) DETERMINATION AND NOTICE.—If an enterprise determines that any new activity, service, undertaking, or offering is not a product, as defined in subsection (f), the enterprise shall provide written notice to the Director prior to the commencement of such activity, service, undertaking, or offering.

“(2) DIRECTOR DETERMINATION OF APPLICABLE PROCEDURE.—Immediately upon receipt of any notice pursuant to paragraph (1), the Director shall make a determination under paragraph (3).

“(3) DETERMINATION AND TREATMENT AS PRODUCT.—If the Director determines that any new activity, service, undertaking, or offering consists of, relates to, or involves a product—

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

“(B) the new activity, service, undertaking, or offering described in the notice under paragraph (1) shall be considered a product for purposes of this section; and

“(C) the enterprise shall withdraw its request or submit a written request for approval of the product pursuant to subsection (c).

“(e) CONDITIONAL APPROVAL.—The Director may conditionally approve the offering of any product by an enterprise, and may establish terms, conditions, or limitations with respect to such product with which the enterprise must comply in order to offer such product.

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

“(1) the automated loan underwriting system of an enterprise in existence as of the date of the enactment of the Federal Housing Finance Reform Act of 2007, including any upgrade to the technology, operating system, or software to operate the underwriting system; or

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

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

“(1) the safety and soundness authority of the Director over all new and existing products or activities; or

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

(b) CONFORMING AMENDMENTS.—

(1) FANNIE MAE.—Section 302(b)(6) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1717(b)(6)) is amended—

(A) by striking “implement any new program” and inserting “initially offer any product”;

(B) by striking “section 1303” and inserting “section 1321(f)”; and

(C) by striking “before obtaining the approval of the Secretary under section 1322” and inserting “except in accordance with section 1321”.

(2) FREDDIE MAC.—Section 305(c) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(c)) is amended—

(A) by striking “implement any new program” and inserting “initially offer any product”;

(B) by striking “section 1303” and inserting “section 1321(f)”; and

(C) by striking “before obtaining the approval of the Secretary under section 1322” and inserting “except in accordance with section 1321”.

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

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

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

SEC. 133. CONFORMING LOAN LIMITS.

(a) FANNIE MAE.—

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

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

(B) by striking the 7th and 8th sentences and inserting the following new sentences: “For 2007, such limitations shall not exceed \$417,000 for a mortgage secured by a single-family residence, \$533,850 for a mortgage secured by a 2-family residence, \$645,300 for a mortgage secured by a 3-family residence, and \$801,950 for a mortgage secured by a 4-family residence, except that such maximum limitations shall be adjusted effective January 1 of each year beginning with 2008, subject to the limitations in this paragraph. Each adjustment shall be made by adding to or subtracting from each such amount (as it may have been previously adjusted) a percentage thereof equal to the percentage increase or decrease, during the most recent 12-month or four-quarter period ending before the time of determining such annual adjustment, in the housing price index maintained by the Director of the Federal Housing Finance Agency (pursuant to section 1322 of the Housing and Community Development Act of 1992 (12 U.S.C. 4541)).”

(2) HIGH-COST AREA LIMIT.—Section 302(b)(2) of the Federal National Mortgage Association Charter Act is (12 U.S.C. 1717(b)(2)) is amended by adding after the period at the end the following: “Such foregoing limitations shall also be increased with respect to properties of a particular size located in any area for which the median price for such size residence exceeds the foregoing limitation for such size residence, to the lesser of 150 percent of such foregoing limitation for such size residence or the amount that is equal to the median price in such area for such size residence, except that, subject to the order, if any, issued by the Director of the Federal Housing Finance Agency pursuant to section 133(d)(3) of the Federal Housing Finance Reform Act of 2007, such increase shall apply only with respect to mortgages on which are based securities issued and sold by the corporation.”

(b) FREDDIE MAC.—

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

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

(B) by striking the 6th and 7th sentences and inserting the following new sentences: “For 2007, such limitations shall not exceed \$417,000 for a mortgage secured by a single-family residence, \$533,850 for a mortgage secured by a 2-family residence, \$645,300 for a mortgage secured by a 3-family residence, and \$801,950 for a mortgage secured by a 4-family residence, except that such maximum limitations shall be adjusted effective January 1 of each year beginning with 2008, subject to the limitations in this paragraph. Each adjustment shall be made by adding to or subtracting from each such amount (as it may have been previously adjusted) a percentage thereof equal to the percentage increase or decrease, during the most recent 12-month or four-quarter period ending before the time of determining such annual adjustment, in the housing price index maintained by the Director of the Federal Housing Finance Agency (pursuant to section 1322 of the Housing and Community Development Act of 1992 (12 U.S.C. 4541)).”

(2) HIGH-COST AREA LIMIT.—Section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act is amended by adding after the period at the end the following: “Such foregoing limitations shall also be increased with respect to properties of a particular size located in any area for which the median price for such size residence exceeds the foregoing limitation for such size residence, to the lesser of 150 percent of such foregoing limitation for such size residence or the amount that is equal to the median price in such area for such size residence, except that, subject to the order, if any, issued by the Director of the Federal Housing Finance Agency pursuant to section 133(d)(3) of the Federal Housing Finance Reform Act of 2007, such increase shall apply only with respect to mortgages on which are based securities issued and sold by the Corporation.”

(c) HOUSING PRICE INDEX.—Subpart A of part 2 of subtitle A of title XIII of the Housing and Community Development Act of 1992 (as amended by the preceding provisions of this Act) is amended by inserting after section 1321 (as added by section 132 of this Act) the following new section:

“SEC. 1322. HOUSING PRICE INDEX.

“(a) IN GENERAL.—The Director shall establish and maintain a method of assessing the national average 1-family house price for use for adjusting the conforming loan limitations of the enterprises. In establishing such method, the Director shall take into consideration the monthly survey of all major lenders conducted by the

Federal Housing Finance Agency to determine the national average 1-family house price, the House Price Index maintained by the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development before the effective date under section 185 of the Federal Housing Finance Reform Act of 2007, any appropriate house price indexes of the Bureau of the Census of the Department of Commerce, and any other indexes or measures that the Director considers appropriate.

“(b) GAO AUDIT.—

“(1) IN GENERAL.—At such times as are required under paragraph (2), the Comptroller General of the United States shall conduct an audit of the methodology established by the Director under subsection (a) to determine whether the methodology established is an accurate and appropriate means of measuring changes to the national average 1-family house price.

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

“(A) ESTABLISHMENT.—The date upon which such methodology is initially established under subsection (a) in final form by the Director.

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

“(3) REPORT.—Within 30 days of the completion of any audit conducted under this subsection, the Comptroller General shall submit a report detailing the results and conclusions of the audit to the Director, the Committee on Financial Services of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate.”.

(d) CONDITIONS ON CONFORMING LOAN LIMIT FOR HIGH-COST AREAS.—

(1) STUDY.—The Director of the Federal Housing Finance Agency shall conduct a study under this subsection during the six-month period beginning on the effective date under section 185 of this Act.

(2) ISSUES.—The study under this subsection shall determine—

(A) the effect that restricting the conforming loan limits for high-cost areas only to mortgages on which are based securities issued and sold by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (as provided in the last sentence of section 302(b)(2) of the Federal National Mortgage Association Charter Act and the last sentence of section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act, pursuant to the amendments made by subsections (a)(2) and (b)(2) of this section) would have on the cost to borrowers for mortgages on housing in such high-cost areas;

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

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

(3) DETERMINATION.—

(A) IN GENERAL.—Not later than the expiration of the six-month period specified in paragraph (1), the Director of the Federal Housing Finance Agency shall make a determination, based on the results of the study under this subsection, of whether the restriction of conforming loan limits for high-cost areas only to mortgages on which are based securities issued and sold by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (as provided in the amendments made by subsections (a)(2) and (b)(2) of this section) will result in an increase in the cost to borrowers for mortgages on housing in such high-cost areas.

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

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

(A) a report that—

(i) describes the study under this subsection; and

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

(B) notice of the determination of the Director under paragraph (3); and

(C) the order of the Director under paragraph (3).

(5) DEFINITION.—For purposes of this subsection, the term “conforming loan limits for high-cost areas” means the dollar amount limitations applicable under

the section 302(b)(2) of the Federal National Mortgage Association Charter Act and section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (as amended by subsections (a) and (b) of this section) for areas described in the last sentence of such sections (as so amended).

SEC. 134. ANNUAL HOUSING REPORT REGARDING REGULATED ENTITIES.

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

“SEC. 1324. ANNUAL HOUSING REPORT REGARDING REGULATED ENTITIES.

“(a) **IN GENERAL.**—After reviewing and analyzing the reports submitted under section 309(n) of the Federal National Mortgage Association Charter Act, section 307(f) of the Federal Home Loan Mortgage Corporation Act, and section 10(j)(11) of the Federal Home Loan Bank Act (12 U.S.C. 1430(j)(11)), the Director shall submit a report, not later than October 30 of each year, to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, on the activities of each regulated entity.

“(b) **CONTENTS.**—The report shall—

“(1) discuss the extent to which—

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

“(B) each enterprise is complying with section 1337;

“(C) each Federal home loan bank is complying with section 10(j) of the Federal Home Loan Bank Act; and

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

“(2) aggregate and analyze relevant data on income to assess the compliance by each enterprise with the housing goals established under subpart B;

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

“(4) examine actions that—

“(A) each enterprise has undertaken or could undertake to promote and expand the annual goals established under subpart B and the purposes of the enterprise established by law; and

“(B) each Federal home loan bank has taken or could undertake to promote and expand the community investment program and affordable housing program of the bank established under section subsections (i) and (j) of section 10 of the Federal Home Loan Bank Act;

“(5) examine the primary and secondary multifamily housing mortgage markets and describe—

“(A) the availability and liquidity of mortgage credit;

“(B) the status of efforts to provide standard credit terms and underwriting guidelines for multifamily housing and to securitize such mortgage products; and

“(C) any factors inhibiting such standardization and securitization;

“(6) examine actions each regulated entity has undertaken and could undertake to promote and expand opportunities for first-time homebuyers, including the use of alternative credit scoring;

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

“(8) discuss and analyze existing conditions and trends, including conditions and trends relating to pricing, in the housing markets and mortgage markets; and

“(9) identify the extent to which each enterprise is involved in mortgage purchases and secondary market activities involving subprime loans (as identified in accordance with the regulations issued pursuant to section 134(b) of the Federal Housing Finance Reform Act of 2007) and compare the characteristics of subprime loans purchased and securitized by the enterprises to other loans purchased and securitized by the enterprises.

“(c) **DATA COLLECTION AND REPORTING.**—

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

“(2) **DATA POINTS.**—Each monthly survey conducted by the Director under paragraph (1) shall collect data on—

“(A) the characteristics of individual mortgages that are eligible for purchase by the enterprises and the characteristics of individual mortgages

that are not eligible for purchase by the enterprises including, in both cases, information concerning—

- “(i) the price of the house that secures the mortgage;
- “(ii) the loan-to-value ratio of the mortgage, which shall reflect any secondary liens on the relevant property;
- “(iii) the terms of the mortgage;
- “(iv) the creditworthiness of the borrower or borrowers; and
- “(v) whether the mortgage, in the case of a conforming mortgage, was purchased by an enterprise; and

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

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

“(4) DEFINITION.—For purposes of this subsection, the term ‘identifiable form’ means any representation of information that permits the identity of a borrower to which the information relates to be reasonably inferred by either direct or indirect means.”.

(b) STANDARDS FOR SUBPRIME LOANS.—The Director shall, not later than one year after the effective date under section 185, by regulations issued under section 1316G of the Housing and Community Development Act of 1992, establish standards by which mortgages purchased and mortgages purchased and securitized shall be characterized as subprime for the purpose of, and only for the purpose of, complying with the reporting requirement under section 1324(b)(9) of such Act.

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

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

“SEC. 1329. ANNUAL REPORTS ON AFFORDABLE HOUSING STOCK.

“(a) IN GENERAL.—To obtain information helpful in applying the formula under section 1337(c)(2) for the affordable housing program under such section and for other appropriate uses, the regulated entities shall conduct, or provide for the conducting of, a study on an annual basis to determine the levels of affordable housing inventory, and the changes in such levels, in communities throughout the United States.

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

“(1) the level of affordable housing inventory, including affordable rental dwelling units and affordable homeownership dwelling units;

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

“(A) any additions to such inventory, disaggregated by the category of such additions (including new construction or housing conversion);

“(B) any subtractions from such inventory, disaggregated by the category of such subtractions (including abandonment, demolition, or upgrade to market-rate housing);

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

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

“(3) the types of financing used to build any dwelling units added to such inventory level and the period during which such units are required to remain affordable;

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

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

“(c) REPORT.—For each annual study conducted pursuant to this section, the regulated entities shall submit to the Congress, and make publicly available, a report setting forth the findings of the study.

“(d) REGULATIONS AND TIMING.—The Director shall, by regulation, establish requirements for the studies and reports under this section, including deadlines for the submission of such annual reports and standards for determining affordable housing.”.

SEC. 136. REVISION OF HOUSING GOALS.

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

“SEC. 1331. ESTABLISHMENT OF HOUSING GOALS.

“(a) **IN GENERAL.**—The Director shall establish, effective for the first year that begins after the effective date under section 185 of the Federal Housing Finance Reform Act of 2007 and each year thereafter, annual housing goals, with respect to the mortgage purchases by the enterprises, as follows:

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

“(2) **MULTIFAMILY SPECIAL AFFORDABLE HOUSING GOALS.**—A multifamily special affordable housing goal under section 1333.

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

“(1) **IN GENERAL.**—Upon request by the Director, an enterprise shall provide to the Director, in a form determined by the Director, data the Director may review to determine whether there exist disparities in interest rates charged on mortgages to borrowers who are minorities as compared with comparable mortgages to borrowers of similar creditworthiness who are not minorities.

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

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

“(B) require the enterprise to submit additional data with respect to any lender or lenders, as appropriate and to the extent practicable, to the Director who shall submit any such additional data to the regulatory or enforcement agency for appropriate action; and

“(C) require the enterprise to undertake remedial actions, as appropriate, pursuant to section 1325(5) (12 U.S.C. 4545(5)).

“(3) **ANNUAL REPORT TO CONGRESS.**—The Director shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report describing the actions taken, and being taken, by the Director to carry out this subsection. No such report shall identify any lender or lenders who have not been found to have engaged in discriminatory lending practices pursuant to a final adjudication on the record, and after opportunity for an administrative hearing, in accordance with subchapter II of chapter 5 of title 5, United States Code.

“(4) **PROTECTION OF IDENTITY OF INDIVIDUALS.**—In carrying out this subsection, the Director shall ensure that no property-related or financial information that would enable a borrower to be identified shall be made public.

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

“SEC. 1332. SINGLE-FAMILY HOUSING GOALS.

“(a) **IN GENERAL.**—The Director shall establish annual goals for the purchase by each enterprise of conventional, conforming, single-family, purchase money mortgages financing owner-occupied and rental housing for each of the following categories of families:

“(1) Low-income families.

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

“(3) Very low-income families.

“(b) **REFINANCE SUBGOAL.**—

“(1) **IN GENERAL.**—The Director shall establish a separate subgoal within each goal under subsection (a)(1) for the purchase by each enterprise of mortgages for low-income families on single family housing given to pay off or prepay an existing loan secured by the same property. The Director shall, for each year, determine whether each enterprise has complied with the subgoal under this subsection in the same manner provided under this section for determining compliance with the housing goals.

“(2) **ENFORCEMENT.**—For purposes of section 1336, the subgoal established under paragraph (1) of this subsection shall be considered to be a housing goal established under this section. Such subgoal shall not be enforceable under any other provision of this title (including subpart C of this part) other than section 1336 or under any provision of the Federal National Mortgage Association Charter Act or the Federal Home Loan Mortgage Corporation Act.

“(c) **DETERMINATION OF COMPLIANCE.**—The Director shall determine, for each year that the housing goals under this section are in effect pursuant to section 1331(a), whether each enterprise has complied with the single-family housing goals estab-

lished under this section for such year. An enterprise shall be considered to be in compliance with such a goal for a year only if, for each of the types of families described in subsection (a), the percentage of the number of conventional, conforming, single-family, owner-occupied or rental, as applicable, purchase money mortgages purchased by each enterprise in such year that serve such families, meets or exceeds the target for the year for such type of family that is established under subsection (d).

“(d) ANNUAL TARGETS.—

“(1) IN GENERAL.—Except as provided in paragraph (2), for each of the types of families described in subsection (a), the target under this subsection for a year shall be the average percentage, for the three years that most recently precede such year and for which information under the Home Mortgage Disclosure Act of 1975 is publicly available, of the number of conventional, conforming, single-family, owner-occupied or rental, as applicable, purchase money mortgages originated in such year that serves such type of family, as determined by the Director using the information obtained and determined pursuant to paragraphs (3) and (4).

“(2) AUTHORITY TO INCREASE TARGETS.—

“(A) IN GENERAL.—The Director may, for any year, establish by regulation, for any or all of the types of families described in subsection (a), percentage targets that are higher than the percentages for such year determined pursuant to paragraph (1), to reflect expected changes in market performance related to such information under the Home Mortgage Disclosure Act of 1975.

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

- “(i) National housing needs.
- “(ii) Economic, housing, and demographic conditions.
- “(iii) The performance and effort of the enterprises toward achieving the housing goals under this section in previous years.
- “(iv) The size of the conventional mortgage market serving each of the types of families described in subsection (a) relative to the size of the overall conventional mortgage market.
- “(v) The ability of the enterprise to lead the industry in making mortgage credit available.
- “(vi) The need to maintain the sound financial condition of the enterprises.

“(3) HMDA INFORMATION.—The Director shall annually obtain information submitted in compliance with the Home Mortgage Disclosure Act of 1975 regarding conventional, conforming, single-family, owner-occupied or rental, as applicable, purchase money mortgages originated and purchased for the previous year.

“(4) CONFORMING MORTGAGES.—In determining whether a mortgage is a conforming mortgage for purposes of this paragraph, the Director shall consider the original principal balance of the mortgage loan to be the principal balance as reported in the information referred to in paragraph (3), as rounded to the nearest thousand dollars.

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

“(1) NOTICE.—Within 30 days of making a determination under subsection (c) regarding a compliance of an enterprise for a year with a housing goal established under this section and before any public disclosure thereof, the Director shall provide notice of the determination to the enterprise, which shall include an analysis and comparison, by the Director, of the performance of the enterprise for the year and the targets for the year under subsection (d).

“(2) COMMENT PERIOD.—The Director shall provide each enterprise an opportunity to comment on the determination during the 30-day period beginning upon receipt by the enterprise of the notice.

“(f) USE OF BORROWER INCOME.—In monitoring the performance of each enterprise pursuant to the housing goals under this section and evaluating such performance (for purposes of section 1336), the Director shall consider a mortgagor’s income to be such income at the time of origination of the mortgage.

“(g) CONSIDERATION OF UNITS IN SINGLE-FAMILY RENTAL HOUSING.—In establishing any goal under this subpart, the Director may take into consideration the number of housing units financed by any mortgage on single-family rental housing purchased by an enterprise

“SEC. 1333. MULTIFAMILY SPECIAL AFFORDABLE HOUSING GOAL.

“(a) ESTABLISHMENT.—

“(1) IN GENERAL.—The Director shall establish, by regulation, an annual goal for the purchase by each enterprise of each of the following types of mortgages on multifamily housing:

“(A) Mortgages that finance dwelling units for low-income families.

“(B) Mortgages that finance dwelling units for very low-income families.

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

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

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

“(A) national multifamily mortgage credit needs;

“(B) the performance and effort of the enterprise in making mortgage credit available for multifamily housing in previous years;

“(C) the size of the multifamily mortgage market;

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

“(E) the need to maintain the sound financial condition of the enterprise.

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

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

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

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

“(1) the income of the prospective or actual tenants of the property, where such data are available; or

“(2) where the data referred to in paragraph (1) are not available, rent levels affordable to low-income and very low-income families.

A rent level shall be considered to be affordable for purposes of this subsection for an income category referred to in this subsection if it does not exceed 30 percent of the maximum income level of such income category, with appropriate adjustments for unit size as measured by the number of bedrooms.

“(d) DETERMINATION OF COMPLIANCE.—The Director shall, for each year that the housing goal under this section is in effect pursuant to section 1331(a), determine whether each enterprise has complied with such goal and the additional requirements under subsection (a)(2).

“SEC. 1334. DISCRETIONARY ADJUSTMENT OF HOUSING GOALS.

“(a) AUTHORITY.—An enterprise may petition the Director in writing at any time during a year to reduce the level of any goal for such year established pursuant to this subpart.

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

“(1) market and economic conditions or the financial condition of the enterprise require such action; or

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

“(c) DETERMINATION.—The Director shall make a determination regarding any proposed reduction within 30 days of receipt of the petition regarding the reduction. The Director may extend such period for a single additional 15-day period, but only if the Director requests additional information from the enterprise. A denial by the Director to reduce the level of any goal under this section may be appealed to the

United States District Court for the District of Columbia or the United States district court in the jurisdiction in which the headquarters of an enterprise is located.”.

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

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

(2) in section 1336(a)(1) (12 U.S.C. 4566(a)(1)), by striking “sections 1332, 1333, and 1334,” and inserting “this subpart”.

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

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

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

(3) by inserting after paragraph (18) the following new paragraph:

“(22) RURAL AREA.—The term ‘rural area’ has the meaning given such term in section 520 of the Housing Act of 1949 (42 U.S.C. 1490), except that such term includes micropolitan areas and tribal trust lands.”

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

(5) by inserting after paragraph (12) the following new paragraph:

“(15) LOW-INCOME AREA.—The term ‘low income area’ means a census tract or block numbering area in which the median income does not exceed 80 percent of the median income for the area in which such census tract or block numbering area is located, and, for the purposes of section 1332(a)(2), shall include families having incomes not greater than 100 percent of the area median income who reside in minority census tracts.”;

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

(7) by inserting after paragraph (10) the following new paragraph:

“(12) EXTREMELY LOW-INCOME.—The term ‘extremely low-income’ means—

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

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

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

(9) by inserting after paragraph (6) the following new paragraph:

“(7) CONFORMING MORTGAGE.—The term ‘conforming mortgage’ means, with respect to an enterprise, a conventional mortgage having an original principal obligation that does not exceed the dollar limitation, in effect at the time of such origination, under, as applicable—

“(A) section 302(b)(2) of the Federal National Mortgage Association Charter Act; or

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

SEC. 137. DUTY TO SERVE UNDERSERVED MARKETS.

(a) ESTABLISHMENT AND EVALUATION OF PERFORMANCE.—Section 1335 of the Housing and Community Development Act of 1992 (12 U.S.C. 4565) is amended—

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

(2) by striking subsection (b);

(3) in subsection (a)—

(A) in the matter preceding paragraph (1), by inserting “and to carry out the duty under subsection (a) of this section” before “, each enterprise shall”;

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

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

(D) by striking paragraph (5); and

(E) by redesignating such subsection as subsection (b);

(4) by inserting before subsection (b) (as so redesignated by paragraph (3)(E) of this subsection) the following new subsection:

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

“(1) DUTY.—In accordance with the purpose of the enterprises under section 301(3) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1716) and section 301(b)(3) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 note) to undertake activities relating to mortgages on housing for very low-, low-, and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities, each enterprise shall have the duty to increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing for underserved markets.

“(2) UNDERSERVED MARKETS.—To meet its duty under paragraph (1), each enterprise shall comply with the following requirements with respect to the following underserved markets:

“(A) MANUFACTURED HOUSING.—The enterprise shall lead the industry in developing loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages on manufactured homes for very low-, low-, and moderate-income families.

“(B) AFFORDABLE HOUSING PRESERVATION.—The enterprise shall lead the industry in developing loan products and flexible underwriting guidelines to facilitate a secondary market to preserve housing affordable to very low-, low-, and moderate-income families, including housing projects subsidized under—

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

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

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

“(iv) the supportive housing for the elderly program under section 202 of the Housing Act of 1959;

“(v) the supportive housing program for persons with disabilities under section 811 of the Cranston-Gonzalez National Affordable Housing Act;

“(vi) the programs under title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11361 et seq.), but only permanent supportive housing projects subsidized under such programs; and

“(vii) the rural rental housing program under section 515 of the Housing Act of 1949.

“(C) RURAL AND OTHER UNDERSERVED MARKETS.—The enterprise shall lead the industry in developing loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages on housing for very low-, low-, and moderate-income families in rural areas, and for mortgages for housing for any other underserved market for very low-, low-, and moderate-income families that the Secretary identifies as lacking adequate credit through conventional lending sources. Such underserved markets may be identified by borrower type, market segment, or geographic area.”; and

(5) by adding at the end the following new subsection:

“(c) EVALUATION AND REPORTING OF COMPLIANCE.—

“(1) IN GENERAL.—Not later than 6 months after the effective date under section 185 of the Federal Housing Finance Reform Act of 2007, the Director shall establish a manner for evaluating whether, and the extent to which, the enterprises have complied with the duty under subsection (a) to serve underserved markets and for rating the extent of such compliance. Using such method, the Director shall, for each year, evaluate such compliance and rate the performance of each enterprise as to extent of compliance. The Director shall include such evaluation and rating for each enterprise for a year in the report for that year submitted pursuant to section 1319B(a).

“(2) SEPARATE EVALUATIONS.—In determining whether an enterprise has complied with the duty referred to in paragraph (1), the Director shall separately evaluate whether the enterprise has complied with such duty with respect to each of the underserved markets identified in subsection (a), taking into consideration—

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

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

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

“(3) MANUFACTURED HOUSING MARKET.—In determining whether an enterprise has complied with the duty under subparagraph (A) of subsection (a)(2), the Director may consider loans secured by both real and personal property.”.

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

(1) in paragraph (1), by inserting “and with the duty under section 1335(a) of each enterprise with respect to underserved markets,” before “as provided in this section”; and

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

“(4) ENFORCEMENT OF DUTY TO PROVIDE MORTGAGE CREDIT TO UNDERSERVED MARKETS.—The duty under section 1335(a) of each enterprise to serve underserved markets (as determined in accordance with section 1335(c)) shall be enforceable under this section to the same extent and under the same provisions that the housing goals established under this subpart are enforceable. Such duty shall not be enforceable under any other provision of this title (including subpart C of this part) other than this section or under any provision of the Federal National Mortgage Association Charter Act or the Federal Home Loan Mortgage Corporation Act.”.

SEC. 138. MONITORING AND ENFORCING COMPLIANCE WITH HOUSING GOALS.

(a) ADDITIONAL CREDIT FOR CERTAIN MORTGAGES.—Section 1336(a) of the Housing and Community Development Act of 1992 (12 U.S.C. 4566(a)) is amended—

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

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

“(5) ADDITIONAL CREDIT.—The Director shall assign more than 125 percent credit toward achievement, under this section, of the housing goals for mortgage purchase activities of the enterprises that comply with the requirements of such goals and support—

“(A) housing that meets energy efficiency or other environmental standards that are established by a Federal, State, or local governmental authority with respect to the geographic area where the housing is located or are otherwise widely recognized; or

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

The availability of additional credit under this paragraph shall not be used to increase any housing goal, subgoal, or target established under this subpart.”.

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

(1) in subsection (b)—

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

(B) by striking paragraph (1) and inserting the following new paragraph: “(1) NOTICE.—If the Director preliminarily determines that an enterprise has failed, or that there is a substantial probability that an enterprise will fail, to meet any housing goal established under this subpart, the Director shall provide written notice to the enterprise of such a preliminary determination, the reasons for such determination, and the information on which the Director based the determination.”;

(C) in paragraph (2)—

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

(ii) by striking subparagraphs (B) and (C) and inserting the following new subparagraph:

“(B) EXTENSION OR SHORTENING OF PERIOD.—The Director may—

“(i) extend the period under subparagraph (A) for good cause for not more than 30 additional days; and

“(ii) shorten the period under subparagraph (A) for good cause.”; and

(iii) by redesignating subparagraph (D) as subparagraph (C); and

(D) in paragraph (3)—

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

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

(iii) in subparagraph (C)—

(I) by striking “Committee on Banking, Finance and Urban Affairs” and inserting “Committee on Financial Services”; and

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

(2) in subsection (c)—

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

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

“(1) REQUIREMENT.—If the Director finds, pursuant to subsection (b), that there is a substantial probability that an enterprise will fail, or has actually failed, to meet any housing goal under this subpart and that the achievement of the housing goal was or is feasible, the Director may require that the enterprise submit a housing plan under this subsection. If the Director makes such a finding and the enterprise refuses to submit such a plan, submits an unacceptable plan, fails to comply with the plan or the Director finds that the enterprise has failed to meet any housing goal under this subpart, in addition to requiring an enterprise to submit a housing plan, the Director may issue a cease and desist order in accordance with section 1341, impose civil money penalties in accordance with section 1345, or order other remedies as set forth in paragraph (7) of this subsection.”;

(B) in paragraph (2)—

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

(ii) in subparagraph (B), by inserting “and changes in its operations” after “improvements”;

(C) in paragraph (3)—

(i) by inserting “comply with any remedial action or” before “submit a housing plan”; and

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

(D) in paragraph (4), by striking the first two sentences and inserting the following: “The Director shall review each submission by an enterprise, including a housing plan submitted under this subsection, and not later than 30 days after submission, approve or disapprove the plan or other action. The Director may extend the period for approval or disapproval for a single additional 30-day period if the Director determines such extension necessary.”; and

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

“(7) ADDITIONAL REMEDIES FOR FAILURE TO MEET GOALS.—In addition to ordering a housing plan under this section, issuing cease and desist orders under section 1341, and ordering civil money penalties under section 1345, the Director may seek other actions when an enterprise fails to meet a goal, and exercise appropriate enforcement authority available to the Director under this Act to prohibit the enterprise from initially offering any product (as such term is defined in section 1321(f)) or engaging in any new activities, services, undertakings, and offerings and to order the enterprise to suspend products and activities, services, undertakings, and offerings pending its achievement of the goal.”.

SEC. 139. AFFORDABLE HOUSING FUND.

(a) IN GENERAL.—The Housing and Community Development Act of 1992 is amended by striking sections 1337 and 1338 (12 U.S.C. 4562 note) and inserting the following new section:

“SEC. 1337. AFFORDABLE HOUSING FUND.

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

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

“(2) to increase investment in housing in low-income areas, and areas designated as qualified census tracts or an area of chronic economic distress pursuant to section 143(j) of the Internal Revenue Code of 1986 (26 U.S.C. 143(j));

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

“(4) to increase investment in public infrastructure development in connection with housing assisted under this section; and

“(5) to leverage investments from other sources in affordable housing and in public infrastructure development in connection with housing assisted under this section.

“(b) ALLOCATION OF AMOUNTS BY ENTERPRISES.—

“(1) IN GENERAL.—In accordance with regulations issued by the Director under subsection (m) and subject to paragraph (2) of this subsection and sub-

section (i)(5), each enterprise shall allocate to the affordable housing fund established under subsection (a), in each of the years 2007 through 2011, an amount equal to 1.2 basis points for each dollar of the average total mortgage portfolio of the enterprise during the preceding year.

“(2) SUSPENSION OF CONTRIBUTIONS.—The Director shall temporarily suspend the allocation under paragraph (1) by an enterprise to the affordable housing fund upon a finding by the Director that such allocations—

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

“(B) are causing, or would cause, the enterprise to be classified as undercapitalized; or

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

“(3) 5-YEAR SUNSET AND REPORT.—

“(A) SUNSET.—The enterprises shall not be required to make allocations to the affordable housing fund in 2012 or in any year thereafter.

“(B) REPORT ON PROGRAM CONTINUANCE.—Not later than June 30, 2011, the Director shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report making recommendations on whether the program under this section, including the requirement for the enterprises to make allocations to the affordable housing fund, should be extended and on any modifications for the program.

“(c) AFFORDABLE HOUSING NEEDS FORMULAS.—

“(1) ALLOCATION FOR 2007.—

“(A) ALLOCATION PERCENTAGES FOR LOUISIANA AND MISSISSIPPI.—For purposes of subsection (d)(1)(A), the allocation percentages for 2007 for the grantees under this section for such year shall be as follows:

“(i) The allocation percentage for the Louisiana Housing Finance Agency shall be 75 percent.

“(ii) The allocation percentage for the Mississippi Development Authority shall be 25 percent.

“(B) USE IN DISASTER AREAS.—Affordable housing grant amounts for 2007 shall be used only as provided in subsection (g) only for such eligible activities in areas that were subject to a declaration by the President of a major disaster or emergency under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) in connection with Hurricane Katrina or Rita of 2005.

“(2) ALLOCATION FORMULA FOR OTHER YEARS.—The Secretary of Housing and Urban Development shall, by regulation, establish a formula to allocate, among the States (as such term is defined in section 1303) and federally recognized Indian tribes, the amounts provided by the enterprises in each year referred to subsection (b)(1), other than 2007, to the affordable housing fund established under this section. The formula shall be based on the following factors, with respect to each State and tribe:

“(A) The ratio of the population of the State or federally recognized Indian tribe to the aggregate population of all the States and tribes.

“(B) The percentage of families in the State or federally recognized Indian tribe that pay more than 50 percent of their annual income for housing costs.

“(C) The percentage of persons in the State or federally recognized Indian tribe that are members of extremely low- or very low-income families.

“(D) The cost of developing or carrying out rehabilitation of housing in the State or for the federally recognized Indian tribe.

“(E) The percentage of families in the State or federally recognized Indian tribe that live in substandard housing.

“(F) The percentage of housing stock in the State or for the federally recognized Indian tribe that is extremely old housing.

“(G) Any other factors that the Secretary determines to be appropriate.

“(3) FAILURE TO ESTABLISH.—If, in any year referred to in subsection (b)(1), other than 2007, the regulations establishing the formula required under paragraph (2) of this subsection have not been issued by the date that the Director determines the amounts described in subsection (d)(1) to be available for affordable housing fund grants in such year, for purposes of such year any amounts for a State (as such term is defined in section 1303 of this Act) that would otherwise be determined under subsection (d) by applying the formula established pursuant to paragraph (2) of this subsection shall be determined instead by applying, for such State, the percentage that is equal to the percentage of the total amounts made available for such year for allocation under subtitle A of title II

of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12741 et seq.) that are allocated in such year, pursuant to such subtitle, to such State (including any insular area or unit of general local government, as such terms are defined in section 104 of such Act (42 U.S.C. 12704), that is treated as a State under section 1303 of this Act) and to participating jurisdictions and other eligible entities within such State.

“(d) ALLOCATION OF FORMULA AMOUNT; GRANTS.—

“(1) FORMULA AMOUNT.—For each year referred to in subsection (b)(1), the Director shall determine the formula amount under this section for each grantee, which shall be the amount determined for such grantee—

“(A) for 2007, by applying the allocation percentages under subparagraph (A) of subsection (c)(1) to the sum of the total amounts allocated by the enterprises to the affordable housing fund for such year, less any amounts used pursuant to subsection (i)(1); and

“(B) for any other year referred to in subsection (b)(1) (other than 2007), by applying the formula established pursuant to paragraph (2) of subsection (c) to the sum of the total amounts allocated by the enterprises to the affordable housing fund for such year and any recaptured amounts available pursuant to subsection (i)(4), less any amounts used pursuant to subsection (i)(1).

“(2) NOTICE.—In each year referred to in subsection (b)(1), not later than 60 days after the date that the Director determines the amounts described in paragraph (1) to be available for affordable housing fund grants to grantees in such year, the Director shall cause to be published in the Federal Register a notice that such amounts shall be so available.

“(3) GRANT AMOUNT.—

“(A) IN GENERAL.—For each year referred to in subsection (b)(1), the Director shall make a grant from amounts in the affordable housing fund to each grantee in an amount that is, except as provided in subparagraph (B), equal to the formula amount under this section for the grantee. A grantee may designate a State housing finance agency, housing and community development entity, tribally designated housing entity (as such term is defined in section 4 of the Native American Housing Assistance and Self-Determination Act of 1997 (25 U.S.C. 4103)) or other qualified instrumentality of the grantee to receive such grant amounts.

“(B) REDUCTION FOR FAILURE TO OBTAIN RETURN OF MISUSED FUNDS.—If in any year a grantee fails to obtain reimbursement or return of the full amount required under subsection (j)(1)(B) to be reimbursed or returned to the grantee during such year—

“(i) except as provided in clause (ii)—

“(I) the amount of the grant for the grantee for the succeeding year, as determined pursuant to subparagraph (A), shall be reduced by the amount by which such amounts required to be reimbursed or returned exceed the amount actually reimbursed or returned; and

“(II) the amount of the grant for the succeeding year for each other grantee whose grant is not reduced pursuant to subclause (I) shall be increased by the amount determined by applying the formula established pursuant to subsection (c)(2) to the total amount of all reductions for all grantees for such year pursuant to subclause (I); or

“(ii) in any case in which such failure to obtain reimbursement or return occurs during a year immediately preceding a year in which grants under this subsection will not be made, the grantee shall pay to the Director for reallocation among the other grantees an amount equal to the amount of the reduction for the grantee that would otherwise apply under clause (i)(I).

“(e) GRANTEE ALLOCATION PLANS.—

“(1) IN GENERAL.—For each year that a grantee receives affordable housing fund grant amounts, the grantee shall establish an allocation plan in accordance with this subsection, which shall be a plan for the distribution of such grant amounts of the grantee for such year that—

“(A) is based on priority housing needs, as determined by the grantee in accordance with the regulations established under subsection (m)(2)(C);

“(B) complies with subsection (f); and

“(C) includes performance goals, benchmarks, and timetables for the grantee for the production, preservation, and rehabilitation of affordable rental and homeownership housing with such grant amounts that comply

with the requirements established by the Director pursuant to subsection (m)(2)(F).

“(2) ESTABLISHMENT.—In establishing an allocation plan, a grantee shall notify the public of the establishment of the plan, provide an opportunity for public comments regarding the plan, consider any public comments received, and make the completed plan available to the public.

“(3) CONTENTS.—An allocation plan of a grantee shall set forth the requirements for eligible recipients under subsection (h) to apply to the grantee to receive assistance from affordable housing fund grant amounts, including a requirement that each such application include—

“(A) a description of the eligible activities to be conducted using such assistance; and

“(B) a certification by the eligible recipient applying for such assistance that any housing units assisted with such assistance will comply with the requirements under this section.

“(f) SELECTION OF ACTIVITIES FUNDED USING AFFORDABLE HOUSING FUND GRANT AMOUNTS.—Affordable housing fund grant amounts of a grantee may be used, or committed for use, only for activities that—

“(1) are eligible under subsection (g) for such use;

“(2) comply with the applicable allocation plan under subsection (e) of the grantee; and

“(3) are selected for funding by the grantee in accordance with the process and criteria for such selection established pursuant to subsection (m)(2)(C).

“(g) ELIGIBLE ACTIVITIES.—Affordable housing fund grant amounts of a grantee shall be eligible for use, or for commitment for use, only for assistance for—

“(1) the production, preservation, and rehabilitation of rental housing, including housing under the programs identified in section 1335(a)(2)(B), except that such grant amounts may be used for the benefit only of extremely low- and very low-income families;

“(2) the production, preservation, and rehabilitation of housing for homeownership, including such forms as downpayment assistance, closing cost assistance, and assistance for interest-rate buy-downs, that—

“(A) is available for purchase only for use as a principal residence by families that qualify both as—

“(i) extremely low- and very-low income families at the times described in subparagraphs (A) through (C) of section 215(b)(2) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12745(b)(2)); and

“(ii) first-time homebuyers, as such term is defined in section 104 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704), except that any reference in such section to assistance under title II of such Act shall for purposes of this section be considered to refer to assistance from affordable housing fund grant amounts;

“(B) has an initial purchase price that meets the requirements of section 215(b)(1) of the Cranston-Gonzalez National Affordable Housing Act;

“(C) is subject to the same resale restrictions established under section 215(b)(3) of the Cranston-Gonzalez National Affordable Housing Act and applicable to the participating jurisdiction that is the State in which such housing is located; and

“(D) is made available for purchase only by, or in the case of assistance under this paragraph, is made available only to, homebuyers who have, before purchase, completed a program of counseling with respect to the responsibilities and financial management involved in homeownership that is approved by the Director; and

“(3) public infrastructure development activities in connection with housing activities funded under paragraph (1) or (2).

“(h) ELIGIBLE RECIPIENTS.—Affordable housing fund grant amounts of a grantee may be provided only to a recipient that is an organization, agency, or other entity (including a for-profit entity, a nonprofit entity, and a faith-based organization) that—

“(1) has demonstrated experience and capacity to conduct an eligible activity under (g), as evidenced by its ability to—

“(A) own, construct or rehabilitate, manage, and operate an affordable multifamily rental housing development;

“(B) design, construct or rehabilitate, and market affordable housing for homeownership;

“(C) provide forms of assistance, such as downpayments, closing costs, or interest-rate buy-downs, for purchasers; or

“(D) construct related public infrastructure development activities in connection with such housing activities;

“(2) demonstrates the ability and financial capacity to undertake, comply, and manage the eligible activity;

“(3) demonstrates its familiarity with the requirements of any other Federal, State or local housing program that will be used in conjunction with such grant amounts to ensure compliance with all applicable requirements and regulations of such programs; and

“(4) makes such assurances to the grantee as the Director shall, by regulation, require to ensure that the recipient will comply with the requirements of this section during the entire period that begins upon selection of the recipient to receive such grant amounts and ending upon the conclusion of all activities under subsection (g) that are engaged in by the recipient and funded with such grant amounts.

“(i) LIMITATIONS ON USE.—

“(1) REQUIRED AMOUNT FOR REFCORP.—Of the aggregate amount allocated pursuant to subsection (b) in each year to the affordable housing fund, 25 percent shall be used as provided in section 21B(f)(2)(E) of the Federal Home Loan Bank Act (12 U.S.C. 1441b(f)(2)(E)).

“(2) REQUIRED AMOUNT FOR HOMEOWNERSHIP ACTIVITIES.—Of the aggregate amount of affordable housing fund grant amounts provided in each year to a grantee, not less than 10 percent shall be used for activities under paragraph (2) of subsection (g).

“(3) MAXIMUM AMOUNT FOR PUBLIC INFRASTRUCTURE DEVELOPMENT ACTIVITIES IN CONNECTION WITH AFFORDABLE HOUSING ACTIVITIES.—Of the aggregate amount of affordable housing fund grant amounts provided in each year to a grantee, not more than 12.5 percent may be used for activities under paragraph (3) of subsection (g).

“(4) DEADLINE FOR COMMITMENT OR USE.—Any affordable housing fund grant amounts of a grantee shall be used or committed for use within two years of the date of that such grant amounts are made available to the grantee. The Director shall recapture into the affordable housing fund any such amounts not so used or committed for use and allocate such amounts under subsection (d)(1) in the first year after such recapture.

“(5) USE OF RETURNS.—The Director shall, by regulation provide that any return on a loan or other investment of any affordable housing fund grant amounts of a grantee shall be treated, for purposes of availability to and use by the grantee, as affordable housing fund grant amounts.

“(6) PROHIBITED USES.—The Director shall—

“(A) by regulation, set forth prohibited uses of affordable housing fund grant amounts, which shall include use for—

- “(i) political activities;
- “(ii) advocacy;
- “(iii) lobbying, whether directly or through other parties;
- “(iv) counseling services;
- “(v) travel expenses; and
- “(vi) preparing or providing advice on tax returns;

“(B) by regulation, provide that, except as provided in subparagraph (C), affordable housing fund grant amounts of a grantee may not be used for administrative, outreach, or other costs of—

- “(i) the grantee; or
- “(ii) any recipient of such grant amounts; and

“(C) by regulation, limit the amount of any affordable housing fund grant amounts of the grantee for a year that may be used for administrative costs of the grantee of carrying out the program required under this section to a percentage of such grant amounts of the grantee for such year, which may not exceed 10 percent.

“(7) PROHIBITION OF CONSIDERATION OF USE FOR MEETING HOUSING GOALS OR DUTY TO SERVE.—In determining compliance with the housing goals under this subpart and the duty to serve underserved markets under section 1335, the Director may not consider any affordable housing fund grant amounts used under this section for eligible activities under subsection (g). The Director shall give credit toward the achievement of such housing goals and such duty to serve underserved markets to purchases by the enterprises of mortgages for housing that receives funding from affordable housing fund grant amounts, but only to the extent that such purchases by the enterprises are funded other than with such grant amounts.

“(j) ACCOUNTABILITY OF RECIPIENTS AND GRANTEEES.—

“(1) RECIPIENTS.—

- “(A) TRACKING OF FUNDS.—The Director shall—
- “(i) require each grantee to develop and maintain a system to ensure that each recipient of assistance from affordable housing fund grant amounts of the grantee uses such amounts in accordance with this section, the regulations issued under this section, and any requirements or conditions under which such amounts were provided; and—
 - “(ii) establish minimum requirements for agreements, between the grantee and recipients, regarding assistance from the affordable housing fund grant amounts of the grantee, which shall include—
 - “(I) appropriate continuing financial and project reporting, record retention, and audit requirements for the duration of the grant to the recipient to ensure compliance with the limitations and requirements of this section and the regulations under this section; and
 - “(II) any other requirements that the Director determines are necessary to ensure appropriate grant administration and compliance.
- “(B) MISUSE OF FUNDS.—
- “(i) REIMBURSEMENT REQUIREMENT.—If any recipient of assistance from affordable housing fund grant amounts of a grantee is determined, in accordance with clause (ii), to have used any such amounts in a manner that is materially in violation of this section, the regulations issued under this section, or any requirements or conditions under which such amounts were provided, the grantee shall require that, within 12 months after the determination of such misuse, the recipient shall reimburse the grantee for such misused amounts and return to the grantee any amounts from the affordable housing fund grant amounts of the grantee that remain unused or uncommitted for use. The remedies under this clause are in addition to any other remedies that may be available under law.
 - “(ii) DETERMINATION.—A determination is made in accordance with this clause if the determination is—
 - “(I) made by the Director; or
 - “(II)(aa) made by the grantee;
 - “(bb) the grantee provides notification of the determination to the Director for review, in the discretion of the Director, of the determination; and
 - “(cc) the Director does not subsequently reverse the determination.
- “(2) GRANTEES.—
- “(A) REPORT.—
- “(i) IN GENERAL.—The Director shall require each grantee receiving affordable housing fund grant amounts for a year to submit a report, for such year, to the Director that—
 - “(I) describes the activities funded under this section during such year with the affordable housing fund grant amounts of the grantee; and
 - “(II) the manner in which the grantee complied during such year with the allocation plan established pursuant to subsection (e) for the grantee.
 - “(ii) PUBLIC AVAILABILITY.—The Director shall make such reports pursuant to this subparagraph publicly available.
- “(B) MISUSE OF FUNDS.—If the Director determines, after reasonable notice and opportunity for hearing, that a grantee has failed to comply substantially with any provision of this section and until the Director is satisfied that there is no longer any such failure to comply, the Director shall—
- “(i) reduce the amount of assistance under this section to the grantee by an amount equal to the amount affordable housing fund grant amounts which were not used in accordance with this section;
 - “(ii) require the grantee to repay the Director an amount equal to the amount of the amount affordable housing fund grant amounts which were not used in accordance with this section;
 - “(iii) limit the availability of assistance under this section to the grantee to activities or recipients not affected by such failure to comply; or
 - “(iv) terminate any assistance under this section to the grantee.
- “(k) CAPITAL REQUIREMENTS.—The utilization or commitment of amounts from the affordable housing fund shall not be subject to the risk-based capital requirements established pursuant to section 1361(a).

“(1) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

“(1) AFFORDABLE HOUSING FUND GRANT AMOUNTS.—The term ‘affordable housing fund grant amounts’ means amounts from the affordable housing fund established under subsection (a) that are provided to a grantee pursuant to subsection (d)(3).

“(2) GRANTEE.—The term ‘grantee’ means—

“(A) with respect to 2007, the Louisiana Housing Finance Agency and the Mississippi Development Authority; and

“(B) with respect to the years referred to in subsection (b)(1), other than 2007, each State (as such term is defined in section 1303) and each federally recognized Indian tribe.

“(3) RECIPIENT.—The term ‘recipient’ means an entity meeting the requirements under subsection (h) that receives assistance from a grantee from affordable housing fund grant amounts of the grantee.

“(4) TOTAL MORTGAGE PORTFOLIO.—The term ‘total mortgage portfolio’ means, with respect to a year, the sum, for all mortgages outstanding during that year in any form, including whole loans, mortgage-backed securities, participation certificates, or other structured securities backed by mortgages, of the dollar amount of the unpaid outstanding principal balances under such mortgages. Such term includes all such mortgages or securitized obligations, whether retained in portfolio, or sold in any form. The Director is authorized to promulgate rules further defining such term as necessary to implement this section and to address market developments.

“(5) VERY-LOW INCOME FAMILY.—The term ‘very low-income family’ has the meaning given such term in section 1303, except that such term includes any family that resides in a rural area that has an income that does not exceed the poverty line (as such term is defined in section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902(2)), including any revision required by such section) applicable to a family of the size involved.

“(m) REGULATIONS.—

“(1) IN GENERAL.—The Director, in consultation with the Secretary of Housing and Urban Development, shall issue regulations to carry out this section.

“(2) REQUIRED CONTENTS.—The regulations issued under this subsection shall include—

“(A) a requirement that the Director ensure that the program of each grantee for use of affordable housing fund grant amounts of the grantee is audited not less than annually to ensure compliance with this section;

“(B) authority for the Director to audit, provide for an audit, or otherwise verify a grantee’s activities, to ensure compliance with this section;

“(C) requirements for a process for application to, and selection by, each grantee for activities meeting the grantee’s priority housing needs to be funded with affordable housing fund grant amounts of the grantee, which shall provide for priority in funding to be based upon—

“(i) greatest impact;

“(ii) geographic diversity;

“(iii) ability to obligate amounts and undertake activities so funded in a timely manner;

“(iv) in the case of rental housing projects under subsection (g)(1), the extent to which rents for units in the project funded are affordable, especially for extremely low-income families;

“(v) in the case of rental housing projects under subsection (g)(1), the extent of the duration for which such rents will remain affordable;

“(vi) the extent to which the application makes use of other funding sources; and

“(vii) the merits of an applicant’s proposed eligible activity;

“(D) requirements to ensure that amounts provided to a grantee from the affordable housing fund that are used for rental housing under subsection (g)(1) are used only for the benefit of extremely low- and very-low income families;

“(E) limitations on public infrastructure development activities that are eligible pursuant to subsection (g)(3) for funding with affordable housing fund grant amounts and requirements for the connection between such activities and housing activities funded under paragraph (1) or (2) of subsection (g); and

“(F) requirements and standards for establishment, by grantees (including the grantees for 2007 pursuant to subsection (1)(2)(A)), of performance goals, benchmarks, and timetables for the production, preservation, and re-

habilitation of affordable rental and homeownership housing with affordable housing fund grant amounts.

“(n) ENFORCEMENT OF REQUIREMENTS ON ENTERPRISE.—Compliance by the enterprises with the requirements under this section shall be enforceable under subpart C. Any reference in such subpart to this part or to an order, rule, or regulation under this part specifically includes this section and any order, rule, or regulation under this section.

“(o) AFFORDABLE HOUSING TRUST FUND.—If, after the enactment of this Act, in any year, there is enacted any provision of Federal law establishing an affordable housing trust fund other than under this title for use only for grants to provide affordable rental housing and affordable homeownership opportunities, and the subsequent year is a year referred to in subsection (b)(1), the Director shall in such subsequent year and any remaining years referred to in subsection (b)(1) transfer to such affordable rental housing and affordable homeownership opportunities, and the subsequent year is a year referred to in subsection (b)(1), the Director shall in such subsequent year and any remaining years referred to in subsection (b)(1) transfer to such affordable housing trust fund the aggregate amount allocated pursuant to subsection (b) in such year to the affordable housing fund under this section, less any amounts used pursuant to subsection (i)(1). For such subsequent and remaining years, the provisions of subsections (c) and (d) shall not apply. Nothing in this subsection shall be construed to alter the terms and conditions of the affordable housing fund under this section or to extend the life of such fund.”

(b) TIMELY ESTABLISHMENT OF AFFORDABLE HOUSING NEEDS FORMULA.—

(1) IN GENERAL.—The Secretary of Housing and Urban Development shall, not later than the effective date under section 185 of this Act, issue the regulations establishing the affordable housing needs formulas in accordance with the provisions of section 1337(c)(2) of the Housing and Community Development Act of 1992, as such section is amended by subsection (a) of this section.

(2) EFFECTIVE DATE.—This subsection shall take effect on the date of the enactment of this Act.

(c) REFCORP PAYMENTS.—Section 21B(f)(2) of the Federal Home Loan Bank Act (12 U.S.C. 1441b(f)(2)) is amended—

(1) in subparagraph (E), by striking “and (D)” and inserting “(D), and (E)”;

(2) by redesignating subparagraph (E) as subparagraph (F); and

(3) by inserting after subparagraph (D) the following new subparagraph:

“(E) PAYMENTS BY FANNIE MAE AND FREDDIE MAC.—To the extent that the amounts available pursuant to subparagraphs (A), (B), (C), and (D) are insufficient to cover the amount of interest payments, each enterprise (as such term is defined in section 1303 of the Housing and Community Development Act of 1992 (42 U.S.C. 4502)) shall transfer to the Funding Corporation in each calendar year the amounts allocated for use under this subparagraph pursuant to section 1337(i)(1) of such Act.”

(d) GAO REPORT.—The Comptroller General shall conduct a study to determine the effects that the affordable housing fund established under section 1337 of the Housing and Community Development Act of 1992, as added by the amendment made by subsection (a) of this section, will have on the availability and affordability of credit for homebuyers, including the effects on such credit of the requirement under such section 1337(b) that the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation make allocations of amounts to such fund based on the average total mortgage portfolios, and the extent to which the costs of such allocation requirement will be borne by such entities or will be passed on to homebuyers. Not later than the expiration of the 12-month period beginning on the date of the enactment of this Act, the Comptroller General shall submit a report to the Congress setting forth the results and conclusions of such study. This subsection shall take effect on the date of the enactment of this Act.

SEC. 140. CONSISTENCY WITH MISSION.

Subpart B of part 2 of subtitle A of title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4561 et seq.) is amended by adding after section 1337, as added by section 139 of this Act, the following new section:

“SEC. 1338. CONSISTENCY WITH MISSION.

“This subpart may not be construed to authorize an enterprise to engage in any program or activity that contravenes or is inconsistent with the Federal National Mortgage Association Charter Act or the Federal Home Loan Mortgage Corporation Act.”

SEC. 141. ENFORCEMENT.

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

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

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

“(1) the enterprise has failed to meet any housing goal established under subpart B, following a written notice and determination of such failure in accordance with section 1336;

“(2) the enterprise has failed to submit a report under section 1314, following a notice of such failure, an opportunity for comment by the enterprise, and a final determination by the Director;

“(3) the enterprise has failed to submit the information required under subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act, or subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act;

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

“(5) the enterprise has failed to submit a housing plan that complies with section 1336(c) within the applicable period; or

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

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

“(A) comply with the goal or goals;

“(B) submit a report under section 1314;

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

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

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

“(F) provide the information required under subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act or subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act, as applicable.”;

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

(4) by striking subsection (d).

(b) **AUTHORITY OF DIRECTOR TO ENFORCE NOTICES AND ORDERS.**—Section 1344 of the Housing and Community Development Act of 1992 (12 U.S.C. 4584) is amended by striking subsection (a) and inserting the following new subsection:

“(a) **ENFORCEMENT.**—The Director may, in the discretion of the Director, apply to the United States District Court for the District of Columbia, or the United States district court within the jurisdiction of which the headquarters of the enterprise is located, for the enforcement of any effective and outstanding notice or order issued under section 1341 or 1345, or request that the Attorney General of the United States bring such an action. Such court shall have jurisdiction and power to order and require compliance with such notice or order.”.

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

(1) by striking subsections (a) and (b) and inserting the following new subsections:

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

“(1) meet any housing goal established under subpart B, following a written notice and determination of such failure in accordance with section 1336(b);

“(2) submit a report under section 1314, following a notice of such failure, an opportunity for comment by the enterprise, and a final determination by the Director;

“(3) submit the information required under subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act, or subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act;

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

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

“(6) comply with a housing plan for the enterprise under section 1336(c).

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

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

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

(2) in subsection (c)—

(A) in paragraph (1)—

- (i) in subparagraph (A), by inserting “and” after the semicolon at the end;
- (ii) in subparagraph (B), by striking “; and” and inserting a period; and
- (iii) by striking subparagraph (C); and
- (B) in paragraph (2), by inserting after the period at the end the following: “In determining the penalty under subsection (a)(1), the Director shall give consideration to the length of time the enterprise should reasonably take to achieve the goal.”;
- (3) in the first sentence of subsection (d)—
 - (A) by striking “request the Attorney General of the United States to” and inserting “, in the discretion of the Director,”; and
 - (B) by inserting “, or request that the Attorney General of the United States bring such an action” before the period at the end;
- (4) by striking subsection (f); and
- (5) by redesignating subsection (g) as subsection (f).
- (d) ENFORCEMENT OF SUBPOENAS.—Section 1348(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 4588(c)) is amended—
 - (1) by striking “request the Attorney General of the United States to” and inserting “, in the discretion of the Director,”; and
 - (2) by inserting “or request that the Attorney General of the United States bring such an action,” after “District of Columbia.”
- (e) CONFORMING AMENDMENT.—The heading for subpart C of part 2 of subtitle A of title XIII of the Housing and Community Development Act of 1992 is amended to read as follows:

“Subpart C—Enforcement”.

SEC. 142. CONFORMING AMENDMENTS.

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

- (1) by striking “Secretary” each place such term appears in such part and inserting “Director”;
- (2) in the section heading for section 1323 (12 U.S.C. 4543), by inserting “**OF ENTERPRISES**” before the period at the end;
- (3) by striking section 1327 (12 U.S.C. 4547);
- (4) by striking section 1328 (12 U.S.C. 4548);
- (5) by redesignating section 1329 (as amended by section 135) as section 1327;
- (6) in sections 1345(c)(1)(A), 1346(a), and 1346(b) (12 U.S.C. 4585(c)(1)(A), 4586(a), and 4586(b)), by striking “Secretary’s” each place such term appears and inserting “Director’s”; and
- (7) by striking section 1349 (12 U.S.C. 4589).

Subtitle C—Prompt Corrective Action

SEC. 151. CAPITAL CLASSIFICATIONS.

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

- (1) in the heading for subsection (a), by striking “IN GENERAL” and inserting “ENTERPRISES”.
- (2) in subsection (c)—
 - (A) by striking “subsection (b)” and inserting “subsection (c)”;
 - (B) by striking “enterprises” and inserting “regulated entities”; and
 - (C) by striking the last sentence;
- (3) by redesignating subsections (c) (as so amended by paragraph (2) of this subsection) and (d) as subsections (d) and (f), respectively;
- (4) by striking subsection (b) and inserting the following new subsections:

“(b) FEDERAL HOME LOAN BANKS.—

“(1) ESTABLISHMENT AND CRITERIA.—For purposes of this subtitle, the Director shall, by regulation—

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

“(B) establish criteria for each such capital classification based on the amount and types of capital held by a bank and the risk-based, minimum, and critical capital levels for the banks and taking due consideration of the capital classifications established under subsection (a) for the enterprises, with such modifications as the Director determines to be appropriate to re-

flect the difference in operations between the banks and the enterprises; and

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

“(2) CLASSIFICATIONS.—The capital classifications specified under this paragraph are—

“(A) adequately capitalized;

“(B) undercapitalized;

“(C) significantly undercapitalized; and

“(D) critically undercapitalized.

“(c) DISCRETIONARY CLASSIFICATION.—

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

“(A) at any time, the Director determines in writing that the regulated entity is engaging in conduct that could result in a rapid depletion of core or total capital or, in the case of an enterprise, that the value of the property subject to mortgages held or securitized by the enterprise has decreased significantly;

“(B) after notice and an opportunity for hearing, the Director determines that the regulated entity is in an unsafe or unsound condition; or

“(C) pursuant to section 1371(b), the Director deems the regulated entity to be engaging in an unsafe or unsound practice.

“(2) RECLASSIFICATION.—In addition to any other action authorized under this title, including the reclassification of a regulated entity for any reason not specified in this subsection, if the Director takes any action described in paragraph (1) the Director may classify a regulated entity—

“(A) as undercapitalized, if the regulated entity is otherwise classified as adequately capitalized;

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

“(C) as critically undercapitalized, if the regulated entity is otherwise classified as significantly undercapitalized.”; and

(5) by inserting after subsection (d) (as so redesignated by paragraph (3) of this subsection), the following new subsection:

“(e) RESTRICTION ON CAPITAL DISTRIBUTIONS.—

“(1) IN GENERAL.—A regulated entity shall make no capital distribution if, after making the distribution, the regulated entity would be undercapitalized.

“(2) EXCEPTION.—Notwithstanding paragraph (1), the Director may permit a regulated entity, to the extent appropriate or applicable, to repurchase, redeem, retire, or otherwise acquire shares or ownership interests if the repurchase, redemption, retirement, or other acquisition—

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

“(B) will reduce the financial obligations of the regulated entity or otherwise improve the financial condition of the entity.”

(b) REGULATIONS.—Not later than the expiration of the 180-day period beginning on the effective date under section 185, the Director of the Federal Housing Finance Agency shall issue regulations to carry out section 1364(b) of the Housing and Community Development Act of 1992 (as added by paragraph (4) of this subsection), relating to capital classifications for the Federal home loan banks.

SEC. 152. SUPERVISORY ACTIONS APPLICABLE TO UNDERCAPITALIZED REGULATED ENTITIES.

Section 1365 of the Housing and Community Development Act of 1992 (12 U.S.C. 4615) is amended—

(1) in the section heading, by striking “**ENTERPRISES**” and inserting “**REGULATED ENTITIES**”;

(2) in subsection (a)—

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

(B) by inserting before paragraph (2), as so redesignated by subparagraph (A) of this paragraph, the following paragraph:

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

“(A) closely monitor the condition of any regulated entity that is classified as undercapitalized;

“(B) closely monitor compliance with the capital restoration plan, restrictions, and requirements imposed under this section; and

“(C) periodically review the plan, restrictions, and requirements applicable to the undercapitalized regulated entity to determine whether the plan,

restrictions, and requirements are achieving the purpose of this section.”; and

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

“(4) RESTRICTION OF ASSET GROWTH.—A regulated entity that is classified as undercapitalized shall not permit its average total assets (as such term is defined in section 1316(b) during any calendar quarter to exceed its average total assets during the preceding calendar quarter unless—

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

“(B) any increase in total assets is consistent with the plan; and

“(C) the ratio of total capital to assets for the regulated entity increases during the calendar quarter at a rate sufficient to enable the entity to become adequately capitalized within a reasonable time.

“(5) PRIOR APPROVAL OF ACQUISITIONS, NEW PRODUCTS, AND NEW ACTIVITIES.—A regulated entity that is classified as undercapitalized shall not, directly or indirectly, acquire any interest in any entity or initially offer any new product (as such term is defined in section 1321(f)) or engage in any new activity, service, undertaking, or offering unless—

“(A) the Director has accepted the capital restoration plan of the regulated entity, the entity is implementing the plan, and the Director determines that the proposed action is consistent with and will further the achievement of the plan; or

“(B) the Director determines that the proposed action will further the purpose of this section.”;

(3) in the subsection heading for subsection (b), by striking “FROM UNDERCAPITALIZED TO SIGNIFICANTLY UNDERCAPITALIZED”; and

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

“(c) OTHER DISCRETIONARY SAFEGUARDS.—The Director may take, with respect to a regulated entity that is classified as undercapitalized, any of the actions authorized to be taken under section 1366 with respect to a regulated entity that is classified as significantly undercapitalized, if the Director determines that such actions are necessary to carry out the purpose of this subtitle.”.

SEC. 153. SUPERVISORY ACTIONS APPLICABLE TO SIGNIFICANTLY UNDERCAPITALIZED REGULATED ENTITIES.

Section 1366 of the Housing and Community Development Act of 1992 (12 U.S.C. 4616) is amended—

(1) in the section heading, by striking “ENTERPRISES” and inserting “REGULATED ENTITIES”;

(2) in subsection (a)(2)(A), by striking “enterprise” the last place such term appears;

(3) in subsection (b)—

(A) in the subsection heading, by striking “DISCRETIONARY SUPERVISORY ACTIONS” and inserting “SPECIFIC ACTIONS”.

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

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

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

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

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

“(B) DISMISSAL OF DIRECTORS OR EXECUTIVE OFFICERS.—Require the regulated entity to dismiss from office any director or executive officer who had held office for more than 180 days immediately before the entity became undercapitalized. Dismissal under this subparagraph shall not be construed to be a removal pursuant to the Director’s enforcement powers provided in section 1377.

“(C) EMPLOY QUALIFIED EXECUTIVE OFFICERS.—Require the regulated entity to employ qualified executive officers (who, if the Director so specifies, shall be subject to approval by the Director).”; and

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

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

(4) by redesignating subsection (c) as subsection (d); and

(5) by inserting after subsection (b) the following new subsection:

“(c) RESTRICTION ON COMPENSATION OF EXECUTIVE OFFICERS.—A regulated entity that is classified as significantly undercapitalized may not, without prior written approval by the Director—

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

“(2) provide compensation to any executive officer at a rate exceeding that of officer’s average rate of compensation (excluding bonuses, stock options, and profit sharing) during the 12 calendar months preceding the calendar month in which the regulated entity became undercapitalized.”

SEC. 154. AUTHORITY OVER CRITICALLY UNDERCAPITALIZED REGULATED ENTITIES.

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

“SEC. 1367. AUTHORITY OVER CRITICALLY UNDERCAPITALIZED REGULATED ENTITIES.

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

“(1) IN GENERAL.—Notwithstanding any other provision of Federal or State law, if any of the grounds under paragraph (3) exist, at the discretion of the Director, the Director may establish a conservatorship or receivership, as appropriate, for the purpose of reorganizing, rehabilitating, or winding up the affairs of a regulated entity.

“(2) APPOINTMENT.—In any conservatorship or receivership established under this section, the Director shall appoint the Agency as conservator or receiver.

“(3) GROUNDS FOR APPOINTMENT.—The grounds for appointing a conservator or receiver for a regulated entity are as follows:

“(A) ASSETS INSUFFICIENT FOR OBLIGATIONS.—The assets of the regulated entity are less than the obligations of the regulated entity to its creditors and others.

“(B) SUBSTANTIAL DISSIPATION.—Substantial dissipation of assets or earnings due to—

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

“(ii) any unsafe or unsound practice.

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

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

“(E) CONCEALMENT.—Any concealment of the books, papers, records, or assets of the regulated entity, or any refusal to submit the books, papers, records, or affairs of the regulated entity, for inspection to any examiner or to any lawful agent of the Director.

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

“(G) LOSSES.—The regulated entity has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the regulated entity to become adequately capitalized (as defined in section 1364(a)(1)).

“(H) VIOLATIONS OF LAW.—Any violation of any law or regulation, or any unsafe or unsound practice or condition that is likely to—

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

or

“(ii) weaken the condition of the regulated entity.

“(I) CONSENT.—The regulated entity, by resolution of its board of directors or its shareholders or members, consents to the appointment.

“(J) UNDERCAPITALIZATION.—The regulated entity is undercapitalized or significantly undercapitalized (as defined in section 1364(a)(3) or in regulations issued pursuant to section 1364(b), as applicable), and—

“(i) has no reasonable prospect of becoming adequately capitalized;

“(ii) fails to become adequately capitalized, as required by—

“(I) section 1365(a)(1) with respect to an undercapitalized regulated entity; or

“(II) section 1366(a)(1) with respect to a significantly undercapitalized regulated entity;

“(iii) fails to submit a capital restoration plan acceptable to the Agency within the time prescribed under section 1369C; or

“(iv) materially fails to implement a capital restoration plan submitted and accepted under section 1369C.

“(K) CRITICAL UNDERCAPITALIZATION.—The regulated entity is critically undercapitalized, as defined in section 1364(a)(4) or in regulations issued pursuant to section 1364(b), as applicable.

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

“(4) MANDATORY RECEIVERSHIP.—

“(A) IN GENERAL.—The Director shall appoint the Agency as receiver for a regulated entity if the Director determines, in writing, that—

“(i) the assets of the regulated entity are, and during the preceding 30 calendar days have been, less than the obligations of the regulated entity to its creditors and others; or

“(ii) the regulated entity is not, and during the preceding 30 calendar days has not been, generally paying the debts of the regulated entity (other than debts that are the subject of a bona fide dispute) as such debts become due.

“(B) PERIODIC DETERMINATION REQUIRED FOR CRITICALLY UNDER CAPITALIZED REGULATED ENTITY.—If a regulated entity is critically undercapitalized, the Director shall make a determination, in writing, as to whether the regulated entity meets the criteria specified in clause (i) or (ii) of subparagraph (A)—

“(i) not later than 30 calendar days after the regulated entity initially becomes critically undercapitalized; and

“(ii) at least once during each succeeding 30-calendar day period.

“(C) DETERMINATION NOT REQUIRED IF RECEIVERSHIP ALREADY IN PLACE.—Subparagraph (B) shall not apply with respect to a regulated entity in any period during which the Agency serves as receiver for the regulated entity.

“(D) RECEIVERSHIP TERMINATES CONSERVATORSHIP.—The appointment under this section of the Agency as receiver of a regulated entity shall immediately terminate any conservatorship established under this title for the regulated entity.

“(5) JUDICIAL REVIEW.—

“(A) IN GENERAL.—If the Agency is appointed conservator or receiver under this section, the regulated entity may, within 30 days of such appointment, bring an action in the United States District Court for the judicial district in which the principal place of business of such regulated entity is located, or in the United States District Court for the District of Columbia, for an order requiring the Agency to remove itself as conservator or receiver.

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

“(6) DIRECTORS NOT LIABLE FOR ACQUIESCING IN APPOINTMENT OF CONSERVATOR OR RECEIVER.—The members of the board of directors of a regulated entity shall not be liable to the shareholders or creditors of the regulated entity for acquiescing in or consenting in good faith to the appointment of the Agency as conservator or receiver for that regulated entity.

“(7) AGENCY NOT SUBJECT TO ANY OTHER FEDERAL AGENCY.—When acting as conservator or receiver, the Agency shall not be subject to the direction or supervision of any other agency of the United States or any State in the exercise of the rights, powers, and privileges of the Agency.

“(b) POWERS AND DUTIES OF THE AGENCY AS CONSERVATOR OR RECEIVER.—

“(1) RULEMAKING AUTHORITY OF THE AGENCY.—The Agency may prescribe such regulations as the Agency determines to be appropriate regarding the conduct of conservatorships or receiverships.

“(2) GENERAL POWERS.—

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

“(i) all rights, titles, powers, and privileges of the regulated entity, and of any stockholder, officer, or director of such regulated entity with respect to the regulated entity and the assets of the regulated entity; and

“(ii) title to the books, records, and assets of any other legal custodian of such regulated entity.

“(B) OPERATE THE REGULATED ENTITY.—The Agency may, as conservator or receiver—

“(i) take over the assets of and operate the regulated entity with all the powers of the shareholders, the directors, and the officers of the regulated entity and conduct all business of the regulated entity;

“(ii) collect all obligations and money due the regulated entity;

“(iii) perform all functions of the regulated entity in the name of the regulated entity which are consistent with the appointment as conservator or receiver; and

“(iv) preserve and conserve the assets and property of such regulated entity.

“(C) FUNCTIONS OF OFFICERS, DIRECTORS, AND SHAREHOLDERS OF A REGULATED ENTITY.—The Agency may, by regulation or order, provide for the exercise of any function by any stockholder, director, or officer of any regulated entity for which the Agency has been named conservator or receiver.

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

“(i) necessary to put the regulated entity in a sound and solvent condition; and

“(ii) appropriate to carry on the business of the regulated entity and preserve and conserve the assets and property of the regulated entity, including, if two or more Federal home loan banks have been placed in conservatorship contemporaneously, merging two or more such banks into a single Federal home loan bank.

“(E) ADDITIONAL POWERS AS RECEIVER.—The Agency may, as receiver, place the regulated entity in liquidation and proceed to realize upon the assets of the regulated entity, having due regard to the conditions of the housing finance market.

“(F) ORGANIZATION OF NEW REGULATED ENTITIES.—The Agency may, as receiver, organize a successor regulated entity that will operate pursuant to subsection (i).

“(G) TRANSFER OF ASSETS AND LIABILITIES.—The Agency may, as conservator or receiver, transfer any asset or liability of the regulated entity in default without any approval, assignment, or consent with respect to such transfer. Any Federal home loan bank may, with the approval of the Agency, acquire the assets of any Bank in conservatorship or receivership, and assume the liabilities of such Bank.

“(H) PAYMENT OF VALID OBLIGATIONS.—The Agency, as conservator or receiver, shall, to the extent of proceeds realized from the performance of contracts or sale of the assets of a regulated entity, pay all valid obligations of the regulated entity in accordance with the prescriptions and limitations of this section.

“(I) SUBPOENA AUTHORITY.—

“(i) IN GENERAL.—

“(I) IN GENERAL.—The Agency may, as conservator or receiver, and for purposes of carrying out any power, authority, or duty with respect to a regulated entity (including determining any claim against the regulated entity and determining and realizing upon any asset of any person in the course of collecting money due the regulated entity), exercise any power established under section 1348.

“(II) APPLICABILITY OF LAW.—The provisions of section 1348 shall apply with respect to the exercise of any power exercised under this subparagraph in the same manner as such provisions apply under that section.

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

“(iii) RULE OF CONSTRUCTION.—This subsection shall not be construed to limit any rights that the Agency, in any capacity, might otherwise have under section 1317 or 1379D.

“(J) CONTRACTING FOR SERVICES.—The Agency may, as conservator or receiver, provide by contract for the carrying out of any of its functions, activities, actions, or duties as conservator or receiver.

“(K) INCIDENTAL POWERS.—The Agency may, as conservator or receiver—

“(i) exercise all powers and authorities specifically granted to conservators or receivers, respectively, under this section, and such incidental powers as shall be necessary to carry out such powers; and

“(ii) take any action authorized by this section, which the Agency determines is in the best interests of the regulated entity or the Agency.

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

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

“(B) NOTICE REQUIREMENTS.—The receiver, in any case involving the liquidation or winding up of the affairs of a closed regulated entity, shall—

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

“(ii) republish such notice approximately 1 month and 2 months, respectively, after the publication under clause (i).

“(C) MAILING REQUIRED.—The receiver shall mail a notice similar to the notice published under subparagraph (B)(i) at the time of such publication to any creditor shown on the books of the regulated entity—

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

“(ii) upon discovery of the name and address of a claimant not appearing on the books of the regulated entity within 30 days after the discovery of such name and address.

“(4) RULEMAKING AUTHORITY RELATING TO DETERMINATION OF CLAIMS.—Subject to subsection (c), the Director may prescribe regulations regarding the allowance or disallowance of claims by the receiver and providing for administrative determination of claims and review of such determination.

“(5) PROCEDURES FOR DETERMINATION OF CLAIMS.—

“(A) DETERMINATION PERIOD.—

“(i) IN GENERAL.—Before the end of the 180-day period beginning on the date on which any claim against a regulated entity is filed with the Agency as receiver, the Agency shall determine whether to allow or disallow the claim and shall notify the claimant of any determination with respect to such claim.

“(ii) EXTENSION OF TIME.—The period described in clause (i) may be extended by a written agreement between the claimant and the Agency.

“(iii) MAILING OF NOTICE SUFFICIENT.—The notification requirements of clause (i) shall be deemed to be satisfied if the notice of any determination with respect to any claim is mailed to the last address of the claimant which appears—

“(I) on the books of the regulated entity;

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

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

“(iv) CONTENTS OF NOTICE OF DISALLOWANCE.—If any claim filed under clause (i) is disallowed, the notice to the claimant shall contain—

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

“(II) the procedures available for obtaining agency review of the determination to disallow the claim or judicial determination of the claim.

“(B) ALLOWANCE OF PROVEN CLAIM.—The receiver shall allow any claim received on or before the date specified in the notice published under paragraph (3)(B)(i), or the date specified in the notice required under paragraph (3)(C), which is proved to the satisfaction of the receiver.

“(C) DISALLOWANCE OF CLAIMS FILED AFTER END OF FILING PERIOD.—Claims filed after the date specified in the notice published under paragraph (3)(B)(i), or the date specified under paragraph (3)(C), shall be disallowed and such disallowance shall be final.

“(D) AUTHORITY TO DISALLOW CLAIMS.—

“(i) IN GENERAL.—The receiver may disallow any portion of any claim by a creditor or claim of security, preference, or priority which is not proved to the satisfaction of the receiver.

“(ii) PAYMENTS TO LESS THAN FULLY SECURED CREDITORS.—In the case of a claim of a creditor against a regulated entity which is secured by any property or other asset of such regulated entity, the receiver—

“(I) may treat the portion of such claim which exceeds an amount equal to the fair market value of such property or other asset as an unsecured claim against the regulated entity; and

“(II) may not make any payment with respect to such unsecured portion of the claim other than in connection with the disposition of all claims of unsecured creditors of the regulated entity.

“(iii) EXCEPTIONS.—No provision of this paragraph shall apply with respect to any extension of credit from any Federal Reserve Bank, Federal home loan bank, or the Treasury of the United States.

“(E) NO JUDICIAL REVIEW OF DETERMINATION PURSUANT TO SUBPARAGRAPH (D).—No court may review the determination of the Agency under subparagraph (D) to disallow a claim. This subparagraph shall not affect the au-

thority of a claimant to obtain de novo judicial review of a claim pursuant to paragraph (6).

“(F) LEGAL EFFECT OF FILING.—

“(i) STATUTE OF LIMITATION TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

“(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (10), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the date of the appointment of the receiver, subject to the determination of claims by the receiver.

“(6) PROVISION FOR JUDICIAL DETERMINATION OF CLAIMS.—

“(A) IN GENERAL.—The claimant may file suit on a claim (or continue an action commenced before the appointment of the receiver) in the district or territorial court of the United States for the district within which the principal place of business of the regulated entity is located or the United States District Court for the District of Columbia (and such court shall have jurisdiction to hear such claim), before the end of the 60-day period beginning on the earlier of—

“(i) the end of the period described in paragraph (5)(A)(i) with respect to any claim against a regulated entity for which the Agency is receiver; or

“(ii) the date of any notice of disallowance of such claim pursuant to paragraph (5)(A)(i).

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

“(7) REVIEW OF CLAIMS.—

“(A) OTHER REVIEW PROCEDURES.—

“(i) IN GENERAL.—The Agency shall establish such alternative dispute resolution processes as may be appropriate for the resolution of claims filed under paragraph (5)(A)(i).

“(ii) CRITERIA.—In establishing alternative dispute resolution processes, the Agency shall strive for procedures which are expeditious, fair, independent, and low cost.

“(iii) VOLUNTARY BINDING OR NONBINDING PROCEDURES.—The Agency may establish both binding and nonbinding processes, which may be conducted by any government or private party. All parties, including the claimant and the Agency, must agree to the use of the process in a particular case.

“(B) CONSIDERATION OF INCENTIVES.—The Agency shall seek to develop incentives for claimants to participate in the alternative dispute resolution process.

“(8) EXPEDITED DETERMINATION OF CLAIMS.—

“(A) ESTABLISHMENT REQUIRED.—The Agency shall establish a procedure for expedited relief outside of the routine claims process established under paragraph (5) for claimants who—

“(i) allege the existence of legally valid and enforceable or perfected security interests in assets of any regulated entity for which the Agency has been appointed receiver; and

“(ii) allege that irreparable injury will occur if the routine claims procedure is followed.

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

“(i) determine—

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

“(II) whether such claim should be determined pursuant to the procedures established under paragraph (5); and

“(ii) notify the claimant of the determination, and if the claim is disallowed, provide a statement of each reason for the disallowance and the procedure for obtaining agency review or judicial determination.

“(C) PERIOD FOR FILING OR RENEWING SUIT.—Any claimant who files a request for expedited relief shall be permitted to file a suit, or to continue a suit filed before the appointment of the receiver, seeking a determination

of the rights of the claimant with respect to such security interest after the earlier of—

“(i) the end of the 90-day period beginning on the date of the filing of a request for expedited relief; or

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

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

“(E) LEGAL EFFECT OF FILING.—

“(i) STATUTE OF LIMITATION TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

“(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (10), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action that was filed before the appointment of the receiver, subject to the determination of claims by the receiver.

“(9) PAYMENT OF CLAIMS.—

“(A) IN GENERAL.—The receiver may, in the discretion of the receiver, and to the extent funds are available from the assets of the regulated entity, pay creditor claims, in such manner and amounts as are authorized under this section, which are—

“(i) allowed by the receiver;

“(ii) approved by the Agency pursuant to a final determination pursuant to paragraph (7) or (8); or

“(iii) determined by the final judgment of any court of competent jurisdiction.

“(B) AGREEMENTS AGAINST THE INTEREST OF THE AGENCY.—No agreement that tends to diminish or defeat the interest of the Agency in any asset acquired by the Agency as receiver under this section shall be valid against the Agency unless such agreement is in writing, and executed by an authorized official of the regulated entity, except that such requirements for qualified financial contracts shall be applied in a manner consistent with reasonable business trading practices in the financial contracts market.

“(C) PAYMENT OF DIVIDENDS ON CLAIMS.—The receiver may, in the sole discretion of the receiver, pay from the assets of the regulated entity dividends on proved claims at any time, and no liability shall attach to the Agency, by reason of any such payment, for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment.

“(D) RULEMAKING AUTHORITY OF THE DIRECTOR.—The Director may prescribe such rules, including definitions of terms, as the Director deems appropriate to establish a single uniform interest rate for, or to make payments of post-insolvency interest to creditors holding proven claims against the receivership estates of regulated entities following satisfaction by the receiver of the principal amount of all creditor claims.

“(10) SUSPENSION OF LEGAL ACTIONS.—

“(A) IN GENERAL.—After the appointment of a conservator or receiver for a regulated entity, the conservator or receiver may, in any judicial action or proceeding to which such regulated entity is or becomes a party, request a stay for a period not to exceed—

“(i) 45 days, in the case of any conservator; and

“(ii) 90 days, in the case of any receiver.

“(B) GRANT OF STAY BY ALL COURTS REQUIRED.—Upon receipt of a request by any conservator or receiver under subparagraph (A) for a stay of any judicial action or proceeding in any court with jurisdiction of such action or proceeding, the court shall grant such stay as to all parties.

“(11) ADDITIONAL RIGHTS AND DUTIES.—

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

“(B) RIGHTS AND REMEDIES OF CONSERVATOR OR RECEIVER.—In the event of any appealable judgment, the Agency as conservator or receiver shall—

“(i) have all the rights and remedies available to the regulated entity (before the appointment of such conservator or receiver) and the Agency, including removal to Federal court and all appellate rights; and

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

“(C) NO ATTACHMENT OR EXECUTION.—No attachment or execution may issue by any court upon assets in the possession of the receiver.

“(D) LIMITATION ON JUDICIAL REVIEW.—Except as otherwise provided in this subsection, no court shall have jurisdiction over—

“(i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any regulated entity for which the Agency has been appointed receiver; or

“(ii) any claim relating to any act or omission of such regulated entity or the Agency as receiver.

“(E) DISPOSITION OF ASSETS.—In exercising any right, power, privilege, or authority as conservator or receiver in connection with any sale or disposition of assets of a regulated entity for which the Agency has been appointed conservator or receiver, the Agency shall conduct its operations in a manner which maintains stability in the housing finance markets and, to the extent consistent with that goal—

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

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

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

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

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

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

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

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

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

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

“(II) the period applicable under State law.

“(B) DETERMINATION OF THE DATE ON WHICH A CLAIM ACCRUES.—For purposes of subparagraph (A), the date on which the statute of limitations begins to run on any claim described in such subparagraph shall be the later of—

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

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

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

“(A) IN GENERAL.—In the case of any tort claim described under subparagraph (B) for which the statute of limitations applicable under State law with respect to such claim has expired not more than 5 years before the appointment of the Agency as conservator or receiver, the Agency may bring an action as conservator or receiver on such claim without regard to the expiration of the statute of limitation applicable under State law.

“(B) CLAIMS DESCRIBED.—A tort claim referred to under subparagraph (A) is a claim arising from fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the regulated entity.

“(14) ACCOUNTING AND RECORDKEEPING REQUIREMENTS.—

“(A) IN GENERAL.—The Agency as conservator or receiver shall, consistent with the accounting and reporting practices and procedures established by the Agency, maintain a full accounting of each conservatorship and receivership or other disposition of a regulated entity in default.

“(B) ANNUAL ACCOUNTING OR REPORT.—With respect to each conservatorship or receivership, the Agency shall make an annual accounting or report available to the Board, the Comptroller General of the United States, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives.

“(C) AVAILABILITY OF REPORTS.—Any report prepared under subparagraph (B) shall be made available by the Agency upon request to any shareholder of a regulated entity or any member of the public.

“(D) RECORDKEEPING REQUIREMENT.—After the end of the 6-year period beginning on the date that the conservatorship or receivership is terminated by the Director, the Agency may destroy any records of such regulated entity which the Agency, in the discretion of the Agency, determines to be unnecessary unless directed not to do so by a court of competent jurisdiction or governmental agency, or prohibited by law.

“(15) FRAUDULENT TRANSFERS.—

“(A) IN GENERAL.—The Agency, as conservator or receiver, may avoid a transfer of any interest of a regulated entity-affiliated party, or any person who the conservator or receiver determines is a debtor of the regulated entity, in property, or any obligation incurred by such party or person, that was made within 5 years of the date on which the Agency was appointed conservator or receiver, if such party or person voluntarily or involuntarily made such transfer or incurred such liability with the intent to hinder, delay, or defraud the regulated entity, the Agency, the conservator, or receiver.

“(B) RIGHT OF RECOVERY.—To the extent a transfer is avoided under subparagraph (A), the conservator or receiver may recover, for the benefit of the regulated entity, the property transferred, or, if a court so orders, the value of such property (at the time of such transfer) from—

- “(i) the initial transferee of such transfer or the regulated entity-affiliated party or person for whose benefit such transfer was made; or
- “(ii) any immediate or mediate transferee of any such initial transferee.

“(C) RIGHTS OF TRANSFEREE OR OBLIGEE.—The conservator or receiver may not recover under subparagraph (B) from—

- “(i) any transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith; or
- “(ii) any immediate or mediate good faith transferee of such transferee.

“(D) RIGHTS UNDER THIS PARAGRAPH.—The rights under this paragraph of the conservator or receiver described under subparagraph (A) shall be superior to any rights of a trustee or any other party (other than any party which is a Federal agency) under title 11, United States Code.

“(16) ATTACHMENT OF ASSETS AND OTHER INJUNCTIVE RELIEF.—Subject to paragraph (17), any court of competent jurisdiction may, at the request of the conservator or receiver, issue an order in accordance with Rule 65 of the Federal Rules of Civil Procedure, including an order placing the assets of any person designated by the Agency or such conservator under the control of the court, and appointing a trustee to hold such assets.

“(17) STANDARDS OF PROOF.—Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under paragraph (16) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

“(18) TREATMENT OF CLAIMS ARISING FROM BREACH OF CONTRACTS EXECUTED BY THE RECEIVER OR CONSERVATOR.—

“(A) IN GENERAL.—Notwithstanding any other provision of this subsection, any final and unappealable judgment for monetary damages entered against a receiver or conservator for the breach of an agreement executed or approved in writing by such receiver or conservator after the date of its appointment, shall be paid as an administrative expense of the receiver or conservator.

“(B) NO LIMITATION OF POWER.—Nothing in this paragraph shall be construed to limit the power of a receiver or conservator to exercise any rights under contract or law, including to terminate, breach, cancel, or otherwise discontinue such agreement.

“(19) GENERAL EXCEPTIONS.—

“(A) LIMITATIONS.—The rights of a conservator or receiver appointed under this section shall be subject to the limitations on the powers of a receiver under sections 402 through 407 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4402 through 4407).

“(B) MORTGAGES HELD IN TRUST.—

“(i) IN GENERAL.—Any mortgage, pool of mortgages, or interest in a pool of mortgages, held in trust, custodial, or agency capacity by a regulated entity for the benefit of persons other than the regulated entity shall not be available to satisfy the claims of creditors generally.

“(ii) HOLDING OF MORTGAGES.—Any mortgage, pool of mortgages, or interest in a pool of mortgages, described under clause (i) shall be held by the conservator or receiver appointed under this section for the beneficial owners of such mortgage, pool of mortgages, or interest in a pool

of mortgages in accordance with the terms of the agreement creating such trust, custodial, or other agency arrangement.

“(iii) LIABILITY OF RECEIVER.—The liability of a receiver appointed under this section for damages shall, in the case of any contingent or unliquidated claim relating to the mortgages held in trust, be estimated in accordance set forth in the regulations of the Director.

“(c) PRIORITY OF EXPENSES AND UNSECURED CLAIMS.—

“(1) IN GENERAL.—Unsecured claims against a regulated entity, or a receiver, that are proven to the satisfaction of the receiver shall have priority in the following order:

“(A) Administrative expenses of the receiver.

“(B) Any other general or senior liability of the regulated entity and claims of other Federal home loan banks arising from their payment obligations (including joint and several payment obligations).

“(C) Any obligation subordinated to general creditors.

“(D) Any obligation to shareholders or members arising as a result of their status as shareholder or members.

“(2) CREDITORS SIMILARLY SITUATED.—All creditors that are similarly situated under paragraph (1) shall be treated in a similar manner, except that the Agency may make such other payments to creditors necessary to maximize the present value return from the sale or disposition or such regulated entity’s assets or to minimize the amount of any loss realized in the resolution of cases so long as all creditors similarly situated receive not less than the amount provided under subsection (e)(2).

“(3) DEFINITION.—The term ‘administrative expenses of the receiver’ shall include the actual, necessary costs and expenses incurred by the receiver in preserving the assets of the regulated entity or liquidating or otherwise resolving the affairs of the regulated entity. Such expenses shall include obligations that are incurred by the receiver after appointment as receiver that the Director determines are necessary and appropriate to facilitate the smooth and orderly liquidation or other resolution of the regulated entity.

“(d) PROVISIONS RELATING TO CONTRACTS ENTERED INTO BEFORE APPOINTMENT OF CONSERVATOR OR RECEIVER.—

“(1) AUTHORITY TO REPUDIATE CONTRACTS.—In addition to any other rights a conservator or receiver may have, the conservator or receiver for any regulated entity may disaffirm or repudiate any contract or lease—

“(A) to which such regulated entity is a party;

“(B) the performance of which the conservator or receiver, in its sole discretion, determines to be burdensome; and

“(C) the disaffirmance or repudiation of which the conservator or receiver determines, in its sole discretion, will promote the orderly administration of the affairs of the regulated entity.

“(2) TIMING OF REPUDIATION.—The conservator or receiver shall determine whether or not to exercise the rights of repudiation under this subsection within a reasonable period following such appointment.

“(3) CLAIMS FOR DAMAGES FOR REPUDIATION.—

“(A) IN GENERAL.—Except as otherwise provided under subparagraph (C) and paragraphs (4), (5), and (6), the liability of the conservator or receiver for the disaffirmance or repudiation of any contract pursuant to paragraph

(1) shall be—

“(i) limited to actual direct compensatory damages; and

“(ii) determined as of—

“(I) the date of the appointment of the conservator or receiver;

or

“(II) in the case of any contract or agreement referred to in paragraph (8), the date of the disaffirmance or repudiation of such contract or agreement.

“(B) NO LIABILITY FOR OTHER DAMAGES.—For purposes of subparagraph (A), the term ‘actual direct compensatory damages’ shall not include—

“(i) punitive or exemplary damages;

“(ii) damages for lost profits or opportunity; or

“(iii) damages for pain and suffering.

“(C) MEASURE OF DAMAGES FOR REPUDIATION OF FINANCIAL CONTRACTS.—In the case of any qualified financial contract or agreement to which paragraph (8) applies, compensatory damages shall be—

“(i) deemed to include normal and reasonable costs of cover or other reasonable measures of damages utilized in the industries for such contract and agreement claims; and

- “(ii) paid in accordance with this subsection and subsection (e), except as otherwise specifically provided in this section.
- “(4) LEASES UNDER WHICH THE REGULATED ENTITY IS THE LESSEE.—
- “(A) IN GENERAL.—If the conservator or receiver disaffirms or repudiates a lease under which the regulated entity was the lessee, the conservator or receiver shall not be liable for any damages (other than damages determined under subparagraph (B)) for the disaffirmance or repudiation of such lease.
- “(B) PAYMENTS OF RENT.—Notwithstanding subparagraph (A), the lessor under a lease to which that subparagraph applies shall—
- “(i) be entitled to the contractual rent accruing before the later of the date—
- “(I) the notice of disaffirmance or repudiation is mailed; or
- “(II) the disaffirmance or repudiation becomes effective, unless the lessor is in default or breach of the terms of the lease;
- “(ii) have no claim for damages under any acceleration clause or other penalty provision in the lease; and
- “(iii) have a claim for any unpaid rent, subject to all appropriate offsets and defenses, due as of the date of the appointment, which shall be paid in accordance with this subsection and subsection (e).
- “(5) LEASES UNDER WHICH THE REGULATED ENTITY IS THE LESSOR.—
- “(A) IN GENERAL.—If the conservator or receiver repudiates an unexpired written lease of real property of the regulated entity under which the regulated entity is the lessor and the lessee is not, as of the date of such repudiation, in default, the lessee under such lease may either—
- “(i) treat the lease as terminated by such repudiation; or
- “(ii) remain in possession of the leasehold interest for the balance of the term of the lease, unless the lessee defaults under the terms of the lease after the date of such repudiation.
- “(B) PROVISIONS APPLICABLE TO LESSEE REMAINING IN POSSESSION.—If any lessee under a lease described under subparagraph (A) remains in possession of a leasehold interest under clause (ii) of such subparagraph—
- “(i) the lessee—
- “(I) shall continue to pay the contractual rent pursuant to the terms of the lease after the date of the repudiation of such lease; and
- “(II) may offset against any rent payment which accrues after the date of the repudiation of the lease, and any damages which accrue after such date due to the nonperformance of any obligation of the regulated entity under the lease after such date; and
- “(ii) the conservator or receiver shall not be liable to the lessee for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II).
- “(6) CONTRACTS FOR THE SALE OF REAL PROPERTY.—
- “(A) IN GENERAL.—If the conservator or receiver repudiates any contract for the sale of real property and the purchaser of such real property under such contract is in possession, and is not, as of the date of such repudiation, in default, such purchaser may either—
- “(i) treat the contract as terminated by such repudiation; or
- “(ii) remain in possession of such real property.
- “(B) PROVISIONS APPLICABLE TO PURCHASER REMAINING IN POSSESSION.—If any purchaser of real property under any contract described under subparagraph (A) remains in possession of such property under clause (ii) of such subparagraph—
- “(i) the purchaser—
- “(I) shall continue to make all payments due under the contract after the date of the repudiation of the contract; and
- “(II) may offset against any such payments any damages which accrue after such date due to the nonperformance (after such date) of any obligation of the regulated entity under the contract; and
- “(ii) the conservator or receiver shall—
- “(I) not be liable to the purchaser for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II);
- “(II) deliver title to the purchaser in accordance with the provisions of the contract; and
- “(III) have no obligation under the contract other than the performance required under subclause (II).
- “(C) ASSIGNMENT AND SALE ALLOWED.—

“(i) IN GENERAL.—No provision of this paragraph shall be construed as limiting the right of the conservator or receiver to assign the contract described under subparagraph (A), and sell the property subject to the contract and the provisions of this paragraph.

“(ii) NO LIABILITY AFTER ASSIGNMENT AND SALE.—If an assignment and sale described under clause (i) is consummated, the conservator or receiver shall have no further liability under the contract described under subparagraph (A), or with respect to the real property which was the subject of such contract.

“(7) PROVISIONS APPLICABLE TO SERVICE CONTRACTS.—

“(A) SERVICES PERFORMED BEFORE APPOINTMENT.—In the case of any contract for services between any person and any regulated entity for which the Agency has been appointed conservator or receiver, any claim of such person for services performed before the appointment of the conservator or the receiver shall be—

“(i) a claim to be paid in accordance with subsections (b) and (e); and

“(ii) deemed to have arisen as of the date the conservator or receiver was appointed.

“(B) SERVICES PERFORMED AFTER APPOINTMENT AND PRIOR TO REPUDIATION.—If, in the case of any contract for services described under subparagraph (A), the conservator or receiver accepts performance by the other person before the conservator or receiver makes any determination to exercise the right of repudiation of such contract under this section—

“(i) the other party shall be paid under the terms of the contract for the services performed; and

“(ii) the amount of such payment shall be treated as an administrative expense of the conservatorship or receivership.

“(C) ACCEPTANCE OF PERFORMANCE NO BAR TO SUBSEQUENT REPUDIATION.—The acceptance by any conservator or receiver of services referred to under subparagraph (B) in connection with a contract described in such subparagraph shall not affect the right of the conservator or receiver to repudiate such contract under this section at any time after such performance.

“(8) CERTAIN QUALIFIED FINANCIAL CONTRACTS.—

“(A) RIGHTS OF PARTIES TO CONTRACTS.—Subject to paragraphs (9) and (10) and notwithstanding any other provision of this Act, any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

“(i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a regulated entity that arises upon the appointment of the Agency as receiver for such regulated entity at any time after such appointment;

“(ii) any right under any security agreement or arrangement or other credit enhancement relating to one or more qualified financial contracts described in clause (i); or

“(iii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more contracts and agreements described in clause (i), including any master agreement for such contracts or agreements.

“(B) APPLICABILITY OF OTHER PROVISIONS.—Paragraph (10) of subsection (b) shall apply in the case of any judicial action or proceeding brought against any receiver referred to under subparagraph (A), or the regulated entity for which such receiver was appointed, by any party to a contract or agreement described under subparagraph (A)(i) with such regulated entity.

“(C) CERTAIN TRANSFERS NOT AVOIDABLE.—

“(i) IN GENERAL.—Notwithstanding paragraph (11) or any other Federal or State laws relating to the avoidance of preferential or fraudulent transfers, the Agency, whether acting as such or as conservator or receiver of a regulated entity, may not avoid any transfer of money or other property in connection with any qualified financial contract with a regulated entity.

“(ii) EXCEPTION FOR CERTAIN TRANSFERS.—Clause (i) shall not apply to any transfer of money or other property in connection with any qualified financial contract with a regulated entity if the Agency determines that the transferee had actual intent to hinder, delay, or defraud such regulated entity, the creditors of such regulated entity, or any conservator or receiver appointed for such regulated entity.

“(D) CERTAIN CONTRACTS AND AGREEMENTS DEFINED.—In this subsection:

“(i) QUALIFIED FINANCIAL CONTRACT.—The term ‘qualified financial contract’ means any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the Agency determines by regulation, resolution, or order to be a qualified financial contract for purposes of this paragraph.

“(ii) SECURITIES CONTRACT.—The term ‘securities contract’—

“(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, or any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

“(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Agency determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

“(III) means any option entered into on a national securities exchange relating to foreign currencies;

“(IV) means the guarantee by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

“(V) means any margin loan;

“(VI) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

“(VII) means any combination of the agreements or transactions referred to in this clause;

“(VIII) means any option to enter into any agreement or transaction referred to in this clause;

“(IX) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII); and

“(X) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

“(iii) COMMODITY CONTRACT.—The term ‘commodity contract’ means—

“(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

“(II) with respect to a foreign futures commission merchant, a foreign future;

“(III) with respect to a leverage transaction merchant, a leverage transaction;

“(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

“(V) with respect to a commodity options dealer, a commodity option;

“(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

“(VII) any combination of the agreements or transactions referred to in this clause;

“(VIII) any option to enter into any agreement or transaction referred to in this clause;

“(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

“(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

“(iv) FORWARD CONTRACT.—The term ‘forward contract’ means—

“(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including, a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

“(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

“(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

“(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

“(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

“(v) REPURCHASE AGREEMENT.—The term ‘repurchase agreement’ (which definition also applies to a reverse repurchase agreement)—

“(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers’ acceptances, qualified foreign government securities or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers’ acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers’ acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

“(II) does not include any repurchase obligation under a participation in a commercial mortgage loan unless the Agency deter-

mines by regulation, resolution, or order to include any such participation within the meaning of such term;

“(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

“(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

“(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

“(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

For purposes of this clause, the term ‘qualified foreign government security’ means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development (as determined by regulation or order adopted by the appropriate Federal banking authority).

“(vi) SWAP AGREEMENT.—The term ‘swap agreement’ means—

“(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; or a weather swap, weather derivative, or weather option;

“(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

“(III) any combination of agreements or transactions referred to in this clause;

“(IV) any option to enter into any agreement or transaction referred to in this clause;

“(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

“(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subclause (I), (II), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

Such term is applicable for purposes of this subsection only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000.

“(vii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.

“(viii) TRANSFER.—The term ‘transfer’ means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the regulated entity’s equity of redemption.

“(E) CERTAIN PROTECTIONS IN EVENT OF APPOINTMENT OF CONSERVATOR.—Notwithstanding any other provision of this Act (other than paragraph (13) of this subsection), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

“(i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a regulated entity in a conservatorship based upon a default under such financial contract which is enforceable under applicable noninsolvency law;

“(ii) any right under any security agreement or arrangement or other credit enhancement relating to one or more such qualified financial contracts; or

“(iii) any right to offset or net out any termination values, payment amounts, or other transfer obligations arising under or in connection with such qualified financial contracts.

“(F) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Agency, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Agency to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this subsection or to disaffirm or repudiate any such contract in accordance with subsection (d)(1) of this section.

“(G) WALKAWAY CLAUSES NOT EFFECTIVE.—

“(i) IN GENERAL.—Notwithstanding the provisions of subparagraphs (A) and (E), and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of a regulated entity in default.

“(ii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term ‘walkaway clause’ means a provision in a qualified financial contract that, after calculation of a value of a party’s position or an amount due to or from 1 of the parties in accordance with its terms upon termination, liquidation, or acceleration of the qualified financial contract, either does not create a payment obligation of a party or extinguishes a payment obligation of a party in whole or in part solely because of such party’s status as a nondefaulting party.

“(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—In making any transfer of assets or liabilities of a regulated entity in default which includes any qualified financial contract, the conservator or receiver for such regulated entity shall either—

“(A) transfer to 1 person—

“(i) all qualified financial contracts between any person (or any affiliate of such person) and the regulated entity in default;

“(ii) all claims of such person (or any affiliate of such person) against such regulated entity under any such contract (other than any claim

which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such regulated entity);

“(iii) all claims of such regulated entity against such person (or any affiliate of such person) under any such contract; and

“(iv) all property securing or any other credit enhancement for any contract described in clause (i) or any claim described in clause (ii) or (iii) under any such contract; or

“(B) transfer none of the financial contracts, claims, or property referred to under subparagraph (A) (with respect to such person and any affiliate of such person).

“(10) NOTIFICATION OF TRANSFER.—

“(A) IN GENERAL.—If—

“(i) the conservator or receiver for a regulated entity in default makes any transfer of the assets and liabilities of such regulated entity, and

“(ii) the transfer includes any qualified financial contract,

the conservator or receiver shall notify any person who is a party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver in the case of a receivership, or the business day following such transfer in the case of a conservatorship.

“(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

“(i) RECEIVERSHIP.—A person who is a party to a qualified financial contract with a regulated entity may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a receiver for the regulated entity (or the insolvency or financial condition of the regulated entity for which the receiver has been appointed)—

“(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver; or

“(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

“(ii) CONSERVATORSHIP.—A person who is a party to a qualified financial contract with a regulated entity may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(E) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a conservator for the regulated entity (or the insolvency or financial condition of the regulated entity for which the conservator has been appointed).

“(iii) NOTICE.—For purposes of this paragraph, the Agency as receiver or conservator of a regulated entity shall be deemed to have notified a person who is a party to a qualified financial contract with such regulated entity if the Agency has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

“(C) BUSINESS DAY DEFINED.—For purposes of this paragraph, the term ‘business day’ means any day other than any Saturday, Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

“(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of a conservator or receiver with respect to any qualified financial contract to which a regulated entity is a party, the conservator or receiver for such institution shall either—

“(A) disaffirm or repudiate all qualified financial contracts between—

“(i) any person or any affiliate of such person; and

“(ii) the regulated entity in default; or

“(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).

“(12) CERTAIN SECURITY INTERESTS NOT AVOIDABLE.—No provision of this subsection shall be construed as permitting the avoidance of any legally enforceable or perfected security interest in any of the assets of any regulated entity, except where such an interest is taken in contemplation of the insolvency of the regulated entity, or with the intent to hinder, delay, or defraud the regulated entity or the creditors of such regulated entity.

“(13) AUTHORITY TO ENFORCE CONTRACTS.—

“(A) IN GENERAL.—Notwithstanding any provision of a contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency or the appointment of a conservator or receiver, the

conservator or receiver may enforce any contract or regulated entity bond entered into by the regulated entity.

“(B) CERTAIN RIGHTS NOT AFFECTED.—No provision of this paragraph may be construed as impairing or affecting any right of the conservator or receiver to enforce or recover under a director’s or officer’s liability insurance contract or surety bond under other applicable law.

“(C) CONSENT REQUIREMENT.—

“(i) IN GENERAL.—Except as otherwise provided under this section, no person may exercise any right or power to terminate, accelerate, or declare a default under any contract to which a regulated entity is a party, or to obtain possession of or exercise control over any property of the regulated entity, or affect any contractual rights of the regulated entity, without the consent of the conservator or receiver, as appropriate, for a period of—

“(I) 45 days after the date of appointment of a conservator; or

“(II) 90 days after the date of appointment of a receiver.

“(ii) EXCEPTIONS.—This paragraph shall—

“(I) not apply to a director’s or officer’s liability insurance contract;

“(II) not apply to the rights of parties to any qualified financial contracts under subsection (d)(8); and

“(III) not be construed as permitting the conservator or receiver to fail to comply with otherwise enforceable provisions of such contracts.

“(14) SAVINGS CLAUSE.—The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.

“(15) EXCEPTION FOR FEDERAL RESERVE AND FEDERAL HOME LOAN BANKS.—No provision of this subsection shall apply with respect to—

“(A) any extension of credit from any Federal home loan bank or Federal Reserve Bank to any regulated entity; or

“(B) any security interest in the assets of the regulated entity securing any such extension of credit.

“(e) VALUATION OF CLAIMS IN DEFAULT.—

“(1) IN GENERAL.—Notwithstanding any other provision of Federal law or the law of any State, and regardless of the method which the Agency determines to utilize with respect to a regulated entity in default or in danger of default, including transactions authorized under subsection (i), this subsection shall govern the rights of the creditors of such regulated entity.

“(2) MAXIMUM LIABILITY.—The maximum liability of the Agency, acting as receiver or in any other capacity, to any person having a claim against the receiver or the regulated entity for which such receiver is appointed shall equal the lesser of—

“(A) the amount such claimant would have received if the Agency had liquidated the assets and liabilities of such regulated entity without exercising the authority of the Agency under subsection (i) of this section; or

“(B) the amount of proceeds realized from the performance of contracts or sale of the assets of the regulated entity.

“(f) LIMITATION ON COURT ACTION.—Except as provided in this section or at the request of the Director, no court may take any action to restrain or affect the exercise of powers or functions of the Agency as a conservator or a receiver.

“(g) LIABILITY OF DIRECTORS AND OFFICERS.—

“(1) IN GENERAL.—A director or officer of a regulated entity may be held personally liable for monetary damages in any civil action by, on behalf of, or at the request or direction of the Agency, which action is prosecuted wholly or partially for the benefit of the Agency—

“(A) acting as conservator or receiver of such regulated entity, or

“(B) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by such receiver or conservator, for gross negligence, including any similar conduct or conduct that demonstrates a greater disregard of a duty of care (than gross negligence) including intentional tortious conduct, as such terms are defined and determined under applicable State law.

“(2) NO LIMITATION.—Nothing in this paragraph shall impair or affect any right of the Agency under other applicable law.

“(h) DAMAGES.—In any proceeding related to any claim against a director, officer, employee, agent, attorney, accountant, appraiser, or any other party employed by or providing services to a regulated entity, recoverable damages determined to result from the improvident or otherwise improper use or investment of any assets of the regulated entity shall include principal losses and appropriate interest.

“(i) LIMITED-LIFE REGULATED ENTITIES.—

“(1) ORGANIZATION.—

“(A) PURPOSE.—If a regulated entity is in default, or if the Agency anticipates that a regulated entity will default, the Agency may organize a limited-life regulated entity with those powers and attributes of the regulated entity in default or in danger of default that the Director determines necessary, subject to the provisions of this subsection. The Director shall grant a temporary charter to the limited-life regulated entity, and the limited-life regulated entity shall operate subject to that charter.

“(B) AUTHORITIES.—Upon the creation of a limited-life regulated entity under subparagraph (A), the limited-life regulated entity may—

“(i) assume such liabilities of the regulated entity that is in default or in danger of default as the Agency may, in its discretion, determine to be appropriate, provided that the liabilities assumed shall not exceed the amount of assets of the limited-life regulated entity;

“(ii) purchase such assets of the regulated entity that is in default, or in danger of default, as the Agency may, in its discretion, determine to be appropriate; and

“(iii) perform any other temporary function which the Agency may, in its discretion, prescribe in accordance with this section.

“(2) CHARTER.—

“(A) CONDITIONS.—The Agency may grant a temporary charter if the Agency determines that the continued operation of the regulated entity in default or in danger of default is in the best interest of the national economy and the housing markets.

“(B) TREATMENT AS BEING IN DEFAULT FOR CERTAIN PURPOSES.—A limited-life regulated entity shall be treated as a regulated entity in default at such times and for such purposes as the Agency may, in its discretion, determine.

“(C) MANAGEMENT.—A limited-life regulated entity, upon the granting of its charter, shall be under the management of a board of directors consisting of not fewer than 5 nor more than 10 members appointed by the Agency.

“(D) BYLAWS.—The board of directors of a limited-life regulated entity shall adopt such bylaws as may be approved by the Agency.

“(3) CAPITAL STOCK.—No capital stock need be paid into a limited-life regulated entity by the Agency.

“(4) INVESTMENTS.—Funds of a limited-life regulated entity shall be kept on hand in cash, invested in obligations of the United States or obligations guaranteed as to principal and interest by the United States, or deposited with the Agency, or any Federal Reserve bank.

“(5) EXEMPT STATUS.—Notwithstanding any other provision of Federal or State law, the limited-life regulated entity, its franchise, property, and income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority.

“(6) WINDING UP.—

“(A) IN GENERAL.—Subject to subparagraph (B), unless Congress authorizes the sale of the capital stock of the limited-life regulated entity, not later than 2 years after the date of its organization, the Agency shall wind up the affairs of the limited-life regulated entity.

“(B) EXTENSION.—The Director may, in the discretion of the Director, extend the status of the limited-life regulated entity for 3 additional 1-year periods.

“(7) TRANSFER OF ASSETS AND LIABILITIES.—

“(A) IN GENERAL.—

“(i) TRANSFER OF ASSETS AND LIABILITIES.—The Agency, as receiver, may transfer any assets and liabilities of a regulated entity in default, or in danger of default, to the limited-life regulated entity in accordance with paragraph (1).

“(ii) SUBSEQUENT TRANSFERS.—At any time after a charter is transferred to a limited-life regulated entity, the Agency, as receiver, may transfer any assets and liabilities of such regulated entity in default,

or in danger in default, as the Agency may, in its discretion, determine to be appropriate in accordance with paragraph (1).

“(iii) EFFECTIVE WITHOUT APPROVAL.—The transfer of any assets or liabilities of a regulated entity in default, or in danger of default, transferred to a limited-life regulated entity shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

“(8) PROCEEDS.—To the extent that available proceeds from the limited-life regulated entity exceed amounts required to pay obligations, such proceeds may be paid to the regulated entity in default, or in danger of default.

“(9) POWERS.—

“(A) IN GENERAL.—Each limited-life regulated entity created under this subsection shall have all corporate powers of, and be subject to the same provisions of law as, the regulated entity in default or in danger of default to which it relates, except that—

“(i) the Agency may—

“(I) remove the directors of a limited-life regulated entity; and

“(II) fix the compensation of members of the board of directors and senior management, as determined by the Agency in its discretion, of a limited-life regulated entity;

“(ii) the Agency may indemnify the representatives for purposes of paragraph (1)(B), and the directors, officers, employees, and agents of a limited-life regulated entity on such terms as the Agency determines to be appropriate; and

“(iii) the board of directors of a limited-life regulated entity—

“(I) shall elect a chairperson who may also serve in the position of chief executive officer, except that such person shall not serve either as chairperson or as chief executive officer without the prior approval of the Agency; and

“(II) may appoint a chief executive officer who is not also the chairperson, except that such person shall not serve as chief executive officer without the prior approval of the Agency.

“(B) STAY OF JUDICIAL ACTION.—Any judicial action to which a limited-life regulated entity becomes a party by virtue of its acquisition of any assets or assumption of any liabilities of a regulated entity in default shall be stayed from further proceedings for a period of up to 45 days at the request of the limited-life regulated entity. Such period may be modified upon the consent of all parties.

“(10) OBTAINING OF CREDIT AND INCURRING OF DEBT.—

“(A) IN GENERAL.—The limited-life regulated entity may obtain unsecured credit and incur unsecured debt in the ordinary course of business.

“(B) INABILITY TO OBTAIN CREDIT.—If the limited-life regulated entity is unable to obtain unsecured credit the Director may authorize the obtaining of credit or the incurring of debt—

“(i) with priority over any or all administrative expenses;

“(ii) secured by a lien on property that is not otherwise subject to a lien; or

“(iii) secured by a junior lien on property that is subject to a lien.

“(C) LIMITATIONS.—

“(i) IN GENERAL.—The Director, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property that is subject to a lien (other than mortgages that collateralize the mortgage-backed securities issued or guaranteed by the regulated entity) only if—

“(I) the limited-life regulated entity is unable to obtain such credit otherwise; and

“(II) there is adequate protection of the interest of the holder of the lien on the property which such senior or equal lien is proposed to be granted.

“(ii) BURDEN OF PROOF.—In any hearing under this subsection, the Director has the burden of proof on the issue of adequate protection.

“(D) EFFECT ON DEBTS AND LIENS.—The reversal or modification on appeal of an authorization under this paragraph to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

“(11) ISSUANCE OF PREFERRED DEBT.—A limited-life regulated entity may, subject to the approval of the Director and subject to such terms and conditions as the Director may prescribe, issue notes, bonds, or other debt obligations of a class to which all other debt obligations of the limited-life regulated entity shall be subordinate in right and payment.

“(12) NO FEDERAL STATUS.—

“(A) AGENCY STATUS.—A limited-life regulated entity is not an agency, establishment, or instrumentality of the United States.

“(B) EMPLOYEE STATUS.—Representatives for purposes of paragraph (1)(B), interim directors, directors, officers, employees, or agents of a limited-life regulated entity are not, solely by virtue of service in any such capacity, officers or employees of the United States. Any employee of the Agency or of any Federal instrumentality who serves at the request of the Agency as a representative for purposes of paragraph (1)(B), interim director, director, officer, employee, or agent of a limited-life regulated entity shall not—

“(i) solely by virtue of service in any such capacity lose any existing status as an officer or employee of the United States for purposes of title 5, United States Code, or any other provision of law; or

“(ii) receive any salary or benefits for service in any such capacity with respect to a limited-life regulated entity in addition to such salary or benefits as are obtained through employment with the Agency or such Federal instrumentality.

“(13) ADDITIONAL POWERS.—In addition to any other powers granted under this subsection, a limited-life regulated entity may—

“(A) extend a maturity date or change in an interest rate or other term of outstanding securities;

“(B) issue securities of the limited-life regulated entity, for cash, for property, for existing securities, or in exchange for claims or interests, or for any other appropriate purposes; and

“(C) take any other action not inconsistent with this section.

“(j) OTHER EXEMPTIONS.—When acting as a receiver, the following provisions shall apply with respect to the Agency:

“(1) EXEMPTION FROM TAXATION.—The Agency, including its franchise, its capital, reserves, and surplus, and its income, shall be exempt from all taxation imposed by any State, country, municipality, or local taxing authority, except that any real property of the Agency shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed, except that, notwithstanding the failure of any person to challenge an assessment under State law of the value of such property, and the tax thereon, shall be determined as of the period for which such tax is imposed.

“(2) EXEMPTION FROM ATTACHMENT AND LIENS.—No property of the Agency shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Agency, nor shall any involuntary lien attach to the property of the Agency.

“(3) EXEMPTION FROM PENALTIES AND FINES.—The Agency shall not be liable for any amounts in the nature of penalties or fines, including those arising from the failure of any person to pay any real property, personal property, probate, or recording tax or any recording or filing fees when due.

“(k) PROHIBITION OF CHARTER REVOCATION.—In no case may a receiver appointed pursuant to this section revoke, annul, or terminate the charter of a regulated entity.”

(b) CONFORMING AMENDMENTS.—

(1) HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1992.—Subtitle B of title XIII of the Housing and Community Development Act of 1992 is amended by striking sections 1369 (12 U.S.C. 4619), 1369A (12 U.S.C. 4620), and 1369B (12 U.S.C. 4621).

(2) FEDERAL HOME LOAN BANKS.—Section 25 of the Federal Home Loan Bank Act (12 U.S.C. 1445) is amended to read as follows:

“SEC. 25. SUCCESSION OF FEDERAL HOME LOAN BANKS.

“Each Federal Home Loan Bank shall have succession until it is voluntarily merged with another Bank under this Act, or until it is merged, reorganized, rehabilitated, liquidated, or otherwise wound up by the Director in accordance with the provisions of section 1367 of the Housing and Community Development Act of 1992, or by further Act of Congress.”

SEC. 155. CONFORMING AMENDMENTS.

Title XIII of the Housing and Community Development Act of 1992, as amended by the preceding provisions of this Act, is further amended—

(1) in sections 1365 (12 U.S.C. 4615) through 1369D (12 U.S.C. 4623), but not including section 1367 (12 U.S.C. 4617) as amended by section 154 of this Act—

(A) by striking “An enterprise” each place such term appears and inserting “A regulated entity”;

(B) by striking “an enterprise” each place such term appears and inserting “a regulated entity”; and

(C) by striking “the enterprise” each place such term appears and inserting “the regulated entity”;

(2) in section 1366 (12 U.S.C. 4616)—

(A) in subsection (b)(7), by striking “section 1369 (excluding subsection (a)(1) and (2))” and inserting “section 1367”; and

(B) in subsection (d), by striking “the enterprises” and inserting “the regulated entities”;

(3) in section 1368(d) (12 U.S.C. 4618(d)), by striking “Committee on Banking, Finance and Urban Affairs” and inserting “Committee on Financial Services”;

(4) in section 1369C (12 U.S.C. 4622)—

(A) in subsection (a)(4), by striking “activities (including existing and new programs)” and inserting “activities, services, undertakings, and offerings (including existing and new products (as such term is defined in section 1321(f)))”; and

(B) in subsection (c), by striking “any enterprise” and inserting “any regulated entity”; and

(5) in subsections (a) and (d) of section 1369D, by striking “section 1366 or 1367 or action under section 1369” each place such phrase appears and inserting “section 1367”.

Subtitle D—Enforcement Actions

SEC. 161. CEASE-AND-DESIST PROCEEDINGS.

Section 1371 of the Housing and Community Development Act of 1992 (12 U.S.C. 4631) is amended—

(1) by striking subsections (a) and (b) and inserting the following new subsections:

“(a) **ISSUANCE FOR UNSAFE OR UNSOUND PRACTICES AND VIOLATIONS OF RULES OR LAWS.**—If, in the opinion of the Director, a regulated entity or any regulated entity-affiliated party is engaging or has engaged, or the Director has reasonable cause to believe that the regulated entity or any regulated entity-affiliated party is about to engage, in an unsafe or unsound practice in conducting the business of the regulated entity or is violating or has violated, or the Director has reasonable cause to believe that the regulated entity or any regulated entity-affiliated party is about to violate, a law, rule, or regulation, or any condition imposed in writing by the Director in connection with the granting of any application or other request by the regulated entity or any written agreement entered into with the Director, the Director may issue and serve upon the regulated entity or such party a notice of charges in respect thereof. The Director may not, pursuant to this section, enforce compliance with any housing goal established under subpart B of part 2 of subtitle A of this title, with section 1336 or 1337 of this title, with subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(m), (n)), with subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1456(e), (f)), or with paragraph (5) of section 10(j) of the Federal Home Loan Bank Act (12 U.S.C. 1430(j)).

“(b) **ISSUANCE FOR UNSATISFACTORY RATING.**—If a regulated entity receives, in its most recent report of examination, a less-than-satisfactory rating for asset quality, management, earnings, or liquidity, the Director may (if the deficiency is not corrected) deem the regulated entity to be engaging in an unsafe or unsound practice for purposes of this subsection.”;

(2) in subsection (c)(2), by striking “enterprise, executive officer, or director” and inserting “regulated entity or regulated entity-affiliated party”; and

(3) in subsection (d)—

(A) in the matter preceding paragraph (1), by striking “enterprise, executive officer, or director” and inserting “regulated entity or regulated entity-affiliated party”;

(B) in paragraph (1)—

(i) by striking “an executive officer or a director” and inserting “a regulated entity affiliated party”; and

- (ii) by inserting “(including reimbursement of compensation under section 1318)” after “reimbursement”;
- (C) in paragraph (6), by striking “and” at the end;
- (D) by redesignating paragraph (7) as paragraph (8); and
- (E) by inserting after paragraph (6) the following new paragraph:
 - “(7) to effect an attachment on a regulated entity or regulated entity-affiliated party subject to an order under this section or section 1372; and”.

SEC. 162. TEMPORARY CEASE-AND-DESIST PROCEEDINGS.

Section 1372 of the Housing and Community Development Act of 1992 (12 U.S.C. 4632) is amended—

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

- “(a) GROUNDS FOR ISSUANCE.—Whenever the Director determines that the violation or threatened violation or the unsafe or unsound practice or practices specified in the notice of charges served upon the regulated entity or any regulated entity-affiliated party pursuant to section 1371(a), or the continuation thereof, is likely to cause insolvency or significant dissipation of assets or earnings of the regulated entity, or is likely to weaken the condition of the regulated entity prior to the completion of the proceedings conducted pursuant to sections 1371 and 1373, the Director may issue a temporary order requiring the regulated entity or such party to cease and desist from any such violation or practice and to take affirmative action to prevent or remedy such insolvency, dissipation, condition, or prejudice pending completion of such proceedings. Such order may include any requirement authorized under section 1371(d).”;

(2) in subsection (b), by striking “enterprise, executive officer, or director” and inserting “regulated entity or regulated entity-affiliated party”;

(3) in subsection (d)—

(A) by striking “An enterprise, executive officer, or director” and inserting “A regulated entity or regulated entity-affiliated party”; and

(B) by striking “the enterprise, executive officer, or director” and inserting “the regulated entity or regulated entity-affiliated party”; and

(4) by striking subsection (e) and in inserting the following new subsection:

“(e) ENFORCEMENT.—In the case of violation or threatened violation of, or failure to obey, a temporary cease-and-desist order issued pursuant to this section, the Director may apply to the United States District Court for the District of Columbia or the United States district court within the jurisdiction of which the headquarters of the regulated entity is located, for an injunction to enforce such order, and, if the court determines that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue such injunction.”.

SEC. 163. PREJUDGMENT ATTACHMENT.

The Housing and Community Development Act of 1992 is amended by inserting after section 1375 (12 U.S.C. 4635) the following new section:

“SEC. 1375A. PREJUDGMENT ATTACHMENT.

“(a) IN GENERAL.—In any action brought pursuant to this title, or in actions brought in aid of, or to enforce an order in, any administrative or other civil action for money damages, restitution, or civil money penalties brought pursuant to this title, the court may, upon application of the Director or Attorney General, as applicable, issue a restraining order that—

“(1) prohibits any person subject to the proceeding from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets or other property; and

“(2) appoints a person on a temporary basis to administer the restraining order.

“(b) STANDARD.—

“(1) SHOWING.—Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under subsection (a) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

“(2) STATE PROCEEDING.—If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of such State provide substantially similar protections to a party’s right to due process as Rule 65 (as modified with respect to such proceeding by paragraph (1)), the relief sought under subsection (a) may be requested under the laws of such State.”.

SEC. 164. ENFORCEMENT AND JURISDICTION.

Section 1375 of the Housing and Community Development Act of 1992 (12 U.S.C. 4635) is amended—

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

“(a) ENFORCEMENT.—The Director may, in the discretion of the Director, apply to the United States District Court for the District of Columbia, or the United States district court within the jurisdiction of which the headquarters of the regulated entity is located, for the enforcement of any effective and outstanding notice or order issued under this subtitle or subtitle B, or request that the Attorney General of the United States bring such an action. Such court shall have jurisdiction and power to order and require compliance with such notice or order.”; and

(2) in subsection (b), by striking “or 1376” and inserting “1376, or 1377”.

SEC. 165. CIVIL MONEY PENALTIES.

Section 1376 of the Housing and Community Development Act of 1992 (12 U.S.C. 4636) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking “, or any executive officer or director” and inserting “or any regulated-entity affiliated party”; and

(B) in paragraph (1)—

(i) by striking “the Federal National Mortgage Association Charter Act, the Federal Home Loan Mortgage Corporation Act” and inserting “any provision of any of the authorizing statutes”;

(ii) by striking “or Act” and inserting “or statute”;

(iii) by striking “or subsection” and inserting “, subsection”;

(iv) by inserting “, or paragraph (5) or (12) of section 10(j) of the Federal Home Loan Bank Act” before the semicolon at the end;

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

“(b) AMOUNT OF PENALTY.—

“(1) FIRST TIER.—Any regulated entity which, or any regulated entity-affiliated party who—

“(A) violates any provision of this title, any provision of any of the authorizing statutes, or any order, condition, rule, or regulation under any such title or statute, except that the Director may not, pursuant to this section, enforce compliance with any housing goal established under subpart B of part 2 of subtitle A of this title, with section 1336 or 1337 of this title, with subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(m), (n)), with subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1456(e), (f)), or with paragraph (5) or (12) of section 10(j) of the Federal Home Loan Bank Act;

“(B) violates any final or temporary order or notice issued pursuant to this title;

“(C) violates any condition imposed in writing by the Director in connection with the grant of any application or other request by such regulated entity; or

“(D) violates any written agreement between the regulated entity and the Director,

shall forfeit and pay a civil money penalty of not more than \$10,000 for each day during which such violation continues.

“(2) SECOND TIER.—Notwithstanding paragraph (1)—

“(A) if a regulated entity, or a regulated entity-affiliated party—

“(i) commits any violation described in any subparagraph of paragraph (1);

“(ii) recklessly engages in an unsafe or unsound practice in conducting the affairs of such regulated entity; or

“(iii) breaches any fiduciary duty; and

“(B) the violation, practice, or breach—

“(i) is part of a pattern of misconduct;

“(ii) causes or is likely to cause more than a minimal loss to such regulated entity; or

“(iii) results in pecuniary gain or other benefit to such party,

the regulated entity or regulated entity-affiliated party shall forfeit and pay a civil penalty of not more than \$50,000 for each day during which such violation, practice, or breach continues.

“(3) THIRD TIER.—Notwithstanding paragraphs (1) and (2), any regulated entity which, or any regulated entity-affiliated party who—

“(A) knowingly—

“(i) commits any violation or engages in any conduct described in any subparagraph of paragraph (1);

“(ii) engages in any unsafe or unsound practice in conducting the affairs of such regulated entity; or

“(iii) breaches any fiduciary duty; and
 “(B) knowingly or recklessly causes a substantial loss to such regulated entity or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach,
 shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under paragraph (4) for each day during which such violation, practice, or breach continues.

“(4) MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN PARAGRAPH (3).—The maximum daily amount of any civil penalty which may be assessed pursuant to paragraph (3) for any violation, practice, or breach described in such paragraph is—

“(A) in the case of any person other than a regulated entity, an amount not to exceed \$2,000,000; and

“(B) in the case of any regulated entity, \$2,000,000.”;

(3) in subsection (c)(1)(B), by striking “enterprise, executive officer, or director” and inserting “regulated entity or regulated entity-affiliated party”;

(4) in subsection (d), by striking the first sentence and inserting the following: “If a regulated entity or regulated entity-affiliated party fails to comply with an order of the Director imposing a civil money penalty under this section, after the order is no longer subject to review as provided under subsection (c)(1) and section 1374, the Director may, in the discretion of the Director, bring an action in the United States District Court for the District of Columbia, or the United States district court within the jurisdiction of which the headquarters of the regulated entity is located, to obtain a monetary judgment against the regulated entity or regulated entity affiliated party and such other relief as may be available, or request that the Attorney General of the United States bring such an action.”; and

(5) in subsection (g), by striking “subsection (b)(3)” and inserting “this section, unless authorized by the Director by rule, regulation, or order”.

SEC. 166. REMOVAL AND PROHIBITION AUTHORITY.

(a) IN GENERAL.—Subtitle C of title XIII of the Housing and Community Development Act of 1992 is amended—

(1) by redesignating sections 1377, 1378, 1379, 1379A, and 1379B (12 U.S.C. 4637–41) as sections 1379, 1379A, 1379B, 1379C, and 1379D, respectively; and

(2) by inserting after section 1376 (12 U.S.C. 4636) the following new section:

“SEC. 1377. REMOVAL AND PROHIBITION AUTHORITY.

“(a) AUTHORITY TO ISSUE ORDER.—Whenever the Director determines that—

“(1) any regulated entity-affiliated party has, directly or indirectly—

“(A) violated—

“(i) any law or regulation;

“(ii) any cease-and-desist order which has become final;

“(iii) any condition imposed in writing by the Director in connection with the grant of any application or other request by such regulated entity; or

“(iv) any written agreement between such regulated entity and the Director;

“(B) engaged or participated in any unsafe or unsound practice in connection with any regulated entity; or

“(C) committed or engaged in any act, omission, or practice which constitutes a breach of such party’s fiduciary duty;

“(2) by reason of the violation, practice, or breach described in any subparagraph of paragraph (1)—

“(A) such regulated entity has suffered or will probably suffer financial loss or other damage; or

“(B) such party has received financial gain or other benefit by reason of such violation, practice, or breach; and

“(3) such violation, practice, or breach—

“(A) involves personal dishonesty on the part of such party; or

“(B) demonstrates willful or continuing disregard by such party for the safety or soundness of such regulated entity, the Director may serve upon such party a written notice of the Director’s intention to remove such party from office or to prohibit any further participation by such party, in any manner, in the conduct of the affairs of any regulated entity.

“(b) SUSPENSION ORDER.—

“(1) SUSPENSION OR PROHIBITION AUTHORITY.—If the Director serves written notice under subsection (a) to any regulated entity-affiliated party of the Director’s intention to issue an order under such subsection, the Director may—

“(A) suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of the regulated entity, if the Director—

“(i) determines that such action is necessary for the protection of the regulated entity; and

“(ii) serves such party with written notice of the suspension order; and

“(B) prohibit the regulated entity from releasing to or on behalf of the regulated entity-affiliated party any compensation or other payment of money or other thing of current or potential value in connection with any resignation, removal, retirement, or other termination of employment or office of the party.

“(2) EFFECTIVE PERIOD.—Any suspension order issued under this subsection—

“(A) shall become effective upon service; and

“(B) unless a court issues a stay of such order under subsection (g) of this section, shall remain in effect and enforceable until—

“(i) the date the Director dismisses the charges contained in the notice served under subsection (a) with respect to such party; or

“(ii) the effective date of an order issued by the Director to such party under subsection (a).

“(3) COPY OF ORDER.—If the Director issues a suspension order under this subsection to any regulated entity-affiliated party, the Director shall serve a copy of such order on any regulated entity with which such party is affiliated at the time such order is issued.

“(c) NOTICE, HEARING, AND ORDER.—A notice of intention to remove a regulated entity-affiliated party from office or to prohibit such party from participating in the conduct of the affairs of a regulated entity shall contain a statement of the facts constituting grounds for such action, and shall fix a time and place at which a hearing will be held on such action. Such hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after the date of service of such notice, unless an earlier or a later date is set by the Director at the request of (1) such party, and for good cause shown, or (2) the Attorney General of the United States. Unless such party shall appear at the hearing in person or by a duly authorized representative, such party shall be deemed to have consented to the issuance of an order of such removal or prohibition. In the event of such consent, or if upon the record made at any such hearing the Director shall find that any of the grounds specified in such notice have been established, the Director may issue such orders of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the regulated entity, as it may deem appropriate, together with an order prohibiting compensation described in subsection (b)(1)(B). Any such order shall become effective at the expiration of 30 days after service upon such regulated entity and such party (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Director or a reviewing court.

“(d) PROHIBITION OF CERTAIN SPECIFIC ACTIVITIES.—Any person subject to an order issued under this section shall not—

“(1) participate in any manner in the conduct of the affairs of any regulated entity;

“(2) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights in any regulated entity;

“(3) violate any voting agreement previously approved by the Director; or

“(4) vote for a director, or serve or act as a regulated entity-affiliated party.

“(e) INDUSTRY-WIDE PROHIBITION.—

“(1) IN GENERAL.—Except as provided in paragraph (2), any person who, pursuant to an order issued under this section, has been removed or suspended from office in a regulated entity or prohibited from participating in the conduct of the affairs of a regulated entity may not, while such order is in effect, continue or commence to hold any office in, or participate in any manner in the conduct of the affairs of, any regulated entity.

“(2) EXCEPTION IF DIRECTOR PROVIDES WRITTEN CONSENT.—If, on or after the date an order is issued under this section which removes or suspends from office any regulated entity-affiliated party or prohibits such party from participating in the conduct of the affairs of a regulated entity, such party receives the written consent of the Director, the order shall, to the extent of such consent, cease to apply to such party with respect to the regulated entity described in the written consent. If the Director grants such a written consent, it shall publicly disclose such consent.

“(3) VIOLATION OF PARAGRAPH (1) TREATED AS VIOLATION OF ORDER.—Any violation of paragraph (1) by any person who is subject to an order described in such subsection shall be treated as a violation of the order.

“(f) APPLICABILITY.—This section shall only apply to a person who is an individual, unless the Director specifically finds that it should apply to a corporation, firm, or other business enterprise.

“(g) STAY OF SUSPENSION AND PROHIBITION OF REGULATED ENTITY-AFFILIATED PARTY.—Within 10 days after any regulated entity-affiliated party has been suspended from office and/or prohibited from participation in the conduct of the affairs of a regulated entity under this section, such party may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district in which the headquarters of the regulated entity is located, for a stay of such suspension and/or prohibition and any prohibition under subsection (b)(1)(B) pending the completion of the administrative proceedings pursuant to the notice served upon such party under this section, and such court shall have jurisdiction to stay such suspension and/or prohibition.

“(h) SUSPENSION OR REMOVAL OF REGULATED ENTITY-AFFILIATED PARTY CHARGED WITH FELONY.—

“(1) SUSPENSION OR PROHIBITION.—

“(A) IN GENERAL.—Whenever any regulated entity-affiliated party is charged in any information, indictment, or complaint, with the commission of or participation in a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year under State or Federal law, the Director may, if continued service or participation by such party may pose a threat to the regulated entity or impair public confidence in the regulated entity, by written notice served upon such party—

“(i) suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of any regulated entity; and

“(ii) prohibit the regulated entity from releasing to or on behalf of the regulated entity-affiliated party any compensation or other payment of money or other thing of current or potential value in connection with the period of any such suspension or with any resignation, removal, retirement, or other termination of employment or office of the party.

“(B) PROVISIONS APPLICABLE TO NOTICE.—

“(i) COPY.—A copy of any notice under paragraph (1)(A) shall also be served upon the regulated entity.

“(ii) EFFECTIVE PERIOD.—A suspension or prohibition under subparagraph (A) shall remain in effect until the information, indictment, or complaint referred to in such subparagraph is finally disposed of or until terminated by the Director.

“(2) REMOVAL OR PROHIBITION.—

“(A) IN GENERAL.—If a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against a regulated entity-affiliated party in connection with a crime described in paragraph (1)(A), at such time as such judgment is not subject to further appellate review, the Director may, if continued service or participation by such party may pose a threat to the regulated entity or impair public confidence in the regulated entity, issue and serve upon such party an order that—

“(i) removes such party from office or prohibits such party from further participation in any manner in the conduct of the affairs of the regulated entity without the prior written consent of the Director; and

“(ii) prohibits the regulated entity from releasing to or on behalf of the regulated entity-affiliated party any compensation or other payment of money or other thing of current or potential value in connection with the termination of employment or office of the party.

“(B) PROVISIONS APPLICABLE TO ORDER.—

“(i) COPY.—A copy of any order under paragraph (2)(A) shall also be served upon the regulated entity, whereupon the regulated entity-affiliated party who is subject to the order (if a director or an officer) shall cease to be a director or officer of such regulated entity.

“(ii) EFFECT OF ACQUITTAL.—A finding of not guilty or other disposition of the charge shall not preclude the Director from instituting proceedings after such finding or disposition to remove such party from office or to prohibit further participation in regulated entity affairs, and to prohibit compensation or other payment of money or other thing of current or potential value in connection with any resignation, removal, retirement, or other termination of employment or office of the party, pursuant to subsections (a), (d), or (e) of this section.

“(iii) EFFECTIVE PERIOD.—Any notice of suspension or order of removal issued under this subsection shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (4) unless terminated by the Director.

“(3) AUTHORITY OF REMAINING BOARD MEMBERS.—If at any time, because of the suspension of one or more directors pursuant to this section, there shall be on the board of directors of a regulated entity less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors. In the event all of the directors of a regulated entity are suspended pursuant to this section, the Director shall appoint persons to serve temporarily as directors in their place and stead pending the termination of such suspensions, or until such time as those who have been suspended cease to be directors of the regulated entity and their respective successors take office.

“(4) HEARING REGARDING CONTINUED PARTICIPATION.—Within 30 days from service of any notice of suspension or order of removal issued pursuant to paragraph (1) or (2) of this subsection, the regulated entity-affiliated party concerned may request in writing an opportunity to appear before the Director to show that the continued service to or participation in the conduct of the affairs of the regulated entity by such party does not, or is not likely to, pose a threat to the interests of the regulated entity or threaten to impair public confidence in the regulated entity. Upon receipt of any such request, the Director shall fix a time (not more than 30 days after receipt of such request, unless extended at the request of such party) and place at which such party may appear, personally or through counsel, before one or more members of the Director or designated employees of the Director to submit written materials (or, at the discretion of the Director, oral testimony) and oral argument. Within 60 days of such hearing, the Director shall notify such party whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the regulated entity will be continued, terminated, or otherwise modified, or whether the order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the regulated entity, and prohibiting compensation in connection with termination will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the Director’s decision, if adverse to such party. The Director is authorized to prescribe such rules as may be necessary to effectuate the purposes of this subsection.

“(i) HEARINGS AND JUDICIAL REVIEW.—

“(1) VENUE AND PROCEDURE.—Any hearing provided for in this section shall be held in the District of Columbia or in the Federal judicial district in which the headquarters of the regulated entity is located, unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5, United States Code. After such hearing, and within 90 days after the Director has notified the parties that the case has been submitted to it for final decision, it shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection. Unless a petition for review is timely filed in a court of appeals of the United States, as provided in paragraph (2), and thereafter until the record in the proceeding has been filed as so provided, the Director may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the Director may modify, terminate, or set aside any such order with permission of the court.

“(2) REVIEW OF ORDER.—Any party to any proceeding under paragraph (1) may obtain a review of any order served pursuant to paragraph (1) (other than an order issued with the consent of the regulated entity or the regulated entity-affiliated party concerned, or an order issued under subsection (h) of this section) by the filing in the United States Court of Appeals for the District of Columbia Circuit or court of appeals of the United States for the circuit in which the headquarters of the regulated entity is located, within 30 days after the date of service of such order, a written petition praying that the order of the Director be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Director, and thereupon the Director shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall (ex-

cept as provided in the last sentence of paragraph (1) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Director. Review of such proceedings shall be had as provided in chapter 7 of title 5, United States Code. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28, United States Code.

“(3) PROCEEDINGS NOT TREATED AS STAY.—The commencement of proceedings for judicial review under paragraph (2) shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Director.”.

(b) CONFORMING AMENDMENTS.—

(1) 1992 ACT.—Section 1317(f) of the Housing and Community Development Act of 1992 (12 U.S.C. 4517(f)) is amended by striking “section 1379B” and inserting “section 1379D”.

(2) FANNIE MAE CHARTER ACT.—The second sentence of subsection (b) of section 308 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723(b)) is amended by striking “The” and inserting “Except to the extent that action under section 1377 of the Housing and Community Development Act of 1992 temporarily results in a lesser number, the”.

(3) FREDDIE MAC ACT.—The second sentence of subparagraph (A) of section 303(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(a)(2)(A)) is amended by striking “The” and inserting “Except to the extent that action under section 1377 of the Housing and Community Development Act of 1992 temporarily results in a lesser number, the”.

SEC. 167. CRIMINAL PENALTY.

Subtitle C of title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4631 et seq.) is amended by inserting after section 1377 (as added by the preceding provisions of this Act) the following new section:

“**SEC. 1378. CRIMINAL PENALTY.**

“Whoever, being subject to an order in effect under section 1377, without the prior written approval of the Director, knowingly participates, directly or indirectly, in any manner (including by engaging in an activity specifically prohibited in such an order) in the conduct of the affairs of any regulated entity shall, notwithstanding section 3571 of title 18, be fined not more than \$1,000,000, imprisoned for not more than 5 years, or both.”.

SEC. 168. SUBPOENA AUTHORITY.

Section 1379D(c) of the Housing and Community Development Act of 1992 (12 U.S.C. 4641(c)), as so redesignated by section 166(a)(1) of this Act, is further amended—

(1) by striking “request the Attorney General of the United States to” and inserting “, in the discretion of the Director,”;

(2) by inserting “or request that the Attorney General of the United States bring such an action,” after “District of Columbia,”; and

(3) by striking “or may, under the direction and control of the Attorney General, bring such an action”.

SEC. 169. CONFORMING AMENDMENTS.

Subtitle C of title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4631 et seq.), as amended by the preceding provisions of this Act, is amended—

(1) in section 1372(c)(1) (12 U.S.C. 4632(c)), by striking “that enterprise” and inserting “that regulated entity”;

(2) in section 1379 (12 U.S.C. 4637), as so redesignated by section 166(a)(1) of this Act—

(A) by inserting “, or of a regulated entity-affiliated party,” before “shall not affect”; and

(B) by striking “such director or executive officer” each place such term appears and inserting “such director, executive officer, or regulated entity-affiliated party”;

(3) in section 1379A (12 U.S.C. 4638), as so redesignated by section 166(a)(1) of this Act, by inserting “or against a regulated entity-affiliated party,” before “or impair”;

(4) by striking “An enterprise” each place such term appears in such subtitle and inserting “A regulated entity”;

(5) by striking “an enterprise” each place such term appears in such subtitle and inserting “a regulated entity”;

(6) by striking “the enterprise” each place such term appears in such subtitle and inserting “the regulated entity”; and

(7) by striking “any enterprise” each place such term appears in such subtitle and inserting “any regulated entity”.

Subtitle E—General Provisions

SEC. 181. BOARDS OF ENTERPRISES.

(a) FANNIE MAE.—

(1) IN GENERAL.—Section 308(b) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723(b)) is amended—

(A) in the first sentence, by striking “eighteen persons, five of whom shall be appointed annually by the President of the United States, and the remainder of whom” and inserting “13 persons, or such other number that the Director determines appropriate, who”;

(B) in the second sentence, by striking “appointed by the President”;

(C) in the third sentence—

(i) by striking “appointed or”; and

(ii) by striking “, except that any such appointed member may be removed from office by the President for good cause”;

(D) in the fourth sentence, by striking “elective”; and

(E) by striking the fifth sentence.

(2) TRANSITIONAL PROVISION.—The amendments made by paragraph (1) shall not apply to any appointed position of the board of directors of the Federal National Mortgage Association until the expiration of the annual term for such position during which the effective date under Section 185 occurs.

(b) FREDDIE MAC.—

(1) IN GENERAL.—Section 303(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1452(a)(2)) is amended—

(A) in subparagraph (A)—

(i) in the first sentence, by striking “18 persons, 5 of whom shall be appointed annually by the President of the United States and the remainder of whom” and inserting “13 persons, or such other number as the Director determines appropriate, who”; and

(ii) in the second sentence, by striking “appointed by the President of the United States”;

(B) in subparagraph (B)—

(i) by striking “such or”; and

(ii) by striking “, except that any appointed member may be removed from office by the President for good cause”; and

(C) in subparagraph (C)—

(i) by striking the first sentence; and

(ii) by striking “elective”.

(2) TRANSITIONAL PROVISION.—The amendments made by paragraph (1) shall not apply to any appointed position of the board of directors of the Federal Home Loan Mortgage Corporation until the expiration of the annual term for such position during which the effective date under Section 185 occurs.

SEC. 182. REPORT ON PORTFOLIO OPERATIONS, SAFETY AND SOUNDNESS, AND MISSION OF ENTERPRISES.

Not later than the expiration of the 12-month period beginning on the effective date under section 185, the Director of the Federal Housing Finance Agency shall submit a report to the Congress which shall include—

(1) a description of the portfolio holdings of the enterprises (as such term is defined in section 1303 of the Housing and Community Development Act of 1992 (12 U.S.C. 4502) in mortgages (including whole loans and mortgage-backed securities), non-mortgages, and other assets;

(2) a description of the risk implications for the enterprises of such holdings and the consequent risk management undertaken by the enterprises (including the use of derivatives for hedging purposes), compared with off-balance sheet liabilities of the enterprises (including mortgage-backed securities guaranteed by the enterprises);

(3) an analysis of portfolio holdings for safety and soundness purposes;

(4) an assessment of whether portfolio holdings fulfill the mission purposes of the enterprises under the Federal National Mortgage Association Charter Act and the Federal Home Loan Mortgage Corporation Act; and

(5) an analysis of the potential systemic risk implications for the enterprises, the housing and capital markets, and the financial system of portfolio holdings, and whether such holdings should be limited or reduced over time.

SEC. 183. CONFORMING AND TECHNICAL AMENDMENTS.

(a) 1992 ACT.—Title XIII of the Housing and Community Development Act of 1992 is amended by striking section 1383 (12 U.S.C. 1451 note).

(b) TITLE 18, UNITED STATES CODE.—Section 1905 of title 18, United States Code, is amended by striking “Office of Federal Housing Enterprise Oversight” and inserting “Federal Housing Finance Agency”.

(c) FLOOD DISASTER PROTECTION ACT OF 1973.—Section 102(f)(3)(A) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a(f)(3)(A)) is amended by striking “Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development” and inserting “Director of the Federal Housing Finance Agency”.

(d) DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ACT.—Section 5 of the Department of Housing and Urban Development Act (42 U.S.C. 3534) is amended by striking subsection (d).

(e) TITLE 5, UNITED STATES CODE.—

(1) DIRECTOR’S PAY RATE.—Section 5313 of title 5, United States Code, is amended by striking the item relating to the Director of the Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development and inserting the following new item:

“Director of the Federal Housing Finance Agency.”.

(2) EXCLUSION FROM SENIOR EXECUTIVE SERVICE.—Section 3132(a)(1)(D) of title 5, United States Code, is amended—

(A) by striking “the Federal Housing Finance Board,”; and

(B) by striking “the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development” and inserting “the Federal Housing Finance Agency”.

(f) INSPECTOR GENERAL ACT OF 1978.—Section 8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C. App.) is amended by striking “Federal Housing Finance Board” and inserting “Federal Housing Finance Agency”.

(g) FEDERAL DEPOSIT INSURANCE ACT.—Section 11(t)(2)(A) of the Federal Deposit Insurance Act (12 U.S.C.1821(t)(2)(A)) is amended by adding at the end the following new clause:

“(vii) The Federal Housing Finance Agency.”.

(h) 1997 EMERGENCY SUPPLEMENTAL APPROPRIATIONS ACT.—Section 10001 of the 1997 Emergency Supplemental Appropriations Act for Recovery From Natural Disasters, and for Overseas Peacekeeping Efforts, Including Those In Bosnia (42 U.S.C. 3548) is amended—

(1) by striking “the Government National Mortgage Association, and the Office of Federal Housing Enterprise Oversight” and inserting “and the Government National Mortgage Association”; and

(2) by striking “, the Government National Mortgage Association, or the Office of Federal Housing Enterprise Oversight” and inserting “or the Government National Mortgage Association”.

(i) NATIONAL HOMEOWNERSHIP TRUST ACT.—Section 302(b)(4) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12851(b)(4)) is amended by striking “the chairperson of the Federal Housing Finance Board” and inserting “the Director of the Federal Housing Finance Agency”.

SEC. 184. STUDY OF ALTERNATIVE SECONDARY MARKET SYSTEMS.

(a) IN GENERAL.—The Director of the Federal Housing Finance Agency, in consultation with the Board of Governors of the Federal Reserve System, the Secretary of the Treasury, and the Secretary of Housing and Urban Development, shall conduct a comprehensive study of the effects on financial and housing finance markets of alternatives to the current secondary market system for housing finance, taking into consideration changes in the structure of financial and housing finance markets and institutions since the creation of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(b) CONTENTS.—The study under this section shall—

(1) include, among the alternatives to the current secondary market system analyzed—

(A) repeal of the chartering Acts for the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation;

(B) establishing bank-like mechanisms for granting new charters for limited purpose mortgage securitization entities;

(C) permitting the Director of the Federal Housing Finance Agency to grant new charters for limited purpose mortgage securitization entities, which shall include analyzing the terms on which such charters should be granted, including whether such charters should be sold, or whether such charters and the charters for the Federal National Mortgage Association

and the Federal Home Loan Mortgage Corporation should be taxed or otherwise assessed a monetary price; and

- (D) such other alternatives as the Director considers appropriate;
- (2) examine all of the issues involved in making the transition to a completely private secondary mortgage market system;
- (3) examine the technological advancements the private sector has made in providing liquidity in the secondary mortgage market and how such advancements have affected liquidity in the secondary mortgage market; and
- (4) examine how taxpayers would be impacted by each alternative system, including the complete privatization of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(c) REPORT.—The Director of the Federal Housing Finance Agency shall submit a report to the Congress on the study not later than the expiration of the 24-month period beginning on the effective date under section 185.

TITLE II—FEDERAL HOME LOAN BANKS

SEC. 201. DEFINITIONS.

Section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422) is amended—

- (1) by striking paragraphs (1), (10), and (11);
- (2) by redesignating paragraphs (2) through (9) as paragraphs (1) through (8), respectively;
- (3) by redesignating paragraphs (12) and (13) as paragraphs (9) and (10), respectively; and
- (4) by adding at the end the following:

“(11) DIRECTOR.—The term ‘Director’ means the Director of the Federal Housing Finance Agency.

“(12) AGENCY.—The term ‘Agency’ means the Federal Housing Finance Agency.”.

SEC. 202. DIRECTORS.

(a) ELECTION.—Section 7 of the Federal Home Loan Bank Act (12 U.S.C. 1427) is amended—

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

“(a) NUMBER; ELECTION; QUALIFICATIONS; CONFLICTS OF INTEREST.—

“(1) IN GENERAL.—The management of each Federal Home Loan Bank shall be vested in a board of 13 directors, or such other number as the Director determines appropriate, each of whom shall be a citizen of the United States. All directors of a Bank who are not independent directors pursuant to paragraph (3) shall be elected by the members.

“(2) MEMBER DIRECTORS.—A majority of the directors of each Bank shall be officers or directors of a member of such Bank that is located in the district in which such Bank is located.

“(3) INDEPENDENT DIRECTORS.—At least two-fifths of the directors of each Bank shall be independent directors, who shall be appointed by the Director of the Federal Housing Finance Agency from a list of individuals recommended by the Federal Housing Enterprise Board, and shall meet the following criteria:

“(A) IN GENERAL.—Each independent director shall be a bona fide resident of the district in which such Bank is located.

“(B) PUBLIC INTEREST DIRECTORS.—At least 2 of the independent directors under this paragraph of each Bank shall be representatives chosen from organizations with more than a 2-year history of representing consumer or community interests on banking services, credit needs, housing, community development, economic development, or financial consumer protections.

“(C) OTHER DIRECTORS.—

“(i) QUALIFICATIONS.—Each independent director that is not a public interest director under subparagraph (B) shall have demonstrated knowledge of, or experience in, financial management, auditing and accounting, risk management practices, derivatives, project development, or organizational management, or such other knowledge or expertise as the Director may provide by regulation.

“(ii) CONSULTATION WITH BANKS.—In appointing other directors to serve on the board of a Federal home loan bank, the Director of the Federal Housing Finance Agency may consult with each Federal home loan bank about the knowledge, skills, and expertise needed to assist the board in better fulfilling its responsibilities.

“(D) CONFLICTS OF INTEREST.—Notwithstanding subsection (f)(2), an independent director under this paragraph of a Bank may not, during such di-

rector's term of office, serve as an officer of any Federal Home Loan Bank or as a director or officer of any member of a Bank.

“(E) COMMUNITY DEMOGRAPHICS.—In appointing independent directors of a Bank pursuant to this paragraph, the Director shall take into consideration the demographic makeup of the community most served by the Affordable Housing Program of the Bank pursuant to section 10(j).”;

(2) in the first sentence of subsection (b), by striking “elective directorship” and inserting “member directorship established pursuant to subsection (a)(2)”;

(3) in subsection (c)—

(A) by striking “elective” each place such term appears and inserting “member”, except—

(i) in the second sentence, the second place such term appears; and
(ii) each place such term appears in the fifth sentence; and

(B) in the second sentence—

(i) by inserting “(A) except as provided in clause (B) of this sentence,” before “if at any time”; and

(ii) by inserting before the period at the end the following: “, and (B) clause (A) of this sentence shall not apply to the directorships of any Federal home loan bank resulting from the merger of any two or more such banks”; and

(4) by striking “elective” each place such term appears (except in subsections (c), (e), and (f)).

(b) TERMS.—

(1) IN GENERAL.—Section 7(d) of the Federal Home Loan Bank Act (12 U.S.C. 1427(d)) is amended—

(A) in the first sentence, by striking “3 years” and inserting “4 years”; and

(B) in the second sentence—

(i) by striking “Federal Home Loan Bank System Modernization Act of 1999” and inserting “Federal Housing Finance Reform Act of 2007”; and

(ii) by striking “1/3” and inserting “1/4”.

(2) SAVINGS PROVISION.—The amendments made by paragraph (1) shall not apply to the term of office of any director of a Federal home loan bank who is serving as of the effective date of this title under section 211, including any director elected to fill a vacancy in any such office.

(c) CONTINUED SERVICE OF INDEPENDENT DIRECTORS AFTER EXPIRATION OF TERM.—Section 7(f)(2) of the Federal Home Loan Bank Act (12 U.S.C. 1427(f)(2)) is amended—

(1) in the second sentence, by striking “or the term of such office expires, whichever occurs first”;

(2) by adding at the end the following new sentence: “An independent Bank director may continue to serve as a director after the expiration of the term of such director until a successor is appointed.”;

(3) in the paragraph heading, by striking “APPOINTED” and inserting “INDEPENDENT”; and

(4) by striking “appointive” each place such term appears and inserting “independent”.

(d) CONFORMING AMENDMENTS.—Section 7(f)(3) of the Federal Home Loan Bank Act (12 U.S.C. 1427(f)(3)) is amended—

(1) in the paragraph heading, by striking “ELECTED” and inserting “MEMBER”; and

(2) by striking “elective” each place such term appears in the first and third sentences and inserting “member”.

(e) COMPENSATION.—Subsection (i) of section 7 of the Federal Home Loan Bank Act (12 U.S.C. 1427(i)) is amended to read as follows:

“(i) DIRECTORS' COMPENSATION.—

“(1) IN GENERAL.—Each Federal home loan bank may pay the directors on the board of directors for the bank reasonable and appropriate compensation for the time required of such directors, and reasonable and appropriate expenses incurred by such directors, in connection with service on the board of directors, in accordance with resolutions adopted by the board of directors and subject to the approval of the Director.

“(2) ANNUAL REPORT BY THE BOARD.—The Director shall include, in the annual report submitted to the Congress pursuant to section 1319B of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, information regarding the compensation and expenses paid by the Federal home loan banks to the directors on the boards of directors of the banks.”.

(f) **TRANSITION RULE.**—Any member of the board of directors of a Federal Home Loan Bank serving as of the effective date under section 211 may continue to serve as a member of such board of directors for the remainder of the term of such office as provided in section 7 of the Federal Home Loan Bank Act, as in effect before such effective date.

SEC. 203. FEDERAL HOUSING FINANCE AGENCY OVERSIGHT OF FEDERAL HOME LOAN BANKS.

The Federal Home Loan Bank Act (12 U.S.C. 1421 et seq.), other than in provisions of that Act added or amended otherwise by this Act, is amended—

(1) by striking sections 2A and 2B (12 U.S.C. 1422a, 1422b);

(2) in section 6 (12 U.S.C. 1426(b)(1))—

(A) in subsection (b)(1), in the matter preceding subparagraph (A), by striking “Finance Board approval” and inserting “approval by the Director”; and

(B) in each of subsections (c)(4)(B) and (d)(2), by striking “Finance Board regulations” each place that term appears and inserting “regulations of the Director”;

(3) in section 8 (12 U.S.C. 1428), in the section heading, by striking “BY THE BOARD”;

(4) in section 10(b) (12 U.S.C. 1430(b)), by striking “by formal resolution”;

(5) in section 10 (12 U.S.C. 1430), by adding at the end the following new subsection:

“(k) **MONITORING AND ENFORCING COMPLIANCE WITH AFFORDABLE HOUSING AND COMMUNITY INVESTMENT PROGRAM REQUIREMENTS.**—The requirements under subsection (i) and (j) that the Banks establish Community Investment and Affordable Housing Programs, respectively, and contribute to the Affordable Housing Program, shall be enforceable by the Director with respect to the Banks in the same manner and to the same extent as the housing goals under subpart B of part 2 of subtitle A of title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4561 et seq.) are enforceable under section 1336 of such Act with respect to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.”;

(6) in section 11 (12 U.S.C. 1431)—

(A) in subsection (b)—

(i) in the first sentence—

(I) by striking “The Board” and inserting “The Office of Finance, as agent for the Banks,”; and

(II) by striking “the Board” and inserting “such Office”; and

(ii) in the second and fourth sentences, by striking “the Board” each place such term appears and inserting “the Office of Finance”;

(B) in subsection (c)—

(i) by striking “the Board” the first place such term appears and inserting “the Office of Finance, as agent for the Banks,”; and

(ii) by striking “the Board” the second place such term appears and inserting “such Office”; and

(C) in subsection (f)—

(i) by striking the two commas after “permit” and inserting “or”; and

(ii) by striking the comma after “require”;

(7) in section 15 (12 U.S.C. 1435), by inserting “or the Director” after “the Board”;

(8) in section 18 (12 U.S.C. 1438), by striking subsection (b);

(9) in section 21 (12 U.S.C. 1441)—

(A) in subsection (b)—

(i) in paragraph (5), by striking “Chairperson of the Federal Housing Finance Board” and inserting “Director”; and

(ii) in the heading for paragraph (8), by striking “FEDERAL HOUSING FINANCE BOARD” and inserting “DIRECTOR”; and

(B) in subsection (i), in the heading for paragraph (2), by striking “FEDERAL HOUSING FINANCE BOARD” and inserting “DIRECTOR”;

(10) in section 23 (12 U.S.C. 1443), by striking “Board of Directors of the Federal Housing Finance Board” and inserting “Director”;

(11) by striking “the Board” each place such term appears in such Act (except in section 15 (12 U.S.C. 1435), section 21(f)(2) (12 U.S.C. 1441(f)(2)), subsections (a), (k)(2)(B)(i), and (n)(6)(C)(ii) of section 21A (12 U.S.C. 1441a), subsections (f)(2)(C), and (k)(7)(B)(ii) of section 21B (12 U.S.C. 1441b), and the first two places such term appears in section 22 (12 U.S.C. 1442)) and inserting “the Director”;

(12) by striking “The Board” each place such term appears in such Act (except in sections 7(e) (12 U.S.C. 1427(e)), and 11(b) (12 U.S.C. 1431(b)) and inserting “The Director”;

(13) by striking “the Board’s” each place such term appears in such Act and inserting “the Director’s”;

(14) by striking “The Board’s” each place such term appears in such Act and inserting “The Director’s”;

(15) by striking “the Finance Board” each place such term appears in such Act and inserting “the Director”;

(16) by striking “Federal Housing Finance Board” each place such term appears and inserting “Director”;

(17) in section 11(i) (12 U.S.C. 1431(i)), by striking “the Chairperson of”;

(18) in section 21(e)(9) (12 U.S.C. 1441(e)(9)), by striking “Chairperson of the”.

SEC. 204. JOINT ACTIVITIES OF BANKS.

Section 11 of the Federal Home Loan Bank Act (12 U.S.C. 1431) is amended by adding at the end the following new subsection:

“(1) JOINT ACTIVITIES.—Subject to the regulation of the Director, any two or more Federal Home Loan Banks may establish a joint office for the purpose of performing functions for, or providing services to, the Banks on a common or collective basis, or may require that the Office of Finance perform such functions or services, but only if the Banks are otherwise authorized to perform such functions or services individually.”.

SEC. 205. SHARING OF INFORMATION BETWEEN FEDERAL HOME LOAN BANKS.

(a) IN GENERAL.—The Federal Home Loan Bank Act is amended by inserting after section 20 (12 U.S.C. 1440) the following new section:

“SEC. 20A. SHARING OF INFORMATION BETWEEN FEDERAL HOME LOAN BANKS.

“(a) REGULATORY AUTHORITY.—The Director shall prescribe such regulations as may be necessary to ensure that each Federal Home Loan Bank has access to information that the Bank needs to determine the nature and extent of its joint and several liability.

“(b) NO WAIVER OF PRIVILEGE.—The Director shall not be deemed to have waived any privilege applicable to any information concerning a Federal Home Loan Bank by transferring, or permitting the transfer of, that information to any other Federal Home Loan Bank for the purpose of enabling the recipient to evaluate the nature and extent of its joint and several liability.”.

(b) REGULATIONS.—The regulations required under the amendment made by subsection (a) shall be issued in final form not later than 6 months after the effective date under section 211 of this Act.

SEC. 206. REORGANIZATION OF BANKS AND VOLUNTARY MERGER.

Section 26 of the Federal Home Loan Bank Act (12 U.S.C. 1446) is amended—

(1) by inserting “(a) REORGANIZATION.—” before “Whenever”; and

(2) by striking “liquidated or” each place such phrase appears;

(3) by striking “liquidation or”; and

(4) by adding at the end the following new subsection:

“(b) VOLUNTARY MERGERS.—Any two or more Banks may, with the approval of the Director, and the approval of the boards of directors of the Banks involved, merge. The Director shall promulgate regulations establishing the conditions and procedures for the consideration and approval of any such voluntary merger, including the procedures for Bank member approval.”.

SEC. 207. SECURITIES AND EXCHANGE COMMISSION DISCLOSURE.

(a) IN GENERAL.—The Federal Home Loan Banks shall be exempt from compliance with—

(1) sections 13(e), 14(a), 14(c), and 17A of the Securities Exchange Act of 1934 and related Commission regulations; and

(2) section 15 of that Act and related Securities and Exchange Commission regulations with respect to transactions in capital stock of the Banks.

(b) MEMBER EXEMPTION.—The members of the Federal Home Loan Banks shall be exempt from compliance with sections 13(d), 13(f), 13(g), 14(d), and 16 of the Securities Exchange Act of 1934 and related Securities and Exchange Commission regulations with respect to their ownership of, or transactions in, capital stock of the Federal Home Loan Banks.

(c) EXEMPTED AND GOVERNMENT SECURITIES.—

(1) CAPITAL STOCK.—The capital stock issued by each of the Federal Home Loan Banks under section 6 of the Federal Home Loan Bank Act are—

(A) exempted securities within the meaning of section 3(a)(2) of the Securities Act of 1933; and

- (B) “exempted securities” within the meaning of section 3(a)(12)(A) of the Securities Exchange Act of 1934.
- (2) OTHER OBLIGATIONS.—The debentures, bonds, and other obligations issued under section 11 of the Federal Home Loan Bank Act are—
- (A) exempted securities within the meaning of section 3(a)(2) of the Securities Act of 1933;
- (B) “government securities” within the meaning of section 3(a)(42) of the Securities Exchange Act of 1934;
- (C) excluded from the definition of “government securities broker” within section 3(a)(43) of the Securities Exchange Act of 1934;
- (D) excluded from the definition of “government securities dealer” within section 3(a)(44) of the Securities Exchange Act of 1934; and
- (E) “government securities” within the meaning of section 2(a)(16) of the Investment Company Act of 1940.
- (d) EXEMPTION FROM REPORTING REQUIREMENTS.—The Federal Home Loan Banks shall be exempt from periodic reporting requirements pertaining to—
- (1) the disclosure of related party transactions that occur in the ordinary course of business of the Banks with their members; and
- (2) the disclosure of unregistered sales of equity securities.
- (e) TENDER OFFERS.—The Securities and Exchange Commission’s rules relating to tender offers shall not apply in connection with transactions in capital stock of the Federal Home Loan Banks.
- (f) REGULATIONS.—In issuing any final regulations to implement provisions of this section, the Securities and Exchange Commission shall consider the distinctive characteristics of the Federal Home Loan Banks when evaluating the accounting treatment with respect to the payment to Resolution Funding Corporation, the role of the combined financial statements of the twelve Banks, the accounting classification of redeemable capital stock, and the accounting treatment related to the joint and several nature of the obligations of the Banks.

SEC. 208. COMMUNITY FINANCIAL INSTITUTION MEMBERS.

- (a) TOTAL ASSET REQUIREMENT.—Paragraph (10) of section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422(10)), as so redesignated by section 201(3) of this Act, is amended by striking “\$500,000,000” each place such term appears and inserting “\$1,000,000,000”.
- (b) USE OF ADVANCES FOR COMMUNITY DEVELOPMENT ACTIVITIES.—Section 10(a) of the Federal Home Loan Bank Act (12 U.S.C. 1430(a)) is amended—
- (1) in paragraph (2)(B)—
- (A) by striking “and”; and
- (B) by inserting “, and community development activities” before the period at the end;
- (2) in paragraph (3)(E), by inserting “or community development activities” after “agriculture.”; and
- (3) in paragraph (6)—
- (A) by striking “and”; and
- (B) by inserting “, and ‘community development activities’” before “shall”.

SEC. 209. TECHNICAL AND CONFORMING AMENDMENTS.

- (a) RIGHT TO FINANCIAL PRIVACY ACT OF 1978.—Section 1113(o) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3413(o)) is amended—
- (1) by striking “Federal Housing Finance Board” and inserting “Federal Housing Finance Agency”; and
- (2) by striking “Federal Housing Finance Board’s” and inserting “Federal Housing Finance Agency’s”.
- (b) RIEGLE COMMUNITY DEVELOPMENT AND REGULATORY IMPROVEMENT ACT OF 1994.—Section 117(e) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4716(e)) is amended by striking “Federal Housing Finance Board” and inserting “Federal Housing Finance Agency”.
- (c) TITLE 18, UNITED STATES CODE.—Title 18, United States Code, is amended by striking “Federal Housing Finance Board” each place such term appears in each of sections 212, 657, 1006, 1014, and inserting “Federal Housing Finance Agency”.
- (d) MAHRA ACT OF 1997.—Section 517(b)(4) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note) is amended by striking “Federal Housing Finance Board” and inserting “Federal Housing Finance Agency”.
- (e) TITLE 44, UNITED STATES CODE.—Section 3502(5) of title 44, United States Code, is amended by striking “Federal Housing Finance Board” and inserting “Federal Housing Finance Agency”.
- (f) ACCESS TO LOCAL TV ACT OF 2000.—Section 1004(d)(2)(D)(iii) of the Launching Our Communities’ Access to Local Television Act of 2000 (47 U.S.C. 1103(d)(2)(D)(iii)) is amended by striking “Office of Federal Housing Enterprise

Oversight, the Federal Housing Finance Board” and inserting “Federal Housing Finance Agency”.

(g) **SARBANES-OXLEY ACT OF 2002.**—Section 105(b)(5)(B)(ii)(II) of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7215(B)(5)(b)(ii)(II)) is amended by inserting “and the Director of the Federal Housing Finance Agency” after “Commission,”.

SEC. 210. STUDY OF AFFORDABLE HOUSING PROGRAM USE FOR LONG-TERM CARE FACILITIES.

The Comptroller General shall conduct a study of the use of affordable housing programs of the Federal home loan banks under section 10(j) of the Federal Home Loan Bank Act to determine how and the extent to which such programs are used to assist long-term care facilities for low- and moderate-income individuals, and the effectiveness and adequacy of such assistance in meeting the needs of affected communities. The study shall examine the applicability of such use to the affordable housing programs required to be established by the enterprises pursuant to the amendment made by section 139 of this Act. The Comptroller General shall submit a report to the Director of the Federal Housing Finance Agency and the Congress regarding the results of the study not later than the expiration of the 1-year period beginning on the date of the enactment of this Act. This section shall take effect on the date of the enactment of this Act.

SEC. 211. EFFECTIVE DATE.

Except as specifically provided otherwise in this title, this title shall take effect on and the amendments made by this title shall take effect on, and shall apply beginning on, the expiration of the 6-month period beginning on the date of the enactment of this Act.

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

Subtitle A—Office of Federal Housing Enterprise Oversight

SEC. 301. ABOLISHMENT OF OFHEO.

(a) **IN GENERAL.**—Effective at the end of the 6-month period beginning on the date of the enactment of this Act, the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development and the positions of the Director and Deputy Director of such Office are abolished.

(b) **DISPOSITION OF AFFAIRS.**—During the 6-month period beginning on the date of the enactment of this Act, the Director of the Office of Federal Housing Enterprise Oversight shall, for the purpose of winding up the affairs of the Office of Federal Housing Enterprise Oversight and in addition to carrying out its other responsibilities under law—

(1) manage the employees of such Office and provide for the payment of the compensation and benefits of any such employee which accrue before the effective date of the transfer of such employee pursuant to section 303; and

(2) may take any other action necessary for the purpose of winding up the affairs of the Office.

(c) **STATUS OF EMPLOYEES BEFORE TRANSFER.**—The amendments made by title I and the abolishment of the Office of Federal Housing Enterprise Oversight under subsection (a) of this section may not be construed to affect the status of any employee of such Office as employees of an agency of the United States for purposes of any other provision of law before the effective date of the transfer of any such employee pursuant to section 303.

(d) **USE OF PROPERTY AND SERVICES.**—

(1) **PROPERTY.**—The Director of the Federal Housing Finance Agency may use the property of the Office of Federal Housing Enterprise Oversight to perform functions which have been transferred to the Director of the Federal Housing Finance Agency for such time as is reasonable to facilitate the orderly transfer of functions transferred pursuant to any other provision of this Act or any amendment made by this Act to any other provision of law.

(2) AGENCY SERVICES.—Any agency, department, or other instrumentality of the United States, and any successor to any such agency, department, or instrumentality, which was providing supporting services to the Office of Federal Housing Enterprise Oversight before the expiration of the period under subsection (a) in connection with functions that are transferred to the Director of the Federal Housing Finance Agency shall—

(A) continue to provide such services, on a reimbursable basis, until the transfer of such functions is complete; and

(B) consult with any such agency to coordinate and facilitate a prompt and reasonable transition.

(e) SAVINGS PROVISIONS.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Subsection (a) shall not affect the validity of any right, duty, or obligation of the United States, the Director of the Office of Federal Housing Enterprise Oversight, or any other person, which—

(A) arises under or pursuant to the title XIII of the Housing and Community Development Act of 1992, the Federal National Mortgage Association Charter Act, the Federal Home Loan Mortgage Corporation Act, or any other provision of law applicable with respect to such Office; and

(B) existed on the day before the abolishment under subsection (a) of this section.

(2) CONTINUATION OF SUITS.—No action or other proceeding commenced by or against the Director of the Office of Federal Housing Enterprise Oversight in connection with functions that are transferred to the Director of the Federal Housing Finance Agency shall abate by reason of the enactment of this Act, except that the Director of the Federal Housing Finance Agency shall be substituted for the Director of the Office of Federal Housing Enterprise Oversight as a party to any such action or proceeding.

SEC. 302. CONTINUATION AND COORDINATION OF CERTAIN REGULATIONS.

All regulations, orders, determinations, and resolutions that—

(1) were issued, made, prescribed, or allowed to become effective by—

(A) the Office of Federal Housing Enterprise Oversight; or

(B) a court of competent jurisdiction and that relate to functions transferred by this subtitle; and

(2) are in effect on the date of the abolishment under section 301(a) of this Act, shall remain in effect according to the terms of such regulations, orders, determinations, and resolutions, and shall be enforceable by or against the Director of the Federal Housing Finance Agency until modified, terminated, set aside, or superseded in accordance with applicable law by such Director, as the case may be, any court of competent jurisdiction, or operation of law.

SEC. 303. TRANSFER AND RIGHTS OF EMPLOYEES OF OFHEO.

(a) TRANSFER.—Each employee of the Office of Federal Housing Enterprise Oversight shall be transferred to the Federal Housing Finance Agency for employment no later than the date of the abolishment under section 301(a) of this Act and such transfer shall be deemed a transfer of function for purposes of section 3503 of title 5, United States Code.

(b) GUARANTEED POSITIONS.—Each employee transferred under subsection (a) shall be guaranteed a position with the same status, tenure, grade, and pay as that held on the day immediately preceding the transfer. Each such employee holding a permanent position shall not be involuntarily separated or reduced in grade or compensation for 12 months after the date of transfer, except for cause or, if the employee is a temporary employee, separated in accordance with the terms of the appointment.

(c) APPOINTMENT AUTHORITY FOR EXCEPTED SERVICE EMPLOYEES.—

(1) IN GENERAL.—In the case of employees occupying positions in the excepted service, any appointment authority established pursuant to law or regulations of the Office of Personnel Management for filling such positions shall be transferred, subject to paragraph (2).

(2) DECLINE OF TRANSFER.—The Director of the Federal Housing Finance Agency may decline a transfer of authority under paragraph (1) (and the employees appointed pursuant thereto) to the extent that such authority relates to positions excepted from the competitive service because of their confidential, policy-making, policy-determining, or policy-advocating character.

(d) REORGANIZATION.—If the Director of the Federal Housing Finance Agency determines, after the end of the 1-year period beginning on the date of the abolishment under section 301(a), that a reorganization of the combined work force is required, that reorganization shall be deemed a major reorganization for purposes of

affording affected employees retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code.

(e) **EMPLOYEE BENEFIT PROGRAMS.**—Any employee of the Office of Federal Housing Enterprise Oversight accepting employment with the Director of the Federal Housing Finance Agency as a result of a transfer under subsection (a) may retain for 12 months after the date such transfer occurs membership in any employee benefit program of the Federal Housing Finance Agency or the Office of Federal Housing Enterprise Oversight, as applicable, including insurance, to which such employee belongs on the date of the abolishment under section 301(a) if—

- (1) the employee does not elect to give up the benefit or membership in the program; and
- (2) the benefit or program is continued by the Director of the Federal Housing Finance Agency,

The difference in the costs between the benefits which would have been provided by such agency and those provided by this section shall be paid by the Director of the Federal Housing Finance Agency. If any employee elects to give up membership in a health insurance program or the health insurance program is not continued by such Director, the employee shall be permitted to select an alternate Federal health insurance program within 30 days of such election or notice, without regard to any other regularly scheduled open season.

SEC. 304. TRANSFER OF PROPERTY AND FACILITIES.

Upon the abolishment under section 301(a), all property of the Office of Federal Housing Enterprise Oversight shall transfer to the Director of the Federal Housing Finance Agency.

Subtitle B—Federal Housing Finance Board

SEC. 321. ABOLISHMENT OF THE FEDERAL HOUSING FINANCE BOARD.

(a) **IN GENERAL.**—Effective at the end of the 6-month period beginning on the date of enactment of this Act, the Federal Housing Finance Board (in this title referred to as the “Board”) is abolished.

(b) **DISPOSITION OF AFFAIRS.**—During the 6-month period beginning on the date of enactment of this Act, the Board, for the purpose of winding up the affairs of the Board and in addition to carrying out its other responsibilities under law—

- (1) shall manage the employees of such Board and provide for the payment of the compensation and benefits of any such employee which accrue before the effective date of the transfer of such employee under section 323; and
- (2) may take any other action necessary for the purpose of winding up the affairs of the Board.

(c) **STATUS OF EMPLOYEES BEFORE TRANSFER.**—The amendments made by titles I and II and the abolishment of the Board under subsection (a) may not be construed to affect the status of any employee of such Board as employees of an agency of the United States for purposes of any other provision of law before the effective date of the transfer of any such employee under section 323.

(d) **USE OF PROPERTY AND SERVICES.**—

(1) **PROPERTY.**—The Director of the Federal Housing Finance Agency may use the property of the Board to perform functions which have been transferred to the Director of the Federal Housing Finance Agency for such time as is reasonable to facilitate the orderly transfer of functions transferred under any other provision of this Act or any amendment made by this Act to any other provision of law.

(2) **AGENCY SERVICES.**—Any agency, department, or other instrumentality of the United States, and any successor to any such agency, department, or instrumentality, which was providing supporting services to the Board before the expiration of the period under subsection (a) in connection with functions that are transferred to the Director of the Federal Housing Finance Agency shall—

- (A) continue to provide such services, on a reimbursable basis, until the transfer of such functions is complete; and
- (B) consult with any such agency to coordinate and facilitate a prompt and reasonable transition.

(e) **SAVINGS PROVISIONS.**—

(1) **EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.**—Subsection (a) shall not affect the validity of any right, duty, or obligation of the United States, a member of the Board, or any other person, which—

- (A) arises under the Federal Home Loan Bank Act or any other provision of law applicable with respect to such Board; and

(B) existed on the day before the effective date of the abolishment under subsection (a).

(2) CONTINUATION OF SUITS.—No action or other proceeding commenced by or against the Board in connection with functions that are transferred to the Director of the Federal Housing Finance Agency shall abate by reason of the enactment of this Act, except that the Director of the Federal Housing Finance Agency shall be substituted for the Board or any member thereof as a party to any such action or proceeding.

SEC. 322. CONTINUATION AND COORDINATION OF CERTAIN REGULATIONS.

(a) IN GENERAL.—All regulations, orders, determinations, and resolutions described under subsection (b) shall remain in effect according to the terms of such regulations, orders, determinations, and resolutions, and shall be enforceable by or against the Director of the Federal Housing Finance Agency until modified, terminated, set aside, or superseded in accordance with applicable law by such Director, any court of competent jurisdiction, or operation of law.

(b) APPLICABILITY.—A regulation, order, determination, or resolution is described under this subsection if it—

- (1) was issued, made, prescribed, or allowed to become effective by—
 - (A) the Board; or
 - (B) a court of competent jurisdiction and relates to functions transferred by this subtitle; and
- (2) is in effect on the effective date of the abolishment under section 321(a).

SEC. 323. TRANSFER AND RIGHTS OF EMPLOYEES OF THE FEDERAL HOUSING FINANCE BOARD.

(a) TRANSFER.—Each employee of the Board shall be transferred to the Federal Housing Finance Agency for employment not later than the effective date of the abolishment under section 321(a), and such transfer shall be deemed a transfer of purposes of section 3503 of title 5, United States Code.

(b) GUARANTEED POSITIONS.—Each employee transferred under subsection (a) shall be guaranteed a position with the same status, tenure, grade, and pay as that held on the day immediately preceding the transfer. Each such employee holding a permanent position shall not be involuntarily separated or reduced in grade or compensation for 12 months after the date of transfer, except for cause or, if the employee is a temporary employee, separated in accordance with the terms of the appointment.

(c) APPOINTMENT AUTHORITY FOR EXCEPTED AND SENIOR EXECUTIVE SERVICE EMPLOYEES.—

(1) IN GENERAL.—In the case of employees occupying positions in the excepted service or the Senior Executive Service, any appointment authority established under law or by regulations of the Office of Personnel Management for filling such positions shall be transferred, subject to paragraph (2).

(2) DECLINE OF TRANSFER.—The Director of the Federal Housing Finance Agency may decline a transfer of authority under paragraph (1) to the extent that such authority relates to positions excepted from the competitive service because of their confidential, policymaking, policy-determining, or policy-advocating character, and noncareer positions in the Senior Executive Service (within the meaning of section 3132(a)(7) of title 5, United States Code).

(d) REORGANIZATION.—If the Director of the Federal Housing Finance Agency determines, after the end of the 1-year period beginning on the effective date of the abolishment under section 321(a), that a reorganization of the combined workforce is required, that reorganization shall be deemed a major reorganization for purposes of affording affected employees retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code.

(e) EMPLOYEE BENEFIT PROGRAMS.—

(1) IN GENERAL.—Any employee of the Board accepting employment with the Federal Housing Finance Agency as a result of a transfer under subsection (a) may retain for 12 months after the date on which such transfer occurs membership in any employee benefit program of the Federal Housing Finance Agency or the Board, as applicable, including insurance, to which such employee belongs on the effective date of the abolishment under section 321(a) if—

- (A) the employee does not elect to give up the benefit or membership in the program; and
- (B) the benefit or program is continued by the Director of the Federal Housing Finance Agency.

(2) COST DIFFERENTIAL.—The difference in the costs between the benefits which would have been provided by the Board and those provided by this section shall be paid by the Director of the Federal Housing Finance Agency. If any employee elects to give up membership in a health insurance program or

the health insurance program is not continued by such Director, the employee shall be permitted to select an alternate Federal health insurance program within 30 days after such election or notice, without regard to any other regularly scheduled open season.

SEC. 324. TRANSFER OF PROPERTY AND FACILITIES.

Upon the effective date of the abolishment under section 321(a), all property of the Board shall transfer to the Director of the Federal Housing Finance Agency.

Subtitle C—Department of Housing and Urban Development

SEC. 341. TERMINATION OF ENTERPRISE-RELATED FUNCTIONS.

(a) **TERMINATION DATE.**—For purposes of this subtitle, the term “termination date” means the date that occurs 6 months after the date of the enactment of this Act.

(b) **DETERMINATION OF TRANSFERRED FUNCTIONS AND EMPLOYEES.**—

(1) **IN GENERAL.**—Not later than the expiration of the 3-month period beginning on the date of the enactment of this Act, the Secretary, in consultation with the Director of the Office of Federal Housing Enterprise Oversight, shall determine—

(A) the functions, duties, and activities of the Secretary of Housing and Urban Development regarding oversight or regulation of the enterprises under or pursuant to the authorizing statutes, title XIII of the Housing and Community Development Act of 1992, and any other provisions of law, as in effect before the date of the enactment of this Act, but not including any such functions, duties, and activities of the Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development and such Office; and

(B) the employees of the Department of Housing and Urban Development necessary to perform such functions, duties, and activities.

(2) **ENTERPRISE-RELATED FUNCTIONS.**—For purposes of this subtitle, the term “enterprise-related functions of the Department” means the functions, duties, and activities of the Department of Housing and Urban Development determined under paragraph (1)(A).

(3) **ENTERPRISE-RELATED EMPLOYEES.**—For purposes of this subtitle, the term “enterprise-related employees of the Department” means the employees of the Department of Housing and Urban Development determined under paragraph (1)(B).

(c) **DISPOSITION OF AFFAIRS.**—During the 6-month period beginning on the date of enactment of this Act, the Secretary of Housing and Urban Development (in this title referred to as the “Secretary”), for the purpose of winding up the affairs of the Secretary regarding the enterprise-related functions of the Department of Housing and Urban Development (in this title referred to as the “Department”) and in addition to carrying out the Secretary’s other responsibilities under law regarding such functions—

(1) shall manage the enterprise-related employees of the Department and provide for the payment of the compensation and benefits of any such employee which accrue before the effective date of the transfer of any such employee under section 343; and

(2) may take any other action necessary for the purpose of winding up the enterprise-related functions of the Department.

(d) **STATUS OF EMPLOYEES BEFORE TRANSFER.**—The amendments made by titles I and II and the termination of the enterprise-related functions of the Department under subsection (b) may not be construed to affect the status of any employee of the Department as employees of an agency of the United States for purposes of any other provision of law before the effective date of the transfer of any such employee under section 343.

(e) **USE OF PROPERTY AND SERVICES.**—

(1) **PROPERTY.**—The Director of the Federal Housing Finance Agency may use the property of the Secretary to perform functions which have been transferred to the Director of the Federal Housing Finance Agency for such time as is reasonable to facilitate the orderly transfer of functions transferred under any other provision of this Act or any amendment made by this Act to any other provision of law.

(2) **AGENCY SERVICES.**—Any agency, department, or other instrumentality of the United States, and any successor to any such agency, department, or instru-

mentality, which was providing supporting services to the Secretary regarding enterprise-related functions of the Department before the termination date under subsection (a) in connection with such functions that are transferred to the Director of the Federal Housing Finance Agency shall—

(A) continue to provide such services, on a reimbursable basis, until the transfer of such functions is complete; and

(B) consult with any such agency to coordinate and facilitate a prompt and reasonable transition.

(f) SAVINGS PROVISIONS.—

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED.—Subsection (a) shall not affect the validity of any right, duty, or obligation of the United States, the Secretary, or any other person, which—

(A) arises under the authorizing statutes, title XIII of the Housing and Community Development Act of 1992, or any other provision of law applicable with respect to the Secretary, in connection with the enterprise-related functions of the Department; and

(B) existed on the day before the termination date under subsection (a).

(2) CONTINUATION OF SUITS.—No action or other proceeding commenced by or against the Secretary in connection with the enterprise-related functions of the Department shall abate by reason of the enactment of this Act, except that the Director of the Federal Housing Finance Agency shall be substituted for the Secretary or any member thereof as a party to any such action or proceeding.

SEC. 342. CONTINUATION AND COORDINATION OF CERTAIN REGULATIONS.

(a) IN GENERAL.—All regulations, orders, and determinations described in subsection (b) shall remain in effect according to the terms of such regulations, orders, determinations, and resolutions, and shall be enforceable by or against the Director of the Federal Housing Finance Agency until modified, terminated, set aside, or superseded in accordance with applicable law by such Director, any court of competent jurisdiction, or operation of law.

(b) APPLICABILITY.—A regulation, order, or determination is described under this subsection if it—

(1) was issued, made, prescribed, or allowed to become effective by—

(A) the Secretary; or

(B) a court of competent jurisdiction and that relate to the enterprise-related functions of the Department; and

(2) is in effect on the termination date under section 341(a).

SEC. 343. TRANSFER AND RIGHTS OF EMPLOYEES OF DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.

(a) TRANSFER.—

(1) IN GENERAL.—Except as provided in paragraph (2), each enterprise-related employee of the Department shall be transferred to the Federal Housing Finance Agency for employment not later than the termination date under section 341(a) and such transfer shall be deemed a transfer of function for purposes of section 3503 of title 5, United States Code.

(2) AUTHORITY TO DECLINE.—An enterprise-related employee of the Department may, in the discretion of the employee, decline transfer under paragraph (1) to a position in the Federal Housing Finance Agency and shall be guaranteed a position in the Department with the same status, tenure, grade, and pay as that held on the day immediately preceding the date that such declination was made. Each such employee holding a permanent position shall not be involuntarily separated or reduced in grade or compensation for 12 months after the date that the transfer would otherwise have occurred, except for cause or, if the employee is a temporary employee, separated in accordance with the terms of the appointment.

(b) GUARANTEED POSITIONS.—Each enterprise-related employee of the Department transferred under subsection (a) shall be guaranteed a position with the same status, tenure, grade, and pay as that held on the day immediately preceding the transfer. Each such employee holding a permanent position shall not be involuntarily separated or reduced in grade or compensation for 12 months after the date of transfer, except for cause or, if the employee is a temporary employee, separated in accordance with the terms of the appointment.

(c) APPOINTMENT AUTHORITY FOR EXCEPTED AND SENIOR EXECUTIVE SERVICE EMPLOYEES.—

(1) IN GENERAL.—In the case of employees occupying positions in the excepted service or the Senior Executive Service, any appointment authority established under law or by regulations of the Office of Personnel Management for filling such positions shall be transferred, subject to paragraph (2).

(2) **DECLINE OF TRANSFER.**—The Director of the Federal Housing Finance Agency may decline a transfer of authority under paragraph (1) (and the employees appointed pursuant thereto) to the extent that such authority relates to positions excepted from the competitive service because of their confidential, policymaking, policy-determining, or policy-advocating character, and noncareer positions in the Senior Executive Service (within the meaning of section 3132(a)(7) of title 5, United States Code).

(d) **REORGANIZATION.**—If the Director of the Federal Housing Finance Agency determines, after the end of the 1-year period beginning on the termination date under section 341(a), that a reorganization of the combined workforce is required, that reorganization shall be deemed a major reorganization for purposes of affording affected employees retirement under section 8336(d)(2) or 8414(b)(1)(B) of title 5, United States Code.

(e) **EMPLOYEE BENEFIT PROGRAMS.**—

(1) **IN GENERAL.**—Any enterprise-related employee of the Department accepting employment with the Federal Housing Finance Agency as a result of a transfer under subsection (a) may retain for 12 months after the date on which such transfer occurs membership in any employee benefit program of the Federal Housing Finance Agency or the Department, as applicable, including insurance, to which such employee belongs on the termination date under section 341(a) if—

(A) the employee does not elect to give up the benefit or membership in the program; and

(B) the benefit or program is continued by the Director of the Federal Housing Finance Agency.

(2) **COST DIFFERENTIAL.**—The difference in the costs between the benefits which would have been provided by the Department and those provided by this section shall be paid by the Director of the Federal Housing Finance Agency. If any employee elects to give up membership in a health insurance program or the health insurance program is not continued by such Director, the employee shall be permitted to select an alternate Federal health insurance program within 30 days after such election or notice, without regard to any other regularly scheduled open season.

SEC. 344. TRANSFER OF APPROPRIATIONS, PROPERTY, AND FACILITIES.

Upon the termination date under section 341(a), all assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to the Department in connection with enterprise-related functions of the Department shall transfer to the Director of the Federal Housing Finance Agency. Unexpended funds transferred by this section shall be used only for the purposes for which the funds were originally authorized and appropriated.

PURPOSE AND SUMMARY

H.R. 1427, the Federal Housing Finance Reform Act of 2007, was introduced on March 9, 2007, by Financial Services Committee Chairman Barney Frank, with Mr. Watt, Mr. Baker, and Mr. Gary G. Miller. H.R. 1427 is based in significant part on a bill passed by the House in the 109th Congress by a vote of 331–90. Modifications have been made in several areas of the bill in this Congress to reflect discussions with the U.S. Department of the Treasury late in the last Congress. The purpose of the bill is to ensure that the government sponsored enterprises supporting the mortgage markets operate in a safe and sound manner and fulfill the missions assigned under their charters, both through establishment of a strong, independent regulator and through enhancements to their mission responsibilities.

SUMMARY OF MAJOR PROVISIONS

H.R. 1427 establishes the Federal Housing Finance Agency (FHFA or Agency) as an independent agency to oversee the safe and sound operations as well as the mission functions of the housing government sponsored enterprises (GSEs)—Fannie Mae,

Freddie Mac, and the 12 Federal Home Loan Banks (collectively, the regulated entities). The Agency assumes the supervisory duties of the Office of Federal Housing Enterprise Oversight (OFHEO), the Federal Housing Finance Board (Finance Board), and the Department of Housing and Urban Development (HUD) (with respect to mission oversight of Fannie Mae and Freddie Mac).

The independent agency created in this legislation is headed by a Director appointed by the President and confirmed by the Senate for a five-year term. The Director will appoint three deputy directors: a Deputy Director of the Division of Enterprise Regulation; a Deputy Director of Federal Home Loan Bank Regulation; and a Deputy Director for Housing. Among other things, this supervisory structure recognizes the unique nature of, and differences between, the Federal Home Loan Banks and the enterprises.

An oversight board (called the Federal Housing Enterprise Board) is created to advise the Director with respect to overall strategies and policies in carrying out the duties of the Director. The Enterprise Board will consist of the Director of the Agency, the Secretaries of Treasury and HUD, and two additional appointed directors. Funding for the Agency is to be provided by an annual assessment by the Agency on the regulated entities for the FHFA's reasonable costs and expenses. Congressional appropriations approval is not required.

Safety and soundness provisions

The legislation strengthens the existing safety and soundness oversight of the regulated entities, particularly with respect to Fannie Mae and Freddie Mac (the enterprises), providing the new regulator with safety and soundness authority that is comparable to and in some areas broader than that of the federal bank regulatory agencies. Under the legislation, the Director of the Agency will have enhanced authority in several areas critical to the safety and soundness of the GSEs:

Capital. The legislation provides the Agency significantly strengthened authority to establish appropriate capital standards for the regulated entities. In particular, the legislation removes restrictions on authority of the enterprises' current regulator that limit the regulator's ability to impose risk-based capital requirements that cover the full range of risks encountered by the enterprises. Instead, the Agency will have broad authority to establish and adjust risk-based capital standards and critical capital levels for all of the regulated entities in order to ensure that they operate in a safe and sound manner and maintain sufficient capital reserves. The Committee expects that the new regulator will use this expanded authority to determine whether the existing rules for the enterprises, which focus primarily on interest rate risk, should be strengthened, supplemented, or replaced, such as with standards that focus on the particular assets held by the enterprises. The Committee believes that providing the Agency flexibility to establish comprehensive risk-based capital standards will considerably enhance ongoing oversight of the safety and soundness oversight of the enterprises, particularly in a prompt corrective action framework, and that strong risk-based capital rules, combined with appropriate risk management and supervisory oversight, are the best means of ensuring that the enterprises operate safely.

As is the case under banking laws and regulations, a robust risk-based capital regime is an effective first line of defense in a strong financial oversight system. The legislation provides, as a further safeguard to address issues related to safety and soundness, significant new authority to the Agency with respect to minimum capital requirements. The Agency will have the authority to adopt rules to revise the minimum capital levels of the enterprises or the Federal Home Loan Banks, or both, to the extent needed to ensure that they operate in a safe and sound manner. The Agency is given specific authority to increase the minimum capital requirement for an individual regulated entity by order on a temporary basis to address certain violations or unsafe and unsound conditions, with temporary increases rescinded when the underlying conditions are remedied. The legislation also provides the Agency authority to establish capital or reserve requirements for specific programs or activities of the regulated entities.

In all cases, the Committee expects the Agency to exercise this authority in a manner consistent with that of the federal banking regulators, by establishing capital requirements necessary to ensure the safety and soundness of the regulated entities themselves, and not to address broader issues of potential risk to the financial system unrelated to oversight of the safety and soundness of the regulated entities.

Prudential standards. The Agency is provided authority to set prudential management and operations standards for the regulated entities, confirming and clarifying the authority of the enterprises' current regulator to adopt such standards. The requirements of the legislation for the adoption of prudential standards are broadly comparable to the requirements currently applicable to the federal bank regulatory agencies. As with the bank regulatory agencies, the Agency would be required to establish standards for internal controls, internal audit, liquidity, asset and investment management, record systems, and management of interest rate, market, and credit risk, as well as other operational and management standards the Agency determines are appropriate.

Portfolio standards. In addition to the prudential standards requirements, the legislation includes a specific requirement for the establishment of standards for the safe and sound and mission-compliant operation of the enterprises' portfolios. The factors to be considered are limited accordingly to the safety and soundness and mission of the enterprises themselves, and not to the competitive or financial impact on other market participants. The Committee expects the new regulator to establish standards governing the future operation and growth of the portfolios that will both ensure the safety and soundness of the enterprises and enable them to provide the support for the secondary mortgage markets contemplated under their charters. The standards required under this section are not intended to address potential risks to the financial system unrelated to oversight of the safe and sound operation of the portfolios of the enterprises themselves. To be clear, any system risk that results from the unsafe or unsound operations of the portfolios will clearly be addressed when safety and soundness is addressed. However, the Committee does not believe that systemic risk can be attributed to the operation of the portfolios if they are operating in a safe and sound manner. Therefore, the requirement

for the development of standards is not intended to permit the new regulator to place arbitrary limits on the size of the portfolios of the enterprises.

This legislation further requires that the Director monitor the portfolios of the enterprises and provides the Director with the extraordinary authority to require an enterprise to dispose of or acquire assets, if the Director determines that such action is consistent with the safety and soundness or mission of the enterprise and is justified by the Director's regulatory responsibilities. The Committee expects this authority to be used solely as necessary to ensure the safety and soundness of the enterprises or their compliance with the requirements of their charters. As with the portfolio standards, the Committee does not expect this authority to be used to place arbitrary limits on the size of the enterprises' portfolios.

Prompt corrective action. The legislation strengthens the existing requirements for prompt corrective action by the regulator in response to conditions that could result in significant degradation of the capital of the regulated entities. H.R. 1427 requires the Director to establish capital classifications for the regulated entities similar to those which exist for federally regulated banks and provides authority for the Director to take actions to return the enterprise to financial health.

Insolvency. The legislation would provide the new regulator with the authority to place a regulated entity into conservatorship or receivership if the Director determines that one or more of the statutory grounds exists. The new regulator also has authority to place a regulated entity that has been classified as critically undercapitalized entity into conservatorship or receivership. Further, the regulator must place the entity into receivership if the Agency determines that the debts of the entity have exceeded its assets for 30 days or the entity has not been paying its debts as they became due for 30 days. The conservatorship and receivership provisions were modeled after similar provisions in the Federal Deposit Insurance Act that apply to federally insured depository institutions.

These provisions are intended to address a criticism of the current regulatory regime for the enterprises, under which the existing regulator does not have the authority to place an enterprise in receivership, which some critics believe has led to inadequate market discipline with respect to the operations of the enterprises. Additionally, the legislation provides for the first time a specific framework for receivership of a Federal Home Loan Bank.

Enforcement powers. The legislation strengthens the existing enforcement powers of the current regulators. The Agency is vested with cease-and-desist powers, if the Director has reasonable cause to believe that the regulated entity or an affiliated party is engaged in an unsafe or unsound practice or other violation of law. The Agency is empowered to issue civil money penalties and has the authority to remove management.

Federal Home Loan Bank operations. H.R. 1427 improves the operations of the Federal Home Loan Bank System by permitting the formation of joint offices by two or more Banks, specifying that joint offices are subject to supervision and oversight to the same extent as are the Banks, requiring sharing of information among the Banks, and raising the total asset eligibility cap for community financial institution members that use advances for additional

lending activities. Two or more Banks are permitted to merge with approval of the boards of the Banks involved and the Agency. The legislation reforms the method by which each Bank elects its board of directors, requiring that two-fifths be independent directors with at least two being public interest directors.

Other. The legislation includes a variety of additional measures intended to strengthen the new regulator, such as a provision adding the Agency as a liaison member of the Federal Financial Institutions Examination Council (FFIEC), as well as measures intended to strengthen the operation of the enterprises and Federal Home Loan Banks, such as corporate governance improvements and requirements for the composition, operation, and compensation of the boards of directors of the enterprises.

Mission Oversight

New product review. Under the legislation, the authority to review and approve new products is transferred from HUD to the Agency. New products will be subject to a public notice and comment period before an enterprise can initially offer the product. The Director must approve or deny the product within 30 days after the close of the public comment period; if the Director does not act within 30 days, the enterprise may offer the product. A product may only be approved if it is authorized by law, in the public interest, consistent with safety and soundness of the enterprise and the mortgage finance system, and does not materially impair the efficiency of the mortgage finance system. The legislation also provides for an expedited review process for any new activity, service, undertaking or offering that an enterprise determines is not a product. The Agency must be notified of any such activity, must determine whether the activity, service, undertaking, or offering consists of, relates to, or involves a product and, if so, must notify the enterprise of that determination and treat the new activity, service, undertaking or offering as a product.

The definition of the term “product” explicitly excludes the automated underwriting system of an enterprise in existence on the date of enactment, including any upgrade to the technology, operating system, or software to operate the system. The term “product” also does not include modifications to mortgage terms and conditions or mortgage underwriting criteria relating to the mortgages that are purchased or guaranteed by an enterprise, provided that such modifications do not alter the underlying transaction to include services or financing, other than residential mortgage financing, or create significant new exposure to risk for the enterprise or the holder of the mortgage. The term “product” is not defined in the legislation, other than by the exclusion.

The Committee believes that the legislation provides the Agency with the flexibility to establish a workable system that will provide predictability as to what offerings or changes to existing offerings rise to the level of a new product that will be subject to notice and approval, addressing both the need to provide notice to market participants of new products and the need for the enterprises to respond in a timely manner to market demands. The Committee intends that the Agency will look to similar processes developed by the federal bank regulatory agencies in establishing procedures to

minimize unnecessary burden on the enterprises and originating institutions while fulfilling the objectives of the provision.

The provision does not apply to existing products or activities that were commenced or offered prior to the enactment of this legislation, but does not limit the authority of the Agency to review products and activities for safety and soundness and compliance with the enterprises' respective charters.

Conforming loan limits. The bill updates the statutory conforming loan limit dollar amounts to reflect 2007 levels, and requires the Agency to adjust the conforming loan limit according to the annual housing price index maintained by the Agency. An additional high-cost area limit is authorized for areas where the median home sales price with respect to certain properties in that area exceeds the generally conforming loan limit, up to the lower of 150 percent of the conforming loan limit or the median home price for such properties in that area. This is consistent with current statutory authority for loan limits to go up to 150 percent of the nationwide conforming loan limit in Alaska, Hawaii, and U.S. territories. Loans in high-cost areas above the general conforming loan limit must be securitized. The Director will conduct a study of whether the securitization requirement raises the cost of high-cost area loans, and may terminate the requirement if it is found to raise costs.

Affordable Housing Goals. The affordable housing goals are revised to target these numerical goals to better meet the needs of lower income borrowers and communities, and to better align the income categories with the Community Reinvestment Act, in order to augment financial institutions' activities in serving low- and very-low income communities and families. The goals are also revised to create a statutory multifamily loan goal.

Under existing law, the enterprises must meet three annual housing goals established by HUD. These goals measure all single-family and multi-family mortgage purchases (including refinancings), and have been set as a percentage of total mortgage purchases that meet the three statutory goal categories, which are based on area median income (AMI), as follows: (1) "low-income" (less than 100 percent of AMI); (2) "special affordable" (less than 60 percent of AMI plus less than 80 percent of AMI in low-income areas; and (3) "central cities, rural areas and other underserved areas" (families in census tracts below 90 percent of AMI, plus families in minority census tracts below 120 percent of AMI). In addition, HUD has authority to establish subgoals, and currently uses such authority to establish home purchase subgoals and a multifamily subgoal, which is volume-based.

This legislation better targets these goals, by creating 3 single family owner occupied affordable housing goals, measuring mortgages that serve families which are: (1) "low income" (less than 80 percent of AMI), (2) "very low income" (less than 50 percent of AMI), and (3) living in census tracts below 80 percent of AMI plus those families below 100 percent of AMI living in minority census tracts. To reflect the narrowing of the types of loans measured, a statutory subgoal is established for refinancings, and a separate statutory subgoal is established for single family rental housing units.

In addition, the bill creates a statutory multifamily housing goal, to be based on loan volume, measuring units assisting low income families, very low income families, and units assisted by low income housing tax credits. The bill also requires establishment of additional requirements for smaller multifamily housing projects.

In establishing these goals, the legislation also recognizes that a verifiable measurement baseline is necessary to ensure consistency and accuracy over time. The Director is required to establish the single-family goals on Home Mortgage Disclosure Act (HMDA) data by using the prior 3-year market averages for each goal category, with authority to adjust such goals to reflect expected changes in market performance, using factors similar to those in current statute regarding goal establishment, and with a requirement that the enterprises must lead the market in each goal area. In addition, the Director must assign added credit toward achievement of the housing goals for mortgage purchase activities of an enterprise that supports housing that includes a licensed childcare center, or that supports housing that meets energy efficiency or other Federal, State or local environmental standards for the geographic area where the housing is located.

Duty to Serve. The bill also creates a statutory duty for the enterprises to serve underserved markets that lack adequate credit through conventional lending sources. The bill specifies three areas—manufactured housing, affordable housing preservation, and rural housing—and gives the Director authority to establish other underserved markets. Enterprises are required to develop loan products and flexible underwriting guidelines, and are to be evaluated on this basis, as well as the extent of outreach to qualified loan sellers and the volume of loans purchased. However, it is not intended that the Director would create percent-of-business or other numeric goals under this section.

Affordable Housing Fund. The legislation creates an “Affordable Housing Fund,” to be managed by the Director. Funds are derived through contributions to be made by Fannie Mae and Freddie Mac each year from 2007 through 2012, with the fund sunseting after this five year period. Contributions are to be made in amounts equal to 1.2 basis points on each enterprise’s average total outstanding mortgages (including both those held in portfolio and those securitized) from the prior calendar year. Seventy-five percent of these funds are used for affordable housing fund purposes, and twenty-five percent are allocated to the federal government as payments to REFCORP, in order to keep the bill deficit neutral. The Director can temporarily suspend allocations by an enterprise upon a finding that the allocation would contribute to the financial instability of the enterprise, would cause the enterprise to be undercapitalized or would prevent the enterprise from successfully completing a capital restoration plan.

Seventy-five percent of the affordable housing funds available in the first year will go to Louisiana and twenty-five percent of such funds will go to Mississippi for affordable housing needs arising out of Hurricanes Katrina and Rita. Thereafter, funds are allocated by formula to the states (including also D.C., federal territories, and federally recognized tribes). This formula is to be developed by HUD, and is to be based on a number of factors, including population, housing affordability, percentage of very and extremely low

income families, cost of rehab, and extent of substandard and aging housing. If HUD fails to establish this formula on time, funds are distributed to states based on HOME allocations to states and Participating Jurisdictions.

One-hundred percent of funds must be used for the benefit of very low (below 50 percent of AMI) and extremely low (below 30 percent of AMI) income families. Very- and extremely low-income families are traditionally the hardest groups to provide affordable housing to without the availability of subsidies, and existing programs are often unable to provide the level of subsidies necessary to make rents affordable for such families. Funds may be used for both rental housing and homeownership, with at least ten percent of funds used by each state for home ownership. Home ownership purposes may include down payment assistance, closing costs, and assistance for interest-rate buy-downs for very low and extremely low income households who are first-time homebuyers. Families receiving homeownership assistance must have completed prepurchase counseling prior to buying the home. Funds also may be used for public infrastructure activities in conjunction with housing, but no more than 12.5 percent of funds in any state may be used for this purpose.

Affordable housing grants are to be made to eligible recipients, which can be any organization, agency, or other entity (including a for-profit entity, a nonprofit entity, or a faith-based organization) that has a demonstrated capacity to carry out the proposed fund use. Grantee funds may only be used for affordable housing uses, and not for administrative costs, except that by regulation the Director can limit the amount of any grant amounts a state (or DC, a territory, or tribe) may use for administrative costs of carrying out the program to a percentage of such grant amounts, which may not exceed 10 percent of grant funds used.

Each state allocates funds under its own Allocation Plan, to be based on priority housing needs in each state, and on criteria that include greatest impact, geographic diversity, ability to obligate funds in a timely manner, and the extent to which rental housing projects are affordable, especially for extremely low income families. Funds are redistributed from any state that does not obligate funds within 2 years.

The bill contains a number of provisions to ensure that AHF funds are used for the specified housing purposes and are not misused or used for other purposes, including an explicit prohibition against fund use for political activities, advocacy, lobbying, counseling, travel expenses, or preparation or advice on tax returns. The bill provides that funds allocated for the affordable housing fund, may be transferred at a later date to a national Affordable Housing Trust Fund that may be subsequently enacted into law.

The GAO shall conduct a study and report to Congress within one year of enactment concerning the effect the AHF will have on availability and affordability of credit for homebuyers, and the extent to which the costs to the enterprises of funding the AHF will be passed on to homebuyers.

Transition provisions. The bill ensures that OFHEO, the Finance Board, and the offices in HUD that oversee Fannie Mae and Freddie Mac will continue their supervisory roles during the six-month period between the enactment and effective dates. During

this time, OFHEO, the Finance Board, and HUD will have continued authority to issue regulations, ensure the safe and sound operation, and monitor the mission functions of the GSEs. On the effective date, all OFHEO, Finance Board, and HUD employees involved in the oversight of the GSEs will be transferred to the new Agency. All of the existing regulations from the former regulatory agencies will remain in force under the new Agency.

BACKGROUND AND NEED FOR LEGISLATION

Freddie Mac, Fannie Mae, and several of the Federal Home Loan Banks have experienced considerable accounting, financial reporting, and managerial problems in recent years. Significant operational and safety and soundness issues that have appeared since 2001 have highlighted the need to fortify the supervisory structure for all of the regulated entities to ensure that they conduct their business in a safe and sound manner and fulfill their statutory missions.

Fannie Mae and Freddie Mac were chartered by Congress in order to create a secondary market and increase liquidity in the home mortgage markets. Through their charters, the GSEs are granted special privileges not available to other private-sector firms. The Secretary of the Treasury is authorized, in his discretion, to purchase up to \$2.25 billion of any obligations of the enterprises. The enterprises are exempt from state regulation, state income taxation, and SEC registration.

Fannie Mae and Freddie Mac buy residential mortgages from lenders and finance the purchases either by issuing debt securities or by packaging mortgages in the form of mortgage backed securities (MBS), on which they guarantee payment for a fee. Purchasers of the debt and MBS include mutual funds, major financial institutions, pension funds, insurance companies, individual investors, central banks, and other institutions in foreign countries. The safety and soundness of the enterprises is regulated by the Office of Federal Housing Enterprise Oversight (OFHEO). HUD is responsible for mission regulation of the enterprises.

In 1992, Congress established affordable housing goals for the enterprises to ensure a more targeted transfer of GSE benefits to the housing market. Even though the enterprises are required by charter to help facilitate affordable housing, HUD has found that the enterprises lag behind the private sector in their affordable housing performance. Each enterprise must create an affordable housing fund in order for more of the subsidy to pass through to consumers.

The Federal Home Loan Bank System was established by Congress in 1932 to provide liquidity to home mortgage lenders. The Bank System encompasses twelve regional Federal Home Loan Banks (Banks), each of which is cooperatively owned by its commercial bank, savings association, credit union, and insurance company member institutions. The Banks issue debt for which they are jointly and severally liable, and use the proceeds principally to make collateralized advances to their 8,000-plus member institutions. Member institutions primarily secure advances with residential mortgages and other housing-related assets. The Federal Home Loan Banks are supervised by the Federal Housing Finance Board, an independent agency of the executive branch consisting of 5 ap-

pointed members. The System fulfills its mission by providing members with access to funding and technical assistance, and through special affordable housing and community and economic development programs.

The Affordable Housing Program (AHP) of the Federal Home Loan Banks is the largest private grant program for housing in the nation. The AHP is funded with 10 percent each of the Federal Home Loan Banks' annual earnings and has been a significant source of funds for financing the production and revitalization of affordable housing for people with low- and moderate-incomes. The AHP is a competitive program that provides grants to finance the purchase, construction, or rehabilitation of owner-occupied or rental housing. Grants can also be used to lower the interest rate on loans or cover down payment and closing costs. AHP grants are flexible and often serve as a "bridge" for housing projects, providing "gap" financing to make thousands of housing projects and home purchases. In 2005, approximately \$230 million was made available for regional housing projects, creating almost 40,000 affordable housing units. Since the program's inception in 1991, over \$2.54 billion dollars in AHP grants and subsidized advances have been awarded, creating almost 430,000 affordable housing units.

H.R. 1427 creates a similar program for Fannie Mae and Freddie Mac, establishing a new Affordable Housing Fund, funded through annual contributions from Fannie Mae and Freddie Mac. This new fund is designed to meet the affordable housing needs of our nation's poorest very low income and extremely low income families, which studies have shown have the most severe housing affordability needs. Traditionally, making housing affordable for such families requires deeper levels of housing subsidies than are typically available in most federal housing programs. The new Affordable Housing Fund is designed to target subsidies to these families. Funds are directed in the first year to meet housing needs arising out of Hurricanes Katrina and Rita, and in later years are distributed nationwide to states by formula.

As of December 31, 2004 (the last annual report filed), Fannie Mae reported total assets of approximately \$1 trillion. As of December 31, 2006, Freddie Mac reported total assets of \$813 billion, and the twelve Federal Home Loan Banks \$1 trillion. As of the same date, Freddie Mac held \$753 billion in outstanding debt, and the Federal Home Loan Banks \$934 billion in debt. The combined portfolios of Fannie Mae and Freddie Mac have grown from \$138 billion in 1990 to \$1.4 trillion at year end 2006. The Federal Home Loan Banks held \$98 billion at year end 2006.

Freddie Mac announced in January 2003 that it would need to revise its financial statements, resulting in a special review by OFHEO. Following the discovery of accounting irregularities and a reorganization of its management, Freddie Mac announced in November 2003 that it had overstated earnings by \$1 billion in 2001. The company said the error in its 2001 earnings—restated to \$3.16 billion from \$4.15 billion—stemmed from failure to properly account for derivatives activity.

In December 2003, OFHEO released a report on the special examination of Freddie Mac finding that the enterprise disregarded accounting rules, internal controls and disclosure standards. Furthermore, the report found that overall the company had under-

stated its earnings by \$5 billion between 2001–2003, and that the Board of Directors had failed to exercise adequate oversight. Freddie Mac entered into a consent order and settlement with OFHEO, under which it was required to undertake remedial actions relating to governance, corporate culture, internal controls, accounting practices, disclosure and oversight. The company also paid a \$125 million civil money penalty. On March 23, 2007, Freddie Mac released its 2006 year-end financial reports and expects to resume filing timely quarterly and annual financial statements in the second half of 2007. Once Freddie Mac becomes current in its financial reporting, the company will begin the process of registering its capital stock with the SEC.

Shortly after the announcement of Freddie Mac's financial reporting problems, OFHEO began a special examination of Fannie Mae. In September 2004, the agency issued a report identifying a number of deficiencies within Fannie Mae, including insufficient internal controls, the improper application of accounting standards, and inadequate corporate governance policies. OFHEO concluded that Fannie Mae was "significantly undercapitalized" in the third quarter of 2004, and required that the enterprise's minimum capital requirement be increased by 30% to strengthen its financial position.

In May 2006, Fannie Mae entered into a Consent Order to settle matters related to accounting, internal control and other failures leading to a restatement of earnings by and losses to the enterprise. Under the Consent Order, Fannie Mae paid \$400 million in fines and penalties and undertook numerous remedial actions. At the end of 2006, Fannie Mae announced that the restatement of its financial reports would lower its reported earnings by a total of \$6.3 billion for the period between 2001 and 2004. In February 2007, Fannie Mae announced its intention to file the company's 2005 annual report by the end of August and the 2006 annual report before the end of 2007.

Like Freddie Mac, Fannie Mae agreed to improve its internal controls and its corporate governance, and temporarily increase its capital levels. Fannie Mae additionally changed its leadership team in the wake of the accounting restatement, and OFHEO is presently pursuing administrative action against several former Fannie Mae executives.

A number of Federal Home Loan Banks also have identified financial reporting and management deficiencies in recent years. For example, during their efforts to register with the SEC six Federal Home Loan Banks (Atlanta, Dallas, Des Moines, Indianapolis, Pittsburgh, and Topeka) determined that they had to restate certain financial statements due to misapplications of accounting standards, primarily those rules for derivative instruments and hedging activities. The Federal Home Loan Bank of Chicago also restated its financials and entered into an agreement with the Finance Board to better manage its risks, but this announcement occurred prior to the SEC review.

Additionally, the Federal Home Loan Bank of Seattle entered into a written supervisory agreement with the FHFBS in December 2004. The agreement resulted from an excessive exposure to interest-rate risk volatility. The Federal Home Loan Bank of Seattle has

since filed and begun to implement a 3-year business and capital management plan to better manage its operations.

In the 109th Congress, the House Financial Services Committee approved H.R. 1461, the Federal Housing Finance Reform Act, by a vote of 65 to 5. The legislation subsequently passed the House by a vote of 331 to 90. On October 31, 2005, H.R. 1461 was received in the Senate, read twice and referred to the Committee on Banking, Housing, and Urban Affairs. While the Senate Committee on Banking, Housing, and Urban Affairs approved a GSE regulatory reform bill (S. 190), the legislation never came up for consideration on the Senate floor. As a result, H.R. 1461 died at the end of the 109th Congress.

HEARINGS

The Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises held a hearing on March 12, 2007, titled "Legislative Proposals on GSE Reform." The following witnesses testified: Mr. John R. Price, President and Chief Executive Officer, Federal Home Loan Bank of Pittsburgh; Mr. Thomas M. Stevens, Immediate Past President, National Association of Realtors; Mr. John M. Robbins, CMB, Chairman, Mortgage Bankers Association; Mr. Arthur R. Connelly, Chairman, South Shore Savings Bank; Mr. R. Michael Stewart Menzies, Sr., President/Chief Executive Officer, Easton Bank and Trust Company; Ms. Karen Shaw Petrou, Managing Partner, Federal Financial Analytics, Inc.; and Mr. Scott Stern, Chief Executive Officer, Lenders One, Chairman, National Alliance of Independent Mortgage Bankers.

The Financial Services Committee held a hearing on March 15, 2007, titled "Legislative Proposals on GSE Reform." The following witnesses testified: The Honorable Robert Steel, Under Secretary for Domestic Finance, U.S. Department of the Treasury; The Honorable James B. Lockhart III, Director, Office of Federal Housing Enterprise Oversight; The Honorable John Dalton, President, Housing Policy Council, Financial Services Roundtable; Mr. Richard F. Syron, Chairman and Chief Executive Officer, Freddie Mac; Mr. Daniel H. Mudd, President and Chief Executive Officer, Fannie Mae; Gerald M. Howard, Executive Vice President and Chief Executive Officer, National Association of Home Builders; Ms. Judith A. Kennedy, President and Chief Executive Officer, National Association of Affordable Housing Lenders; Mr. Allen J. Fishbein, Director of Housing and Credit Policy, Consumer Federation of America; Ms. Sheila Crowley, President, National Low Income Housing Coalition; Mr. Thomas Gleason, Board Member, National Council of State Housing Agencies; and Mr. Michael Flynn, Director of Government Affairs, Reason Foundation.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on March 28, 2007, and on March 29, 2007, ordered H.R. 1427, Federal Housing Finance Reform Act of 2007, reported, as amended, with a favorable recommendation by a record vote of 45 yeas and 19 nays.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Frank to report the bill to the House with a favorable recommendation was agreed to by a record vote of 45 yeas and 19 nays (Record vote FC-37). The names of Members voting for and against follow:

RECORD VOTE NO. FC-37

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank	X			Mr. Bachus		X	
Mr. Kanjorski				Mr. Baker	X		
Ms. Waters	X			Ms. Pryce (OH)	X		
Mrs. Maloney	X			Mr. Castle	X		
Mr. Gutierrez	X			Mr. King (NY)	X		
Ms. Velázquez				Mr. Royce		X	
Mr. Watt				Mr. Lucas		X	
Mr. Ackerman	X			Mr. Paul		X	
Ms. Carson	X			Mr. Gillmor	X		
Mr. Sherman	X			Mr. LaTourette	X		
Mr. Meeks	X			Mr. Manzullo		X	
Mr. Moore (KS)	X			Mr. Jones	X		
Mr. Capuano	X			Mrs. Biggert		X	
Mr. Hinojosa	X			Mr. Shays	X		
Mr. Clay	X			Mr. Miller (CA)	X		
Mrs. McCarthy	X			Mrs. Capito	X		
Mr. Baca	X			Mr. Feeney		X	
Mr. Lynch				Mr. Hensarling			
Mr. Miller (NC)	X			Mr. Garrett (NJ)		X	
Mr. Scott	X			Ms. Brown-Waite		X	
Mr. Green	X			Mr. Barrett (SC)		X	
Mr. Cleaver	X			Mr. Renzi	X		
Ms. Bean	X			Mr. Gerlach	X		
Ms. Moore (WI)	X			Mr. Pearce		X	
Mr. Davis (TN)	X			Mr. Neugebauer		X	
Mr. Sires	X			Mr. Price (GA)		X	
Mr. Hodes	X			Mr. Davis (KY)	X		
Mr. Ellison	X			Mr. McHenry		X	
Mr. Klein	X			Mr. Campbell		X	
Mr. Mahoney (FL)	X			Mr. Putnam		X	
Mr. Wilson	X			Mrs. Bachmann		X	
Mr. Perlmutter	X			Mr. Roskam		X	
Mr. Murphy	X			Mr. Marchant		X	
Mr. Donnelly	X						
Mr. Wexler							
Mr. Marshall	X						
Mr. Boren	X						

The following amendments were disposed of by record votes. The names of Members voting for and against follow:

An amendment by Mr. Bachus, No. 2, striking section 128 (Affordable Housing Fund), was not agreed to by record vote of 15 yeas and 31 nays (Record vote FC-27):

RECORD VOTE NO. FC-27

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski				Mr. Baker	X		
Ms. Waters		X		Ms. Pryce (OH)			
Mrs. Maloney		X		Mr. Castle			
Mr. Gutierrez				Mr. King (NY)	X		

RECORD VOTE NO. FC-27—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Ms. Velázquez				Mr. Royce	X		
Mr. Watt				Mr. Lucas	X		
Mr. Ackerman		X		Mr. Paul			
Ms. Carson		X		Mr. Gillmor			
Mr. Sherman		X		Mr. LaTourette		X	
Mr. Meeks		X		Mr. Manzullo	X		
Mr. Moore (KS)		X		Mr. Jones			
Mr. Capuano		X		Mrs. Biggert	X		
Mr. Hinojosa				Mr. Shays		X	
Mr. Clay		X		Mr. Miller (CA)	X		
Mrs. McCarthy		X		Mrs. Capito		X	
Mr. Baca		X		Mr. Feeney	X		
Mr. Lynch				Mr. Hensarling			
Mr. Miller (NC)		X		Mr. Garrett (NJ)	X		
Mr. Scott				Ms. Brown-Waite			
Mr. Green		X		Mr. Barrett (SC)	X		
Mr. Cleaver				Mr. Renzi			
Ms. Bean		X		Mr. Gerlach		X	
Ms. Moore (WI)				Mr. Pearce	X		
Mr. Davis (TN)		X		Mr. Neugebauer			
Mr. Sires		X		Mr. Price (GA)			
Mr. Hodes		X		Mr. Davis (KY)			
Mr. Ellison		X		Mr. McHenry	X		
Mr. Klein		X		Mr. Campbell			
Mr. Mahoney (FL)		X		Mr. Putnam	X		
Mr. Wilson				Mrs. Bachmann	X		
Mr. Perlmutter		X		Mr. Roskam			
Mr. Murphy		X		Mr. Marchant			
Mr. Donnelly		X					
Mr. Wexler		X					
Mr. Marshall		X					
Mr. Boren		X					

An amendment by Mr. Bachus, No. 4, regarding Affordable Housing Fund amounts to FHLB affordable housing program, was not agreed to, as modified, by record vote of 16 yeas and 36 nays (Record vote FC-28):

RECORD VOTE NO. FC-28

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski				Mr. Baker		X	
Ms. Waters		X		Ms. Pryce (OH)		X	
Mrs. Maloney		X		Mr. Castle		X	
Mr. Gutierrez				Mr. King (NY)		X	
Ms. Velázquez				Mr. Royce		X	
Mr. Watt				Mr. Lucas	X		
Mr. Ackerman		X		Mr. Paul			
Ms. Carson		X		Mr. Gillmor	X		
Mr. Sherman		X		Mr. LaTourette	X		
Mr. Meeks		X		Mr. Manzullo	X		
Mr. Moore (KS)		X		Mr. Jones			
Mr. Capuano		X		Mrs. Biggert	X		
Mr. Hinojosa				Mr. Shays			
Mr. Clay		X		Mr. Miller (CA)		X	
Mrs. McCarthy		X		Mrs. Capito		X	
Mr. Baca		X		Mr. Feeney	X		
Mr. Lynch				Mr. Hensarling	X		
Mr. Miller (NC)		X		Mr. Garrett (NJ)	X		
Mr. Scott				Ms. Brown-Waite			
Mr. Green		X		Mr. Barrett (SC)	X		
Mr. Cleaver				Mr. Renzi	X		

RECORD VOTE NO. FC-28—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Ms. Bean		X		Mr. Gerlach		X	
Ms. Moore (WI)				Mr. Pearce	X		
Mr. Davis (TN)		X		Mr. Neugebauer			
Mr. Sires		X		Mr. Price (GA)			
Mr. Hodes		X		Mr. Davis (KY)	X		
Mr. Ellison		X		Mr. McHenry	X		
Mr. Klein		X		Mr. Campbell			
Mr. Mahoney (FL)		X		Mr. Putnam	X		
Mr. Wilson		X		Mrs. Bachmann	X		
Mr. Perlmutter		X		Mr. Roskam			
Mr. Murphy		X		Mr. Marchant			
Mr. Donnelly		X					
Mr. Wexler		X					
Mr. Marshall		X					
Mr. Boren		X					

An amendment by Mrs. Biggert, No. 8, requiring Affordable Housing Fund grants to be administered by HUD, was not agreed to by a record vote of 20 yeas and 35 nays (Record vote FC-29):

RECORD VOTE NO. FC-29

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski				Mr. Baker	X		
Ms. Waters				Ms. Pryce (OH)		X	
Mrs. Maloney		X		Mr. Castle		X	
Mr. Gutierrez				Mr. King (NY)			
Ms. Velázquez				Mr. Royce		X	
Mr. Watt				Mr. Lucas	X		
Mr. Ackerman		X		Mr. Paul			
Ms. Carson		X		Mr. Gillmor	X		
Mr. Sherman		X		Mr. LaTourette		X	
Mr. Meeks		X		Mr. Manzullo	X		
Mr. Moore (KS)		X		Mr. Jones			
Mr. Capuano		X		Mrs. Biggert	X		
Mr. Hinojosa		X		Mr. Shays			
Mr. Clay		X		Mr. Miller (CA)	X		
Mrs. McCarthy		X		Mrs. Capito	X		
Mr. Baca		X		Mr. Feeney		X	
Mr. Lynch		X		Mr. Hensarling	X		
Mr. Miller (NC)		X		Mr. Garrett (NJ)	X		
Mr. Scott		X		Ms. Brown-Waite		X	
Mr. Green		X		Mr. Barrett (SC)	X		
Mr. Cleaver		X		Mr. Renzi	X		
Ms. Bean		X		Mr. Gerlach	X		
Ms. Moore (WI)		X		Mr. Pearce			
Mr. Davis (TN)		X		Mr. Neugebauer	X		
Mr. Sires		X		Mr. Price (GA)			
Mr. Hodes		X		Mr. Davis (KY)	X		
Mr. Ellison				Mr. McHenry	X		
Mr. Klein		X		Mr. Campbell	X		
Mr. Mahoney (FL)		X		Mr. Putnam	X		
Mr. Wilson				Mrs. Bachmann	X		
Mr. Perlmutter		X		Mr. Roskam			
Mr. Murphy		X		Mr. Marchant	X		
Mr. Donnelly		X					
Mr. Wexler							
Mr. Marshall		X					
Mr. Boren		X					

An amendment by Mr. Hensarling, No. 11, on conforming loan limits, was not agreed to by a record vote of 10 yeas and 51 nays (Record vote FC–30):

RECORD VOTE NO. FC–30

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski				Mr. Baker	X		
Ms. Waters	X			Ms. Pryce (OH)	X		
Mrs. Maloney	X			Mr. Castle	X		
Mr. Gutierrez	X			Mr. King (NY)		X	
Ms. Velázquez				Mr. Royce	X		
Mr. Watt				Mr. Lucas		X	
Mr. Ackerman		X		Mr. Paul			
Ms. Carson	X			Mr. Gillmor		X	
Mr. Sherman	X			Mr. LaTourette		X	
Mr. Meeks	X			Mr. Manzullo		X	
Mr. Moore (KS)	X			Mr. Jones		X	
Mr. Capuano	X			Mrs. Biggert		X	
Mr. Hinojosa	X			Mr. Shays			
Mr. Clay	X			Mr. Miller (CA)		X	
Mrs. McCarthy	X			Mrs. Capito		X	
Mr. Baca	X			Mr. Feeney		X	
Mr. Lynch	X			Mr. Hensarling	X		
Mr. Miller (NC)	X			Mr. Garrett (NJ)	X		
Mr. Scott	X			Ms. Brown-Waite		X	
Mr. Green	X			Mr. Barrett (SC)	X		
Mr. Cleaver	X			Mr. Renzi		X	
Ms. Bean	X			Mr. Gerlach		X	
Ms. Moore (WI)	X			Mr. Pearce			
Mr. Davis (TN)	X			Mr. Neugebauer		X	
Mr. Sires	X			Mr. Price (GA)			
Mr. Hodes	X			Mr. Davis (KY)		X	
Mr. Ellison	X			Mr. McHenry		X	
Mr. Klein	X			Mr. Campbell		X	
Mr. Mahoney (FL)	X			Mr. Putnam	X		
Mr. Wilson	X			Mrs. Bachmann	X		
Mr. Perlmutter	X			Mr. Roskam			
Mr. Murphy	X			Mr. Marchant		X	
Mr. Donnelly	X						
Mr. Wexler							
Mr. Marshall	X						
Mr. Boren	X						

An amendment by Ms. Waters, No. 12, directing regulated entities to consider inclusion of minorities and women, was agreed to by a record vote of 34 yeas and 27 nays (Record vote FC–31):

RECORD VOTE NO. FC–31

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank	X			Mr. Bachus		X	
Mr. Kanjorski				Mr. Baker		X	
Ms. Waters	X			Ms. Pryce (OH)		X	
Mrs. Maloney	X			Mr. Castle			
Mr. Gutierrez	X			Mr. King (NY)		X	
Ms. Velázquez				Mr. Royce		X	
Mr. Watt				Mr. Lucas		X	
Mr. Ackerman	X			Mr. Paul		X	
Ms. Carson	X			Mr. Gillmor		X	
Mr. Sherman	X			Mr. LaTourette		X	
Mr. Meeks	X			Mr. Manzullo		X	
Mr. Moore (KS)	X			Mr. Jones		X	
Mr. Capuano	X			Mrs. Biggert		X	
Mr. Hinojosa	X			Mr. Shays			

RECORD VOTE NO. FC-31—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Clay	X			Mr. Miller (CA)		X	
Mrs. McCarthy	X			Mrs. Capito		X	
Mr. Baca	X			Mr. Feeney		X	
Mr. Lynch	X			Mr. Hensarling			
Mr. Miller (NC)	X			Mr. Garrett (NJ)		X	
Mr. Scott	X			Ms. Brown-Waite		X	
Mr. Green	X			Mr. Barrett (SC)		X	
Mr. Cleaver	X			Mr. Renzi	X		
Ms. Bean	X			Mr. Gerlach		X	
Ms. Moore (WI)	X			Mr. Pearce			
Mr. Davis (TN)	X			Mr. Neugebauer		X	
Mr. Sires	X			Mr. Price (GA)		X	
Mr. Hodes	X			Mr. Davis (KY)		X	
Mr. Ellison	X			Mr. McHenry		X	
Mr. Klein	X			Mr. Campbell		X	
Mr. Mahoney (FL)	X			Mr. Putnam		X	
Mr. Wilson	X			Mrs. Bachmann		X	
Mr. Perlmutter	X			Mr. Roskam		X	
Mr. Murphy	X			Mr. Marchant		X	
Mr. Donnelly	X						
Mr. Wexler							
Mr. Marshall		X					
Mr. Boren	X						

An amendment by Mr. Frank, No. 14, reserving authority for Affordable Housing Fund grants, was agreed to, as modified, by a record vote of 35 yeas and 26 nays (Record vote FC-32):

RECORD VOTE NO. FC-32

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank	X			Mr. Bachus		X	
Mr. Kanjorski				Mr. Baker			
Ms. Waters	X			Ms. Pryce (OH)		X	
Mrs. Maloney	X			Mr. Castle			
Mr. Gutierrez	X			Mr. King (NY)		X	
Ms. Velázquez				Mr. Royce		X	
Mr. Watt				Mr. Lucas		X	
Mr. Ackerman	X			Mr. Paul		X	
Ms. Carson	X			Mr. Gillmor		X	
Mr. Sherman	X			Mr. LaTourette	X		
Mr. Meeks	X			Mr. Manzullo		X	
Mr. Moore (KS)	X			Mr. Jones		X	
Mr. Capuano	X			Mrs. Biggert		X	
Mr. Hinojosa	X			Mr. Shays			
Mr. Clay	X			Mr. Miller (CA)		X	
Mrs. McCarthy	X			Mrs. Capito		X	
Mr. Baca	X			Mr. Feeney		X	
Mr. Lynch	X			Mr. Hensarling			
Mr. Miller (NC)	X			Mr. Garrett (NJ)		X	
Mr. Scott	X			Ms. Brown-Waite		X	
Mr. Green	X			Mr. Barrett (SC)		X	
Mr. Cleaver	X			Mr. Renzi		X	
Ms. Bean	X			Mr. Gerlach		X	
Ms. Moore (WI)	X			Mr. Pearce			
Mr. Davis (TN)	X			Mr. Neugebauer		X	
Mr. Sires	X			Mr. Price (GA)			
Mr. Hodes	X			Mr. Davis (KY)		X	
Mr. Ellison	X			Mr. McHenry		X	
Mr. Klein	X			Mr. Campbell		X	
Mr. Mahoney (FL)	X			Mr. Putnam		X	
Mr. Wilson	X			Mrs. Bachmann		X	
Mr. Perlmutter	X			Mr. Roskam		X	

RECORD VOTE NO. FC-32—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Murphy	X	.....	.....	Mr. Marchant .....	.....	X	.....
Mr. Donnelly	X	.....	.....		
Mr. Wexler	X	.....	.....		
Mr. Marshall	X	.....	.....		
Mr. Boren	X	.....	.....		

An amendment by Mr. McHenry, No. 17, establishing Habitat for Humanity as the recipient of Affordable Housing Fund grant, was not agreed to by a record vote of 13 yeas and 50 nays (Record vote FC-33):

RECORD VOTE NO. FC-33

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank	X	.....	Mr. Bachus .....	.....	.....	.....
Mr. Kanjorski	Mr. Baker	X	.....	.....
Ms. Waters	X	.....	Ms. Pryce (OH) .....	.....	X	.....
Mrs. Maloney	X	.....	Mr. Castle .....	.....	X	.....
Mr. Gutierrez	X	.....	Mr. King (NY) .....	.....	X	.....
Ms. Velázquez	Mr. Royce .....	.....	X	.....
Mr. Watt	Mr. Lucas .....	.....	X	.....
Mr. Ackerman	X	.....	Mr. Paul	X	.....	.....
Ms. Carson	X	.....	Mr. Gillmor .....	.....	X	.....
Mr. Sherman	X	.....	Mr. LaTourette .....	.....	X	.....
Mr. Meeks	X	.....	Mr. Manzullo	X	.....	.....
Mr. Moore (KS)	X	.....	Mr. Jones	X	.....	.....
Mr. Capuano	X	.....	Mrs. Biggert .....	.....	X	.....
Mr. Hinojosa	X	.....	Mr. Shays .....	.....	X	.....
Mr. Clay	X	.....	Mr. Miller (CA) .....	.....	X	.....
Mrs. McCarthy	X	.....	Mrs. Capito .....	.....	X	.....
Mr. Baca	X	.....	Mr. Feeney	X	.....	.....
Mr. Lynch	X	.....	Mr. Hensarling .....	.....	.....	.....
Mr. Miller (NC)	X	.....	Mr. Garrett (NJ)	X	.....	.....
Mr. Scott	X	.....	Ms. Brown-Waite .....	.....	X	.....
Mr. Green	X	.....	Mr. Barrett (SC)	X	.....	.....
Mr. Cleaver	X	.....	Mr. Renzi .....	.....	X	.....
Ms. Bean	X	.....	Mr. Gerlach .....	.....	X	.....
Ms. Moore (WI)	X	.....	Mr. Pearce .....	.....	.....	.....
Mr. Davis (TN)	X	.....	Mr. Neugebauer .....	.....	X	.....
Mr. Sires	X	.....	Mr. Price (CA) .....	.....	.....	.....
Mr. Hodes	X	.....	Mr. Davis (KY) .....	.....	X	.....
Mr. Ellison	X	.....	Mr. McHenry	X	.....	.....
Mr. Klein	X	.....	Mr. Campbell	X	.....	.....
Mr. Mahoney (FL)	X	.....	Mr. Putnam	X	.....	.....
Mr. Wilson	X	.....	Mrs. Bachmann	X	.....	.....
Mr. Perlmutter	X	.....	Mr. Roskam	X	.....	.....
Mr. Murphy	X	.....	Mr. Marchant	X	.....	.....
Mr. Donnelly	X	.....			
Mr. Wexler	X	.....			
Mr. Marshall	X	.....			
Mr. Boren	X	.....			

An amendment by Mr. Garrett, No. 22, setting portfolio guidelines, was not agreed to by a record vote of 15 yeas and 48 nays (Record vote FC-34):

RECORD VOTE NO. FC-34

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank	X	.....	Mr. Bachus .....	.....	.....	.....
Mr. Kanjorski	Mr. Baker	X	.....	.....

RECORD VOTE NO. FC-34—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Ms. Waters		X		Ms. Pryce (OH)		X	
Mrs. Maloney		X		Mr. Castle		X	
Mr. Gutierrez		X		Mr. King (NY)		X	
Ms. Velázquez				Mr. Royce	X		
Mr. Watt				Mr. Lucas	X		
Mr. Ackerman		X		Mr. Paul	X		
Ms. Carson		X		Mr. Gillmor		X	
Mr. Sherman		X		Mr. LaTourette		X	
Mr. Meeks		X		Mr. Manzullo	X		
Mr. Moore (KS)		X		Mr. Jones	X		
Mr. Capuano		X		Mrs. Biggert		X	
Mr. Hinojosa		X		Mr. Shays		X	
Mr. Clay		X		Mr. Miller (CA)		X	
Mrs. McCarthy		X		Mrs. Capito		X	
Mr. Baca		X		Mr. Feeney	X		
Mr. Lynch		X		Mr. Hensarling			
Mr. Miller (NC)		X		Mr. Garrett (NJ)	X		
Mr. Scott		X		Ms. Brown-Waite		X	
Mr. Green		X		Mr. Barrett (SC)	X		
Mr. Cleaver		X		Mr. Renzi		X	
Ms. Bean		X		Mr. Gerlach		X	
Ms. Moore (WI)		X		Mr. Pearce		X	
Mr. Davis (TN)		X		Mr. Neugebauer		X	
Mr. Sires		X		Mr. Price (GA)	X		
Mr. Hodes		X		Mr. Davis (KY)		X	
Mr. Ellison		X		Mr. McHenry			
Mr. Klein		X		Mr. Campbell	X		
Mr. Mahoney (FL)		X		Mr. Putnam	X		
Mr. Wilson		X		Mrs. Bachmann	X		
Mr. Perlmutter		X		Mr. Roskam	X		
Mr. Murphy		X		Mr. Marchant	X		
Mr. Donnelly		X					
Mr. Wexler							
Mr. Marshall		X					
Mr. Boren		X					

An amendment by Mr. Neugebauer, No. 25, setting a cap on the Affordable Housing Fund, was not agreed to by a record vote of 30 yeas and 35 nays (Record vote FC-35):

RECORD VOTE NO. FC-35

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski				Mr. Baker	X		
Ms. Waters		X		Ms. Pryce (OH)	X		
Mrs. Maloney		X		Mr. Castle	X		
Mr. Gutierrez		X		Mr. King (NY)	X		
Ms. Velázquez				Mr. Royce	X		
Mr. Watt				Mr. Lucas	X		
Mr. Ackerman		X		Mr. Paul	X		
Ms. Carson		X		Mr. Gillmor	X		
Mr. Sherman		X		Mr. LaTourette	X		
Mr. Meeks		X		Mr. Manzullo	X		
Mr. Moore (KS)		X		Mr. Jones	X		
Mr. Capuano		X		Mrs. Biggert	X		
Mr. Hinojosa		X		Mr. Shays		X	
Mr. Clay		X		Mr. Miller (CA)	X		
Mrs. McCarthy		X		Mrs. Capito	X		
Mr. Baca		X		Mr. Feeney	X		
Mr. Lynch		X		Mr. Hensarling			
Mr. Miller (NC)		X		Mr. Garrett (NJ)	X		
Mr. Scott		X		Ms. Brown-Waite	X		

RECORD VOTE NO. FC-35—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Green		X		Mr. Barrett (SC)	X		
Mr. Cleaver		X		Mr. Renzi		X	
Ms. Bean		X		Mr. Gerlach	X		
Ms. Moore (WI)		X		Mr. Pearce	X		
Mr. Davis (TN)		X		Mr. Neugebauer	X		
Mr. Sires		X		Mr. Price (GA)	X		
Mr. Hodes		X		Mr. Davis (KY)	X		
Mr. Ellison		X		Mr. McHenry	X		
Mr. Klein		X		Mr. Campbell	X		
Mr. Mahoney (FL)		X		Mr. Putnam	X		
Mr. Wilson		X		Mrs. Bachmann	X		
Mr. Perlmutter		X		Mr. Roskam	X		
Mr. Murphy		X		Mr. Marchant	X		
Mr. Donnelly		X					
Mr. Wexler							
Mr. Marshall		X					
Mr. Boren		X					

An amendment by Mr. Price, No. 27, setting portfolio requirements, was not agreed to by a record vote of 15 yeas and 50 nays (Record vote FC-36):

RECORD VOTE NO. FC-36

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski				Mr. Baker	X		
Ms. Waters		X		Ms. Pryce (OH)		X	
Mrs. Maloney		X		Mr. Castle		X	
Mr. Gutierrez		X		Mr. King (NY)		X	
Ms. Velázquez				Mr. Royce	X		
Mr. Watt				Mr. Lucas		X	
Mr. Ackerman		X		Mr. Paul	X		
Ms. Carson		X		Mr. Gillmor	X		
Mr. Sherman		X		Mr. LaTourette		X	
Mr. Meeks		X		Mr. Manzullo	X		
Mr. Moore (KS)		X		Mr. Jones		X	
Mr. Capuano		X		Mrs. Biggert		X	
Mr. Hinojosa		X		Mr. Shays		X	
Mr. Clay		X		Mr. Miller (CA)		X	
Mrs. McCarthy		X		Mrs. Capito		X	
Mr. Baca		X		Mr. Feeney		X	
Mr. Lynch		X		Mr. Hensarling			
Mr. Miller (NC)		X		Mr. Garrett (NJ)	X		
Mr. Scott		X		Ms. Brown-Waite		X	
Mr. Green		X		Mr. Barrett (SC)	X		
Mr. Cleaver		X		Mr. Renzi		X	
Ms. Bean		X		Mr. Gerlach		X	
Ms. Moore (WI)		X		Mr. Pearce	X		
Mr. Davis (TN)		X		Mr. Neugebauer		X	
Mr. Sires		X		Mr. Price (GA)	X		
Mr. Hodes		X		Mr. Davis (KY)		X	
Mr. Ellison		X		Mr. McHenry	X		
Mr. Klein		X		Mr. Campbell	X		
Mr. Mahoney (FL)		X		Mr. Putnam	X		
Mr. Wilson		X		Mrs. Bachmann	X		
Mr. Perlmutter		X		Mr. Roskam		X	
Mr. Murphy		X		Mr. Marchant	X		
Mr. Donnelly		X					
Mr. Wexler							
Mr. Marshall		X					
Mr. Boren		X					

The following other amendments were also considered by the Committee:

An amendment by Mr. Frank, No. 1, manager's amendment, was agreed to by a voice vote.

An amendment by Mr. Sires, No. 3, providing an FHLB directors grandfather clause, was agreed to by a voice vote.

An amendment by Mr. Frank, No. 5, establishing additional factors for portfolio standards, was agreed to by a voice vote.

An amendment by Mr. Shays, No. 6, regarding Enterprise boards of directors, was agreed to by a voice vote.

An amendment by Mr. Hinojosa, No. 7, providing homebuyers pre-purchasing counseling, was agreed to by a voice vote.

An amendment by Mr. Frank, No. 9, requiring periodic review of core/minimum capital, was agreed to by a voice vote.

An amendment by Mr. Baker, No. 10, requiring LHFA use of 2007 Affordable Housing Fund amounts, was offered and withdrawn.

An amendment by Mr. Neugebauer, No. 13, setting guidelines for eligible recipients of Affordable Housing Fund grants, was agreed to by a voice vote.

An amendment by Mr. Gillmor, No. 15, directing each enterprise to include disclosure of income information, was agreed to by a voice vote.

An amendment by Mr. Clay, No. 16, setting single family housing goal targets, was agreed to by a voice vote.

An amendment by Mr. Lynch, No. 18, setting single family rental housing goals, was agreed to by a voice vote.

An amendment by Mrs. Biggert, No. 19, providing a limit on states' administrative costs of the Affordable Housing Fund, was agreed to by a voice vote.

An amendment by Mr. Meeks, No. 20, regarding diversity in the Agency workforce, was agreed to by a voice vote.

An amendment by Ms. Waters, No. 21, regarding Federal Housing Enterprise Board membership, was agreed to by a voice vote.

An amendment by Mr. Royce, No. 23, striking limited-life entity proceeds, was not agreed to by a voice vote.

An amendment by Mr. Perlmutter, No. 24, setting 125 percent credit for energy/environmental standards as housing goals, was agreed to by a voice vote.

An amendment by Mrs. Maloney, No. 26, setting housing goals credit for licensed childcare, was agreed to by a voice vote.

An amendment by Ms. Waters, No. 28, taking community demographics into consideration in appointing independent directors, was agreed to by a voice vote.

An amendment by Mr. Shays, No. 29, including information security/privacy controls, was agreed to by a voice vote.

An amendment by Mr. Paul, No. 30, eliminating authority for Fannie Mae, Freddie Mac, and FHLBs to borrow from the Treasury, was not agreed to by a voice vote.

An amendment by Mr. McHenry (offered by Mr. Bachus), No. 31, setting limitations on Affordable Housing Fund recipients, was not agreed to by a voice vote.

An amendment by Mr. McHenry (offered by Mr. Bachus), No. 32, requiring a GAO report on the Affordable Housing Fund, was agreed to, as modified by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held hearings and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

The Federal Housing Finance Agency will oversee the safe and sound operation as well as the mission functions of Fannie Mae, Freddie Mac, and the Federal Home Loan Bank System. The Agency will be equipped with the tools and powers possessed by a world class regulator. The Agency will ensure that the GSEs do not pose a significant risk to the domestic or international financial system.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

APRIL 23, 2007.

Hon. BARNEY FRANK,
*Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: As you requested, the Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1427, the Federal Housing Finance Reform Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Susanne S. Mehlman (for federal spending), Emily Schlect (for federal revenues), Marjorie Miller (for the state and local impact), and Paige Piper/Bach (for the private-sector impact).

Sincerely,

PETER R. ORSZAG.

Enclosure.

H.R. 1427—Federal Housing Finance Reform Act of 2007

Summary: H.R. 1427 would establish a single regulator—the Federal Housing Finance Agency (FHFA)—for government-sponsored enterprises (GSEs) involved in the home mortgage market. GSEs are privately owned, Congressionally chartered financial institutions created to enhance the availability of credit in the economy. The GSEs that would be regulated by FHFA under the bill include the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), and the Federal Home Loan Banks (FHLBs). These GSEs were created to increase the availability of credit for home mortgages.

FHFA would be an independent agency within the federal government with the authority to oversee the safety, soundness, and mission of the housing GSEs. Under H.R. 1427, FHFA would be authorized to collect fees from the GSEs and to spend such fees to pay for its operating costs. Because the GSEs would be compelled by the government to pay those fees, the amounts collected and spent would be recorded on the federal budget as governmental revenues and outlays, respectively. CBO expects that FHFA would become operational midway through fiscal year 2008, that its operations would cost about \$50 million in 2008, and that fees collected by the agency would cover that spending.

The legislation also would require Fannie Mae and Freddie Mac to contribute amounts equal to 1.2 basis points on their average total mortgage portfolios (that is, 1.2 cents per \$100 of the value of their mortgage portfolios) from the previous year to a new affordable housing fund created by the bill. Those contributions would occur over calendar years 2007 through 2011 and would be used for three purposes. First, each year, 25 percent of the funds deposited in the affordable housing fund would be used to pay some of the interest on the Resolution Funding Corporation (REF CORP) bonds that would otherwise be paid by the U.S. Treasury. Second, in the first year of the fund's operation, the remaining 75 percent of the funds would be used to fund the reconstruction of housing in areas of Louisiana and Mississippi affected by Hurricanes Katrina and Rita. In subsequent years, that remaining 75 percent would be used to provide grants to states and Indian tribes to support home ownership and rental housing among low-income households and investment in public infrastructure associated with housing activities.

As a result of the fees that would be collected and spent by FHFA and the transactions of the affordable housing fund, CBO estimates that enacting this legislation would increase revenues and direct spending by \$2.7 billion over the 2008–2012 period and by \$3.3 billion over the 2008–2017 period.

Finally, CBO estimates that implementing H.R. 1427 would result in net savings of about \$22 million in discretionary spending over the next five years, assuming that appropriations are reduced to reflect the changes in regulatory structure that would be established in the legislation. Those savings would result from a reduction in the regulatory responsibilities of the Department of Housing and Urban Development (HUD).

H.R. 1427 contains several intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the aggregate costs to state, local, and tribal govern-

ments would be minimal and would not exceed the threshold established in that act (\$66 million in 2007, adjusted annually for inflation). The bill also would authorize formula grants to support affordable housing programs, which would benefit state, local, and tribal governments.

H.R. 1427 would impose several private-sector mandates, as defined in UMRA, on Fannie Mae, Freddie Mac, and the FHLBs. CBO estimates that the aggregate direct cost of those mandates would exceed the annual threshold established by UMRA (\$131 million in 2007, adjusted annually for inflation) in fiscal years 2008 through 2011.

Estimated cost to the Federal Government: The bill's estimated budgetary impact over the next five years is summarized in Table 1. The costs of this legislation fall within budget function 370 (commerce and housing credit).

TABLE 1. ESTIMATED BUDGETARY IMPACT OF H.R. 1427

	By fiscal year, in millions of dollars—				
	2008	2009	2010	2011	2012
CHANGES IN REVENUES					
Estimated Revenues	850	540	590	630	110
CHANGES IN DIRECT SPENDING					
Estimated Budget Authority	850	540	590	630	110
Estimated Outlays	570	520	560	610	460
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Estimated Authorization Level	-1	-3	-6	-6	-6
Estimated Outlays	-1	-3	-6	-6	-6

Basis of estimate: The budgetary impact of the bill would stem mostly from the establishment of a new regulator for the GSEs and from the creation of the affordable housing fund. For this estimate, CBO assumes that H.R. 1427 will be enacted by the end of fiscal year 2007, that the affordable housing fund will become effective upon enactment, that the FHFA will become operational midway into fiscal year 2008, and that appropriation actions consistent with this bill will occur.

Background on GSE regulation

Currently, HUD is responsible for setting affordable housing goals for Fannie Mae and Freddie Mac and ensuring that these two GSEs meet such goals. HUD's oversight activities are funded from the agency's annual appropriation. In 2006, HUD spent about \$6 million to perform those oversight responsibilities. In addition, the Office of Federal Housing Enterprise Oversight (OFHEO), an independent agency within HUD, currently oversees the financial safety and soundness of these two GSEs. OFHEO is funded through annual assessments collected from Fannie Mae and Freddie Mac; the collection and spending of those assessments are subject to appropriation actions. In 2007, OFHEO was authorized to collect and spend about \$60 million to perform its duties.

The FHLB system, which consists of 12 regionally based banks, is currently regulated by the Federal Housing Finance Board (FHFB). FHFB is an independent agency that oversees the financial safety and soundness of the FHLBs as well as their mission

compliance; it is funded through annual assessments collected on the earnings of the FHLBs. The collection and spending of those annual assessments are not subject to appropriation actions. In 2007, FHFB anticipates that assessments and spending will total about \$34 million.

Under this legislation, beginning midway through 2008, FHFA would assume all of the responsibilities associated with oversight of Fannie Mae's and Freddie Mac's housing mission, which are currently under HUD's jurisdiction. Additionally, enacting H.R. 1427 would abolish OFHEO and FHFB six months following its enactment, and their functions and current staff would be transferred to FHFA. The legislation also would establish an Inspector General within FHFA.

Revenues and direct spending

CBO estimates that the collection and spending of fees by FHFA would increase revenues and direct spending by about \$1.1 billion over the next 10 years.

We also estimate that enacting the affordable housing fund provisions of H.R. 1427 would increase revenues and direct spending by about \$2.2 billion over the same period. CBO assumes that Fannie Mae and Freddie Mac would begin making deposits to the new, affordable housing funds in calendar year 2007, and that payments to REFCORP and spending for grants and other types of financial assistance from the funds also would begin in calendar year 2007. The estimated impact of the bill on direct spending and revenues over fiscal years 2008 through 2017 is shown in Table 2.

FHFA Fees and Spending. While many of the regulatory activities currently performed by HUD, OFHEO, and FHFB would continue under H.R. 1427, enacting this legislation also would establish some new authorities, such as the authority to liquidate a troubled or insolvent GSE and the authority to limit the portfolio holdings of Fannie Mae and Freddie Mac (that is, the amount of mortgages that are held instead of repackaged and then sold as mortgage-backed securities) to ensure financial soundness and consistency with the mission of these two GSEs. In addition, Fannie Mae and Freddie Mac would not be able to undertake any new program without prior approval from the Director of FHFA. Also, section 106 of this legislation would authorize the Director of FHFA to assess fees on the housing-related GSEs each year to obtain funding for reasonable costs and expenses associated with FHFA's responsibilities. Those fees paid by the GSEs would be classified as federal revenues because they would be imposed through the exercise of the government's sovereign power.

TABLE 2.—ESTIMATED IMPACT OF H.R. 1427 ON DIRECT SPENDING AND REVENUES

	By fiscal year, in millions of dollars—									
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
FHFA Fees:										
Estimated Budget Authority	50	100	110	110	110	110	120	120	120	120
Estimated Outlays	50	100	110	110	110	110	120	120	120	120
Estimated Revenues	50	100	110	110	110	110	120	120	120	120
Affordable Housing Funds:										
Estimated Budget Authority	1,070	590	640	690	0	0	0	0	0	0

TABLE 2.—ESTIMATED IMPACT OF H.R. 1427 ON DIRECT SPENDING AND REVENUES—Continued

	By fiscal year, in millions of dollars—									
	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Estimated Outlays:										
Fund Payments of REFCORP										
Interest	270	150	160	170	0	0	0	0	0	0
All Other Payments	520	420	450	500	350	0	0	0	0	0
Total Outlays	790	570	610	670	350	0	0	0	0	0
Estimated Revenues	800	440	480	520	0	0	0	0	0	0
Reduction in Treasury Payments of REFCORP Interest:										
Estimated Budget Authority	-270	-150	-160	-170	0	0	0	0	0	0
Estimated Outlays	-270	-150	-160	-170	0	0	0	0	0	0
Total Impact of H.R. 1427 on Direct Spending and Revenues:										
Estimated Budget Authority	850	540	590	630	110	110	120	120	120	120
Estimated Outlays	570	520	560	610	460	110	120	120	120	120
Estimated Revenues	850	540	590	630	110	110	120	120	120	120

Note: Positive (negative) changes in revenues correspond to decreases (increases) in budget deficits. Positive (negative) changes in direct spending correspond to increases (decreases) in budget deficits.

Revenue Effects of the Fees Assessed by FHFA. CBO estimates that FHFA would require annual funding of about \$50 million in 2008, approximately half the amount that will be spent under current law to oversee the GSEs in 2007. In subsequent years, we estimate that the new agency would spend \$100 million to \$120 million a year. Under the bill, the first assessment by FHFA would occur midway into 2008, and CBO estimates that resulting collections would total about \$1.1 billion over the 2008–2017 period. We expect that the fees assessed by FHFA would be roughly the same amount currently paid to OFHEO and FHFB. CBO estimates that any increase in costs stemming from the new responsibilities of FHFA would be offset by savings from merging the technical and administrative functions of OFHEO and FHFB.

CBO expects that the new collections under the bill would be treated as revenues in the budget. Because the new fees paid by the GSEs to FHFA would be approximately equal to the amounts they would pay to OFHEO and FHFB under current law, taxable incomes of Fannie Mae and Freddie Mac or of other entities in the economy would not change significantly under the bill.

Spending Effects of the Fees Assessed by FHFA. CBO expects that such spending would begin in fiscal year 2008 after FHFA is established. We estimate that, in most years, FHFA would spend the total amount of fees it collects from the GSEs. Thus, enacting this provision would increase federal outlays by about \$480 million over the 2008–2012 period and by about \$1.1 billion over the 2008–2017 period.

Affordable Housing Fund. Section 139 of H.R. 1427 would establish an affordable housing fund managed by the Director of FHFA. To support that fund, both Fannie Mae and Freddie Mac would be required to contribute amounts equal to 1.2 basis points on the previous year's average mortgage portfolio, (including mortgages held and those securitized), provided that the GSE is adequately capitalized and such contributions would not contribute to the GSE's financial instability. Under the legislation, these contributions by the GSEs would occur over calendar years 2007 through 2011 and would be used to pay some of the interest on REFCORP bonds, pro-

vide assistance to areas impacted by Hurricanes Katrina and Rita, and provide grants to states to support home ownership and public infrastructure. No later than June 30, 2011, the Director of FHFA would be required to report to the House Committee on Financial Services and the Senate Committee on Banking, Housing, and Urban Affairs on whether the affordable housing fund should be extended or modified after the end of calendar year 2011.

REFCORP Bonds. The Resolution Trust Corporation (RTC) was created by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) in the aftermath of the savings and loan crisis of the late 1980s as a means of liquidating insolvent institutions. FIRREA also established REFCORP to finance the operations of the RTC by issuing bonds. REFCORP issued about \$30 billion in noncallable long-term bonds that mature between October 2019 and April 2030. The annual interest payable on those bonds through 2019 is \$2.6 billion. (Interest payments will decrease from 2020 through 2030 as the bonds mature.)

The bulk of the interest on these bonds is paid by the U.S. Treasury. Under FIRREA, and later under the Gramm-Leach-Bliley Act of 2000, the FHLBs are required to pay some of the interest due on these bonds. To the extent that those payments from the FHLBs are not sufficient to pay the interest due on the bonds, the U.S. Treasury is required to pay the remaining amounts due. (In 2006, for example, the Treasury paid about \$2 billion of the interest due.) H.R. 1427 would direct that 25 percent of the amounts deposited in the affordable housing fund each year to be used to pay some of the interest on REFCORP Bonds. Thus, CBO estimates that the amount of interest paid by the Treasury would decrease over the 2008–2012 period by about \$750 million.

Grants and other Financial Assistance. In fiscal year 2008, the remaining 75 percent of the deposits to the affordable housing fund would be provided to the Louisiana Housing Finance Agency and the Mississippi Development Authority to support reconstruction of affordable housing in areas affected by Hurricanes Katrina and Rita.

In subsequent years, 75 percent of the deposits to the affordable housing fund would be used to provide grants to states and Indian tribes to support efforts to increase and improve home ownership and rental housing for extremely low- and very low-income families, and investment in public infrastructure associated with housing activities. The funds would be distributed based on a formula developed by HUD. Also under the bill, the fund's resources could not be used to fund activities, such as lobbying or counseling services, or pay for a grantee's administrative expenses.

Budgetary Treatment of the Affordable Housing Fund. The required contributions to the affordable housing fund would be considered revenues because the bill compels their expenditure for governmental purposes. The deposit of specific amounts into the new fund would be compulsory, not voluntary. Likewise, expenditures from the fund would be a form of federal spending because the affordable housing funds could be obligated only for purposes specified in the bill. (FHFA would enforce the requirement for deposits into the affordable housing fund and would oversee spending of those funds to ensure compliance with federal purposes.)

Revenue Impact of Establishing the Affordable Housing Fund. The estimated revenue effect of establishing the fund consists of two broad components. First, the levy on the average total mortgage portfolio (that is, payments equal to 1.2 basis points on the value of the average mortgage portfolio) would be accounted for as a revenue when credited to the affordable housing fund. The combined mortgage portfolio for these GSEs has averaged \$3.8 trillion over the last five years. CBO estimates that future portfolios of these entities will grow by CBO's forecast of mortgage debt outstanding (that is, mortgage debt on one to four family residences), which is estimated to be about 5 percent to 7 percent annually. We also estimate that because section 133 of this legislation would permit the GSEs to securitize and sell certain high-dollar loans in high-cost areas, a small expansion in the GSEs' volume of mortgage-backed securities would result.

CBO assumes that H.R. 1427 will be enacted by the end of fiscal year 2007, which would result in two assessments occurring in fiscal year 2008 and one assessment in each of the subsequent three fiscal years. The first assessment for the affordable housing fund would be based on the 2006 value of mortgage portfolios and would occur in calendar year 2007, but paid in fiscal year 2008. CBO estimates that in 2006 the value of the mortgage portfolios for both GSEs totaled about \$4.3 trillion, and we estimate that the assessment for 2008 would total \$520 million. In addition, an assessment on the 2007 value of mortgage portfolios would be collected in fiscal year 2008 of about \$550 million in fiscal year 2008. CBO estimates that over the 2008–2011 period, assessments would total about \$3.0 billion. (Under H.R. 1427, collections would stop in 2011; continuation of the fund would require additional legislative action.)

Second, spending of amounts from the affordable housing fund for both payments to the REFCORP and financial assistance to affordable housing programs would generate deductions against taxable corporate profits for the two GSEs. If the GSEs' taxable profits were reduced as a result of the affordable housing program, they would pay lower corporate income taxes. If the GSEs passed through some of the assessments to customers in the form of higher fees, other taxable incomes in the economy would presumably be lower. Therefore, CBO estimates that the payments to the affordable housing fund would reduce total taxable incomes in the economy and thus diminish federal tax receipts by about \$750 million over the 2008–2012 period (25 percent of the amount of the payments from the funds). However, payments from the affordable housing fund to REFCORP would result in savings to the Treasury that are equal to the revenue loss caused by lower taxable incomes.

Spending from the Affordable Housing Fund. Expenditures from the fund would constitute direct spending by the federal government and would likely begin in fiscal year 2008. We estimate that enacting this provision would increase federal outlays by \$3 billion over the 2008–2012 period, with no spending after 2012 under this legislation.

The bill would require that affordable housing fund grant amounts be committed for use within two years of the date the amounts are made available to the grantee. Unused amounts would be returned to the fund. While CBO estimates a lag between the recording of federal revenues and the spending of amounts in fund,

we estimate that enacting the affordable housing provision would be deficit-neutral both over the 2008–2012, with no revenues or spending after 2012.

Other effects on spending

Enacting H.R. 1427 also could have an additional minor impact on revenues and direct spending because this bill would provide for civil and criminal penalties against GSEs or a party affiliated with them for various violations of law. While enacting the legislation would expand the number of possible violations, CBO expects that the amount of fines assessed would not significantly increase under the bill. In fact, prior to the \$125 million fine paid by Freddie Mac in 2003, a \$125,000 fine paid by one of its former employees, and a \$400 million fine paid by Fannie Mae in 2007, no fines had been collected from any of the housing-related GSEs.

Section 117 would direct GSEs to register their capital stock with the Securities and Exchange Commission (SEC) under the Securities Act of 1934. Registering under this act involves standardized disclosure of certain financial information but would not involve any payment of fees associated with other securities laws.

Under current law, GSEs are exempt from registering their capital stock with the SEC. However, Fannie Mae has registered its stock voluntarily, though its filings have been suspended pending restated financial statements. Freddie Mac intends to register, but like Fannie Mae, cannot do so until its financial statements are corrected. The FHLBs are registered with the SEC. Based on information provided by the SEC, CBO estimates that implementing section 117 of H.R. 1427 would impose no significant costs on the SEC.

In addition, enacting this legislation would abolish the FHFB. Thus, the receipts collected and spent by this regulatory body would no longer appear in the budget beginning midway through fiscal year 2008. Because collections and spending by FHFB are about equal, eliminating FHFB would have no net budgetary effect.

Spending subject to appropriation

Implementing H.R. 1427 could result in net savings of about \$22 million in discretionary spending over the next five years, assuming appropriation actions consistent with the legislation.

Changes in HUD's Regulatory Responsibilities. CBO estimates that implementing the bill would reduce HUD spending by about \$2 million beginning midway through 2008 and \$6 million in each subsequent year because FHFA would take over HUD's current GSE-oversight responsibilities, though HUD would be responsible for developing regulations associated with allocating funds from the affordable housing fund.

GAO Studies and Audits. H.R. 1427 would require GAO to conduct several studies and audits over the next five years, including a study to examine the practices used by the GSEs to set guarantee fees, a study of the effects of the affordable housing fund on the cost of housing for borrowers, and an audit of the methodology used by FHFA to calculate changes in housing prices. Based on information from GAO, CBO estimates that it would cost GAO about \$4 million over the next five years to carry out its responsibilities under this legislation. The bill also would require GAO to conduct

annual audits of the financial transactions associated with the new regulator. However, the costs associated with the annual audits could be funded through the assessments collected by FHFA.

Elimination of OFHEO. Under H.R. 1427, OFHEO would be abolished six months after enactment. Because its collections are about equal to its spending, the elimination of OFHEO would have no net budgetary effect.

Estimated impact on State, local, and tribal governments: Several provisions of H.R. 1427 would preempt state laws and thus constitute intergovernmental mandates as defined in UMRA. Those provisions would allow FHF A to act outside the authority of state law in some circumstances and would preempt state statute-of-limitations and contract laws. These preemptions would primarily occur in the unlikely instance that FHF A serves as the receiver or conservator of a regulated entity. CBO estimates that the aggregate costs to states of complying with these mandates would be minimal and would not exceed the threshold established in UMRA (\$66 million, in 2007, adjusted annually for inflation). The bill also would authorize formula grants to support affordable housing programs, which would benefit state, local, and tribal governments.

Estimated impact on the private sector: H.R. 1427 would impose several private-sector mandates, as defined in UMRA, on Fannie Mae, Freddie Mac, and the FHLBs. The bill would require Fannie Mae and Freddie Mac to contribute to a new affordable housing fund. In addition, the bill would require the housing-related GSEs to comply with new requirements to be administered by the FHF A and to register their capital stock with the SEC. CBO estimates that the aggregate direct cost of those mandates would exceed the annual threshold established by UMRA (\$131 million in 2007, adjusted annually for inflation) in fiscal years 2008 through 2011.

Affordable housing fund

The most costly mandate would require Fannie Mae and Freddie Mac to make contributions to the affordable housing fund to be established by this bill. In each calendar year through 2011, those GSEs would be required to allocate amounts equal to 1.2 basis points for each dollar of their average total mortgage portfolios from the previous year. CBO estimates that the direct cost of those mandatory contributions would total approximately \$3 billion over the 2008–2011 period.

Regulatory functions

The bill would establish a new federal regulator for the GSEs involved in the home mortgage market—Fannie Mae, Freddie Mac, and the FHLBs. In general, the GSEs would have to comply with regulations administered by their new regulator—the Federal Housing Finance Agency. Under current law, those GSEs pay assessments to their regulators. Under the bill, they would pay assessments for the operation of the FHFA. The duty to pay those fees would be a private-sector mandate, but CBO expects that the new fees would not differ significantly from the amounts the GSEs would otherwise pay to their current regulators.

The bill would authorize the FHFA to establish a conservatorship or receivership over a critically undercapitalized GSE, to increase the amount of capital GSEs must hold, and to limit the portfolio

holdings of the GSEs to ensure financial soundness. Such new authority would impose private-sector mandates on the GSEs when it is utilized.

The cost to the GSEs would depend on how the regulations governing such authority are implemented. Because that information is not available, CBO cannot determine the cost of those mandates.

The bill also would impose new reporting requirements on the GSEs. The bill would require Fannie Mae and Freddie Mac to submit an annual report to the FHFA on certain charitable contributions and to include in their annual report to the Securities and Exchange Commission their income reported to the Internal Revenue Service. According to industry representatives, the cost to comply with those mandates would be minimal.

In addition, Fannie Mae, Freddie Mac, and the FHLBs would each be required to establish an Office of Minority and Women for developing and implementing standards and procedures to ensure the inclusion of minorities and women in their business activities. The GSEs also would have to conduct, or provide for the conducting of, an annual study to determine the levels of affordable housing inventory and the changes in those levels. According to industry representatives, the cost to comply with those mandates would be small relative to the annual threshold.

Registration of capital stock

The bill also would require the GSEs to register their capital stock with the SEC under the Securities Act of 1934. Registering under this act involves a standardized disclosure of certain financial information. Under current law, GSEs are exempt from registering their capital stock with the SEC. According to the SEC, Fannie Mae has registered its stock voluntarily, though its filings have been suspended pending restated financial statements and Freddie Mac intends to register, when its financial statements are corrected. The FHLBs are registered with the SEC. Therefore, the direct cost to the GSEs to comply with this mandate would be minimal.

Estimate prepared by: Federal spending: Susanne S. Mehlman. Federal revenues: Emily Schlect. Impact on State, local, and tribal governments: Marjorie Miller. Impact on the private sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis and G. Thomas Woodward, Assistant Director for Tax Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 1427 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

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Congress of the United States

U.S. House of Representatives

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BRETT LOEFL,
MINORITY STAFF DIRECTOR

April 25, 2007

The Honorable Barney Frank
Chairman
Financial Services Committee
2129 Rayburn House Office Building
Washington, DC 20515

Dear Barney,

I am writing regarding H.R. 1427, the Federal Housing Reform Act of 2007, which was reported to the House by the Committee on Financial Services on Wednesday, March 28, 2007.

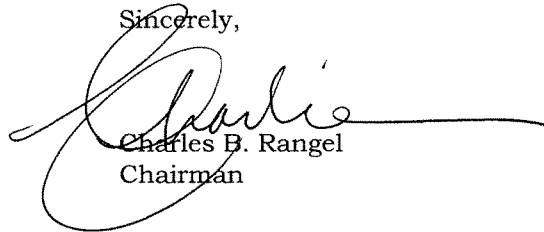
As you know, a provision within section 144 of H.R. 1427 would provide an exemption for a limited-life enterprise from Federal taxes, an authority which falls within the jurisdiction of the Committee on Ways and Means. The Ways and Means Committee has jurisdiction over all matters concerning taxes and the Internal Revenue Code of 1986.

In order to expedite this legislation for floor consideration, the Committee will forgo action on this bill, and will not oppose the inclusion of tax provisions within H.R. 1427. This is being done with the understanding that it does not in any way prejudice the Committee or its jurisdictional prerogatives on this or similar legislation in the future.

The Honorable Barney Frank
April 25, 2007
Page 2

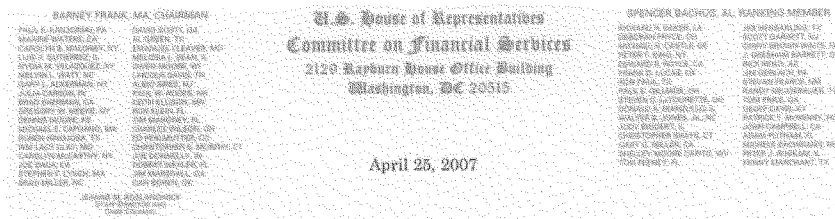
I would appreciate your response to this letter, confirming this understanding with respect to H.R. 1427, and would ask that a copy of our exchange of letters on this matter be included in the record.

Sincerely,



Charles B. Rangel
Chairman

cc: The Honorable Nancy Pelosi
The Honorable Steny Hoyer
The Honorable James Clyburn
The Honorable John Boehner
The Honorable Roy Blunt
The Honorable Spencer Bachus
The Honorable Jim McCrery
Mr. John Sullivan, Parliamentarian



The Honorable Charles B. Rangel, Chairman
 Committee on Ways and Means
 U.S. House of Representatives
 Washington, DC 20515

Dear Charlie:

Thank you for your letter concerning H.R. 1427, the "Federal Housing Finance Reform Act of 2007". This bill was ordered reported by the Committee on Financial Services last month. It is my expectation that this bill will be scheduled for floor consideration in the near future.

I acknowledge your committee's interest in a provision contained in section 144 of the bill which would provide an exemption for a limited-life enterprise from Federal taxes. Such matters concerning Federal taxation fall under the jurisdiction of the Committee on Ways and Means. However, I appreciate your willingness to forego action on H.R. 1427 in order to allow the bill to come to the floor expeditiously. I agree that your decision to forego further action on this bill will not prejudice the Committee on Ways and Means with respect to its jurisdictional prerogatives on this or similar legislation.

I will include this exchange of correspondence in the committee report and in Congressional Record when this bill is considered by the House. Thank you again for your assistance.

Sincerely,


 Barney Frank
 Chairman

Cc: The Honorable Spencer Bachus

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CHAIRMAN

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Congress of the United States
House of Representatives

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April 27, 2007

The Honorable Barney Frank
Chairman
Committee on Financial Services
2252 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Frank:

I am writing about H.R. 1427, the Federal Housing Financing Reform Act of 2007, which the Committee on Financial Services ordered reported to the House on March 29, 2007.

I appreciate your effort to consult with the Committee on Oversight and Government Reform regarding those provisions of H.R. 1427 that fall within the Oversight Committee's jurisdiction. These provisions involve the federal civil service and the Freedom of Information Act.

In the interest of expediting consideration of H.R. 1427, the Oversight Committee will not request a sequential referral of this bill. I would, however, request your support for the appointment of conferees from the Oversight Committee should H.R. 1427 or a similar Senate bill be considered in conference with the Senate.

This letter should not be construed as a waiver of the Oversight Committee's legislative jurisdiction over subjects addressed in H.R. 1427 that fall within the jurisdiction of the Oversight Committee.

TOM DAVIS, VIRGINIA
RANKING MINORITY MEMBER

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BILL SALL KHANO

The Honorable Barney Frank
April 27, 2007
Page 2

Finally, I request that you include our exchange of letters on this matter in the Financial Services Committee Report on H.R. 1427 and in the Congressional Record during consideration of this legislation on the House floor.

Thank you for your attention to these matters.

Sincerely,

A handwritten signature in black ink that reads "Henry A. Waxman". The signature is written in a cursive, slightly slanted style.

Henry A. Waxman
Chairman

cc: Tom Davis
Ranking Minority Member

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 DEPUTY DIRECTOR AND
 CHIEF COUNSEL

U.S. House of Representatives
 Committee on Financial Services
 2129 Rayburn House Office Building
 Washington, DC 20515

April 27, 2007

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The Honorable Henry Waxman, Chairman
 Committee on Oversight and Government Reform
 U.S. House of Representatives
 Washington, DC 20515

Dear Chairman Waxman:

Thank you for your letter concerning H.R. 1427, the "Federal Housing Finance Reform Act of 2007," which the Committee on Financial Services has ordered reported. This bill will be considered by the House shortly.

I want to confirm our mutual understanding with respect to the consideration of this bill. I acknowledge that portions of the bill as reported fall within the jurisdiction of the Committee on Oversight and Government Reform and I appreciate your cooperation in moving the bill to the House floor expeditiously. I further agree that your decision to not to proceed on this bill will not prejudice the Committee on Oversight and Government Reform with respect to its prerogatives on this or similar legislation. I would support your request for conferees on those provisions within your jurisdiction in the event of a House-Senate conference.

I will include a copy of this letter and your response in the Congressional Record and in the Committee on Financial Services report on the bill. Thank you again for your assistance.


 Barney Frank
 Chairman

Cc: The Honorable Spencer Bachus

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section establishes the short title of the bill, the “Federal Housing Finance Reform Act of 2007.”

Section 2. Definitions

This section defines various terms referred to in the bill, including “regulated entities,” which refer to Fannie Mae, Freddie Mac, and the Federal Home Loan Banks, and generally conforms existing definitions to reflect the provisions of this bill.

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

Subtitle A—Improvement of Safety and Soundness

Section 101. Establishment of the Federal Housing Finance Agency

Creates an independent agency, the Federal Housing Finance Agency (FHFA or Agency) as an independent Agency of the Federal government, headed by a presidentially appointed Senate-confirmed Director, to oversee Fannie Mae, Freddie Mac and the Federal Home Loan Banks (collectively the “regulated entities”). This provision grants the FHFA general supervisory and regulatory authority over the regulated entities, including any joint office of the Federal Home Loan Banks, and requires the agency to ensure that the purposes of the Act, the authorizing statutes and other applicable laws are carried out. The Director has a term of 5 years and may be removed only for cause. The Director shall appoint three Deputy Directors: Deputy Director of the Division of Enterprise Regulation; Deputy Director of Federal Home Loan Bank Regulation; and Deputy Director for Housing.

Section 102. Duties and authorities of Director

The principal duties of the Director will be to oversee the operations of the regulated entities (and any joint office of the Federal Home Loan Banks) and ensure their safe and sound operation as well as oversee their respective housing or housing finance and community and economic development missions. Regarding their housing missions, the Director must ensure that “the operations and activities of each regulated entity foster liquid, efficient, competitive, and resilient national housing finance markets that minimize the cost of housing finance * * * .” This provision clarifies, consistent with existing authority, that the Director will establish prudential management and operations standards for each regulated entity comparable to standards established by the Federal bank regulatory agencies for depository institutions. This section provides an enforcement regime for the standards, which may require the regulated entity that fails to meet the prescribed standards to submit a corrective plan, restrict asset growth, or increase capital. The Director is authorized to testify before Congress without prior Administration review of the testimony and to review and, if warranted, reject any acquisition or transfer of a controlling interest in an enterprise. The Director also is granted independent litigating authority to enforce the government-sponsored enterprise

provisions of the Housing and Community Development Act of 1992, as amended, any regulation or order thereunder, or any other provision of law, rule, regulation, or order, or in any other action, suit, or proceeding to which the Director is a party or in which the Director is interested, and in the administration of conservatorships and receiverships. This general independent litigation authority is supplemented by section 164, which grants specific authorization to the Director to enforce notices and orders issued under the capital and enforcement provisions of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

Section 103. Federal Housing Enterprise Board

A board, consisting of the Director, as chair, the Secretaries of Treasury and the Department of Housing and Urban Development (HUD), and two additional appointed members, will advise the Director on strategies and policies in carrying out the duties of the Director. The additional directors are presidentially appointed Senate confirmed, have a term of 4 years, and can be removed only for cause. The board meets by notice of the Director, but at least every three months. The Board is prohibited from exercising any “executive authority.” The Board is required to testify before Congress and submit an annual report regarding safety and soundness, any material deficiencies, overall operational status, and performance in carrying out housing mission with respect to the regulated entities, as well as the operations, resources, workforce diversity, mission fulfillment and performance of the Agency.

Section 104. Authority to require reports by regulated entities

The Director may require the regulated entities to submit regular reports on condition, management, activities, or operations, and any special reports. Reports of fraudulent financial transactions must be submitted to the Director.

Section 105. Disclosure of income and charitable contributions by enterprises

The enterprises must submit annually to the Director a report on the total value of contributions made by the enterprise to non-profit organizations during its previous fiscal year. This report must also include specific information about the value and recipients of substantial contributions and about substantial contributions given to charities affiliated with enterprise insiders. The Director shall make the information submitted in the reports publicly available.

Each enterprise must prominently disclose in its annual report the amount of income reported by the enterprise to the Internal Revenue Service for the most recent taxable year.

Section 106. Assessments

Permits the Agency to obtain funding for winding up the affairs of the Office of Federal Housing Enterprise Oversight (OFHEO) and the Federal Housing Finance Board (Finance Board) and for reasonable costs and expenses on an annual basis through assessments on the regulated entities. The amounts received by the Director are not to be considered government funds or appropriated monies. It is expected that, in making annual assessments and disbursing funds for agency expenses, the Director will, to the extent

possible, have assessments from Fannie Mae and Freddie Mac be used for supervision of those regulated entities and assessments from the Federal Home Loan Banks be used for supervision of those entities. Each regulated entity is to be assessed in accordance with its total assets. The Director is permitted to adjust assessments to pay additional estimated costs of regulating a regulated entity that is not adequately capitalized, or to ensure that a regulated entity bears the cost of enforcement activity it generates. Consistent with current practice at OFHEO and the Finance Board, assessments will be deposited with the U.S. Department of the Treasury, and the Director may request the Secretary of the Treasury to invest amounts of the collected assessments.

Assessments are not subject to apportionment, and, although the Director must submit financial operating plans, forecasts, and reports of agency financial condition to OMB, the latter has no approval authority with regard to the reports or other related jurisdiction over the agency.

The Government Accountability Office (GAO) must annually audit the financial transaction of the Agency and submit a report to Congress of each annual audit conducted. The Agency must reimburse GAO for the costs of any CPA firms the GAO hires in connection with such audits.

Section 107. Examiners and accountants

Grants the Agency special authority to hire examiners, accountants, economists, and experts in financial markets and information technology.

Section 108. Prohibition and withholding of executive compensation

Grants the Director, when making a determination of whether to prohibit the payment of compensation to any executive officer of the regulated entities, authority to take into account any factors the Director considers relevant, including “any wrongdoing on the part of the executive officer.” The Director is authorized to direct a regulated entity to withhold any payment, transfer, or disbursement of compensation to an executive officer or to place such compensation into escrow during review of the reasonableness and comparability of compensation. The approval of an agreement or contract does not preclude the Agency’s ability to make such a determination.

Section 109. Reviews of regulated entities

The Director may contract with any entity, including a nationally recognized statistical rating organization, that the Director considers appropriate to conduct a review of the regulated entities.

Section 110. Inclusion of minorities and women

Each regulated entity must have an Office of Minority and Women Inclusion responsible for matters relating to diversity in all aspects of the entity’s management, employment, and business activities in accordance with requirements established by the Director. Each regulated entity must develop and implement standards and procedures to ensure, to the maximum extent possible, the inclusion and utilization of minorities and women, and minority- and women-owned businesses at all levels of the entity and in all busi-

ness and activities of the entity. Processes for evaluation of all contract proposals and for service provider hires of any kind must give consideration to the diversity of the applicants. Each regulated entity must disclose in its annual report detailed information about actions taken by the Office.

The Agency must take affirmative steps to seek diversity in all levels of its workforce consistent with the demographic diversity of the United States.

Section 111. Regulations and orders

The Director will issue any regulations, guidelines, and orders necessary to carry out the duties of the Director.

Section 112. Non-waiver of privileges

The submission by any person of any information to the Agency for any purpose in the course of any supervisory or regulatory process of the Agency shall not be construed as waiving, destroying, or otherwise affecting any privilege such person may claim with respect to such information under Federal or State law as to any person or entity other than the Agency. This provision may not be construed to imply or establish that any person waives any privilege applicable to information that is submitted or transferred under any circumstance to which the provision does not apply, or that any person would waive any privilege applicable to any information by submitting the information to the Agency, but for the provision.

Section 113. Risk-based capital requirements

The Agency is authorized to establish risk-based capital requirements for the regulated entities to ensure they operate in a safe and sound manner with sufficient permanent capital to support risk-taking. This section removes the current limitations on the form and content of risk-based capital rules included in the existing statute in order to provide the Agency with broad authority to adopt robust risk-based capital standards to ensure the safe and sound operation of the regulated entities. This section does not eliminate current risk-based capital regulations, which will remain in effect unless amended by the Director.

Section 114. Minimum and critical capital levels

This section authorizes the Director to raise the minimum capital requirements for the enterprises or federal home loan banks, or both, by regulation subject to notice and comment, from the current statutory levels to the extent such an increase is needed to ensure the regulated entities operate in a safe and sound manner, notwithstanding their capital classifications.

The section also provides the Director the authority to require a temporary increase in minimum capital for a regulated entity by order under certain circumstances related to the safety and soundness of the entity. A temporary increase in minimum capital may be required if the Director: (1) makes a determination for reclassification of capital category under the prompt corrective action provisions that an entity is engaging in conduct that could rapidly deplete its capital or significantly decrease the value of assets held, is engaged in an unsafe or unsound practice, or is in an unsafe and unsound condition; (2) determines that the regulated entity has

violated any of the prudential standards and as a result of such violation determines that an unsafe or unsound condition exists; or (3) determines that an unsafe or unsound condition exists. A temporary increase in minimum capital ordered under this third provision, however, shall not remain in place for more than 6 months unless the Director makes a renewed determination of the existence of an unsafe and unsound condition.

Additionally, the Director may, at any time by order or regulation, establish such capital or reserve requirements with respect to any program or activity of a regulated entity that the Director considers appropriate to ensure that the regulated entity enterprise operates in a safe and sound manner with sufficient capital and reserves to support the risks that arise in the operations and management of the regulated entity.

This section provides for the periodic review of the capital of the regulated entities and any minimum capital level established under this section. If the Director determines that the circumstances justifying any temporary minimum capital increase made under this section are no longer present, the Director must rescind the temporary increase. The Director cannot lower minimum capital levels below current statutory levels.

Not later than 180 days after the effective date, the Director will establish by regulation critical capital levels for the Federal Home Loan Banks. In establishing critical capital levels for the Federal Home Loan Banks, the Director will take due consideration of the critical capital level established for the enterprises, with such modifications as the Director determines to be appropriate to reflect the difference in operations between the Federal Home Loan Banks and the enterprises.

Section 115. Review of and authority over enterprise assets and liabilities

Section 115 provides the regulator with authority to establish standards for the safe and sound and mission-compliant operation of the enterprises' portfolios. Not later than 180 days after the effective date, the Director must establish standards, after a notice and comment rule making process, by which the portfolio holdings, or rate of growth of the portfolio holdings, of the enterprises will be deemed to be consistent with the mission and the safe and sound operations of the enterprises. The Committee intends that the standards established under this section be designed to support the safe and sound operation of the enterprises, as well as their compliance with their charters and the fulfillment of their missions to provide liquidity and stability to the secondary markets for home mortgages. The standards required under this section are not intended to address potential risks to the financial system that are unrelated to specific considerations of the safe and sound operation of the enterprises' portfolios, nor are they intended to limit the enterprises' portfolios predominantly to assets acquired for the purposes of meeting the enterprises' affordable housing goals.

In developing the standards, the Director must consider a list of factors related to both the safety and soundness of the enterprises and the roles they play in the secondary mortgages markets. The Director is required to consider: (1) the size or growth of the mortgage market; (2) the need for the portfolio in maintaining liquidity

or stability of the secondary mortgage market; (3) the need for an inventory of mortgages in connection with securitizations; (4) the need for the portfolio to directly support the affordable housing mission of the enterprises; (5) the liquidity needs of the enterprises; (6) any potential risks posed by the nature of the portfolio holdings; and (7) any additional factors the Director determines to be necessary to carry out the purposes of this section to assess mission-compliance and safety and soundness of the operation of the enterprises. The purpose of the standards-setting required in this section is to provide standards for the safe and sound and mission-compliant operation of the portfolios and the factors therefore are limited to the safety and soundness and mission of the enterprises themselves, not other market participants.

While this section requires the establishment of standards for operation and growth of the portfolios, the Director is provided authority, by order, to make temporary adjustments to the portfolio standards, such as during times of economic distress or market disruption. Such authority could be used by the Director to ensure that the enterprises are able to provide adequate liquidity to the market as needed without violating the standards.

The section requires that the Director monitor the portfolios of the enterprises. Pursuant to this review, and notwithstanding the capital classifications of the enterprises, the Director may by order and subject to such terms and conditions the Director determines to be appropriate, require an enterprise to dispose of or acquire any assets, if the Director determines that such action is consistent with the safety and soundness or mission of the enterprise.

Section 116. Corporate governance of enterprises

This section codifies a 2005 rule making by OFHEO for improvements in corporate governance, regarding boards of directors, compensation, codes of conduct and ethics, conduct and responsibilities of boards of directors, audits, extensions of credit to board members and executive officers, compliance program requirements, change of audit partners, risk management, CEO and CFO certification of disclosure, and other matters.

Section 117. Required registration under Securities Exchange Act of 1934.

Each regulated entity shall be required to register at least one class of the entity's capital stock with the Securities and Exchange Commission (SEC).

Section 118. Liaison with Financial Institutions Examination Council

The Agency is to participate on the Federal Financial Institutions Examination Council (FFIEC) in a liaison capacity. The FFIEC prescribes uniform standards for examination of financial institutions, with federal financial regulators as members.

Section 119. Guarantee fee study

The Agency, in consultation with the federal bank regulatory agencies and HUD, will, within 18 months of enactment, submit to Congress a study concerning the pricing, transparency, and reporting of Fannie Mae, Freddie Mac, and the Federal Home Loan

Banks regarding guarantee fees and the practices of other participants in the business of mortgage purchases and securitization.

Section 120. Conforming amendments

This section makes changes that are necessary to conform existing law with new provisions in H.R. 1427, such as eliminating references to the “Office of Federal Housing Enterprise Oversight” and replacing them with the “Federal Housing Finance Agency,” striking sections made unnecessary by earlier parts of the bill, and striking outdated provisions pertaining to the issuance of regulations.

Subtitle B—Improvement of Mission Supervision

Section 131. Transfer of product approval and housing goal oversight

This section amends and transfers authority to oversee the mission requirements of Fannie Mae and Freddie Mac from HUD to the Agency.

Section 132. Review of enterprise products

This section strikes the “program” approval provisions of current law and replaces it with provisions under which the Director shall require each enterprise to submit a written request for and obtain the approval of the Director for a new product before the enterprise may initially offer the product. An enterprise may not offer any new product prior to obtaining approval of the Director, following public notice and 30-day comment period. The Director may approve, or conditionally approve, a new product if the Director determines that: (1) the product is authorized under the enterprise’s chartering act; (2) the product is in the public interest; (3) the product is consistent with the safety and soundness of the enterprise and the mortgage finance system; and (4) the product does not materially impair the efficiency of the mortgage finance system.

Immediately upon receipt of a request for approval of a product, the Director is required to publish notice of the request and of the 30-day period for public comment. Not later than 30 days after the close of the public comment period, the Director must approve or deny the product and specify the grounds for the decision in writing. If the Director does not act within the 30-day period to approve or deny a product, the enterprise may offer the product.

This section provides for expedited review of any new activity, service, undertaking or offering that an enterprise determines is not a product. Immediately upon receipt of a notice from an enterprise that a new activity, service, undertaking or offering is not a product, the Director must determine if the activity, service, undertaking or offering consists of, relates to, or involves a product. If the Director determines that any new activity, service, undertaking, or offering consists of, relates to, or involves a product, the Director shall notify the enterprise of that determination, and the new activity, service, undertaking or offering shall be considered a product subject to the established approval process for new products.

The Director may conditionally approve the offering of any product and may establish terms, conditions, or limitations with respect to the product and with which the enterprise must comply.

The product review process does not apply to certain fundamental aspects of enterprise operation. The definition of the term “product” explicitly excludes the automated underwriting system of an enterprise in existence on the date of enactment, including any upgrade to the technology, operating system, or software to operate the system. The term “product” also does not include modifications to mortgage terms and conditions or mortgage underwriting criteria relating to the mortgages that are purchased or guaranteed by an enterprise, provided that such modifications do not alter the underlying transaction to include services or financing, other than residential mortgage financing, or create significant new exposure to risk for the enterprise or the holder of the mortgage.

This section does not define specifically the term “product” other than by exclusion, due to the difficulty of adequately delineating the scope of offerings that the Director may determine are authorized under the enterprises’ charters and meet the other criteria set forth for approval. In determining what offerings or changes to existing offerings rise to the level of a new product that should be subject to notice and approval, this section therefore provides the Director adequate flexibility to implement this provision in a manner that addresses both the need to provide notice to market participants of new products and the need for the enterprises to respond in a timely manner to market demands. The Committee expects that the Agency will establish procedures, similar to those developed by the federal bank regulatory agencies, to provide for a timely and efficient process that will minimize unnecessary burden on the enterprises and originating institutions while assuring prompt and appropriate public notice. As with the banking agencies, the Committee expects that the Agency will establish procedures that provide for appropriate treatment of proprietary business information.

The provision does not apply to existing products or activities that were commenced or offered prior to the enactment of this legislation, but does not limit the authority of the Agency to review products and activities for safety and soundness and compliance with the enterprises’ respective charters.

Section 133. Conforming loan limits

This section updates statutory language from 1981 that set conforming loan limits for Fannie Mae and Freddie Mac, and provided for adjustments upward through an index/housing survey. While the conforming loan limit has been raised every year since 1981, this section inserts 2007 conforming loan limits that were set by the current regulator at \$417,000 for a one-unit single family residence; \$533,850 for a two-unit family residence; \$645,300 for a three-unit family residence and \$801,950 for a four-unit family residence. Allows for these limits to be adjusted annually, starting on January 1 after the effective date of this legislation, to reflect increases and, for the first time, decreases in housing prices, and a new method for establishing annual adjustments authorized in this section.

This section authorizes Fannie Mae and Freddie Mac to further increase loan limits above the conforming loan limits in areas in which the median home prices are greater than the conforming loan limits. The enterprises may adjust loan limits in any such area up to the lesser of 150 percent of the conforming loan limit or the area median home price. This increase applies only to mortgages on which are based securities issued and sold by an enterprise. This provision is different from current law, which provides similar loan limit adjustments for Alaska, Hawaii, Guam and the Virgin Islands set at 150 percent of the conforming loan limit, without any relationship to median home prices.

The Director must establish a Housing Price Index, which would be subject to a GAO audit on the methodology and timing of the index followed by a report to Congress. The Director will conduct a study, within six months of the effective date, of whether the securitization requirement raises the cost of high-cost area loans, and may terminate the requirement if it is found to raise costs to borrowers.

Section 134. Annual housing report regarding regulated entities

The Director must submit an annual report to Congress after reviewing the Affordable Housing Activities Reports (AHARs) submitted by Fannie Mae and Freddie Mac and certain reports on the Federal Home Loan Banks in supporting low income housing and community development.

The Director's report will examine the affordable housing goals and how each enterprise is complying with those goals and the housing fund provisions, the progress of the Federal Home Loan Banks in their Affordable Housing Program (AHP) and Community Investment Program (CIP), and whether the regulated entities are achieving their respective missions. The bill requires detailed reporting by the Agency on housing and affordable housing issues and requires a detailed monthly survey of mortgage markets to assist the Agency in this report and in the establishment of the housing price index methodology to determine loan limits. Data collected for the monthly survey must be made public, but the Agency may modify the data in order to not reveal a borrower's identity.

This provision also requires the Agency, by regulation, to establish standards by which mortgages purchased and/or securitized by the enterprises shall be characterized as subprime loans. These standards are solely to provide data for purposes of the Agency report to identify the extent to which each enterprise is engaged in purchasing or other secondary market activities involving subprime loans. In its reports, the Agency also must identify the extent to which each enterprise is purchasing and securitizing subprime loans, and compare the characteristics of subprime loans purchased and securitized by the enterprises with other loans.

Section 135. Annual reports by regulated entities on affordable housing stock

The regulated entities shall, pursuant to regulatory requirements established by the Director, conduct or provide for the conduct of an annual study to determine the levels and changes in levels of affordable housing inventory for the United States, each State, and each community in each State. Affordable housing inventory shall

include affordable rental dwelling units and affordable homeownership dwelling units.

Section 136. Revision of housing goals

The Director is required to establish for the enterprises three single family housing goals and a multifamily special affordable housing goal. The bill adds a refinance subgoal to the single family goals, and a subgoal for single family rental housing units. In implementing these goals, the Director and the enterprises are required to address evidence of any disparities in interest rates between minorities and non-minorities of similar creditworthiness. The bill strengthens enforcement authority in the event that enterprises do not meet their housing goals. Compliance with the single-family goals for each year will be measured by whether the annual numerical targets established by the Director are met or exceeded.

Specifically, the bill replaces the three existing housing goals with three single family housing goals that measure the percentage of single family, owner-occupied purchase money mortgages for the following: (1) "low-income" families (families with incomes of 80 percent or less of area median income (AMI)); (2) "very low-income" families (families with incomes of 50 percent or less of AMI) and (3) families that reside in low-income areas (census tracts with median incomes of 80 percent or less of AMI and families with incomes less than 100 percent of AMI who reside in minority tracts). Separate statutory subgoals are established for refinancings, and for single family rental housing units. The Director will set the annual single family housing goal targets (both owner-occupied and rental) prospectively, using the prior three year average of market HMDA data as a baseline, and may increase the targets adjust to reflect expected changes in market performance based on factors similar to those in current law regarding goal establishment, including the ability of the enterprise to lead the industry in each goal area in making mortgage credit available. This provision should provide the Director flexibility to continue the practice of considering the enterprises' penetration into the subprime and other markets.

The Director continues to have discretion to set goals for a multi-year period. Setting multi-year goals allows the enterprises time to plan and incorporate goal-qualifying activities into their longer-term business strategies.

The newly created Multifamily Special Affordable Housing Goal measures mortgages that finance dwelling units for low-income families (families with incomes of 80 percent or less of AMI), very-low income families (families with incomes of 50 percent or less of AMI), and mortgages that finance dwelling units assisted by the low-income housing tax credit. The bill contains additional requirements to increase the purchase of small multifamily mortgages. The Director will give credit towards the Multifamily Special Affordable Housing Goal to dwelling units in multifamily housing that is financed by taxexempt or taxable bonds issued by a State or local housing finance agency if the bonds are secured by a guarantee of an enterprise or if the bonds are not investment grade and are purchased by an enterprise.

An enterprise may petition the Director, in writing, for a reduction in the housing goals. The Director may reduce the goal level

only if market and economic conditions or the financial condition of the enterprise require such action, or if efforts to meet the goal would result in liquidity constraints, over-investment in certain market segments, or other consequences contrary to the enterprise's purpose. A denial from the Director to reduce the level of the goal may be appealed in the courts.

The Director shall assign added credit toward achievement of the housing goals for mortgage purchase activities of an enterprise that supports housing that includes a licensed childcare center, or that supports housing that meets energy efficiency or other Federal, State or local environmental standards for the geographic area where the housing is located. The availability of additional credit shall not be used to increase any housing goal, subgoal or target.

Section 137. Duty to serve underserved markets

This section adds a duty for each enterprise to serve underserved markets that lack adequate credit through conventional lending sources by increasing the liquidity of mortgage investments and improving the distribution of investment capital available for mortgage financing for underserved markets. This section instructs the enterprises to undertake activities relating to mortgages on housing for very low (50 percent and less of AMI), low (80 percent and less of AMI) and moderate (100 percent and less of AMI) income families.

The Enterprises are required to lead the industry in developing loan products and flexible underwriting guidelines to facilitate a secondary market in three specified markets—manufactured housing, affordable housing preservation (including through current government programs), and rural housing—and the Director may establish other underserved markets. However, it is not intended that the Director would create percent-of-business or other numeric goals under this section.

Within six months of the effective date, the Director must establish a manner for evaluating compliance of the enterprises under each of the three categories of the duty to serve provisions. When evaluating compliance, the Director will take into consideration: (1) the development of loan products and more flexible underwriting guidelines; (2) the extent of outreach to qualified loan sellers in underserved markets; and (3) the volume of loans purchased in such underserved markets.

The Director must report to Congress annually on this evaluation and the duty-to-serve provisions are enforceable under the same provisions as the housing subgoals.

Section 138. Monitoring and enforcing compliance with housing goals

The Director is authorized to take a number of steps to enforce compliance, including cease-and-desist orders, prohibition on enterprise offerings of products or engaging in any new activities, services, undertakings and offerings pending achievement of the goals, and civil money penalties not to exceed \$50,000 per day, if the enterprise has failed to meet a housing goal, has failed to submit a housing plan if required, submits an unacceptable plan, fails to comply with the plan, or violates any other rule, regulation, or order relative to the housing goals.

Section 139. Affordable housing fund

This section creates an “Affordable Housing Fund,” to be managed by the Director. Funds are derived through contributions to be made by Fannie Mae and Freddie Mac each year from 2007 through 2012, with the fund sunseting after this five year period. Contributions are to be made in amounts equal to 1.2 basis points on each enterprise’s average total outstanding mortgages (including both those held in portfolio and those securitized) from the prior calendar year. Seventy-five percent of these funds are used for affordable housing fund purposes, and twenty-five percent are allocated to the federal government, to keep the bill deficit neutral. The Director can temporarily suspend allocations by an enterprise upon a finding that the allocation would contribute to the financial instability of the enterprise, would cause the enterprise to be undercapitalized or would prevent the enterprise from successfully completing a capital restoration plan.

Seventy-five percent of the affordable housing funds available in the first year will go to Louisiana and twenty-five percent of such funds will go to Mississippi for affordable housing needs arising out of Hurricanes Katrina and Rita. Thereafter, funds are allocated by formula to the states (including also D.C., federal territories, and federally recognized tribes). This formula is to be developed by HUD, and is to be based on a number of factors, including population, housing affordability, percentage of very and extremely low income families, cost of rehab, and extent of substandard and aging housing. If HUD fails to establish this formula on time, funds are distributed to states based on HOME allocations to states and Participating Jurisdictions.

One-hundred percent of funds must be used for the benefit of very low and extremely low income families. Funds may be used for both rental housing and homeownership, with at least ten percent of funds used by each state for home ownership. Families receiving homeownership assistance must have completed prepurchase counseling prior to buying the home. Funds also may be used for public infrastructure activities in conjunction with housing, but no more than 12.5 percent of funds in any state may be used for this purpose.

Affordable housing grants are to be made to eligible recipients, which can be any “organization, agency, or other entity (including a for-profit entity, a nonprofit entity, and a faith-based organization)” that has demonstrated experience and capacity to conduct an eligible activity, demonstrates the ability and financial capacity to undertake, comply, and manage the eligible activity, and demonstrates its familiarity with the requirements of any other Federal, State, or local housing program that will be used in conjunction with such grant amounts. Grantee funds may only be used for affordable housing uses, and not for administrative costs, except that by regulation the Director can limit the amount of any grant amounts a state, (or D.C. a territory or tribe) may use for administrative costs of carrying out the program to a percentage of such grant amounts, which may not exceed 10 percent of grant funds used.

Each state allocates funds under its own Allocation Plan, to be based on priority housing needs in each state, and on criteria that include greatest impact, geographic diversity, ability to obligate

funds in a timely manner, and the extent to which rental housing projects are affordable, especially for extremely low income families. Funds are redistributed from any state that does not obligate funds within 2 years.

This section includes a number of provisions to ensure that the funds are used for housing and are not misused or used for other purposes. The Director is required to adopt regulations to set forth prohibited uses of Fund grant amounts, such as administrative, outreach or other costs of the grantee (other than administrative costs of carrying out the Fund program) or any grant recipient, and political activities, advocacy, lobbying, counseling, travel expense, or preparation or advice on tax returns. Grantees are required to submit annually a report to the Director to describe the activities funded during that year and the grantee's compliance with the allocation plan. These reports will be made publicly available. Other provisions to ensure appropriate use of Fund grant amounts include: (1) a requirement by the Director to establish program regulations; (2) authority for the Director to audit each state's compliance; (3) a requirement that each state develop systems to ensure program compliance and required annual state fund use reports; and (4) authority for the Director to impose penalties on states that do not comply with requirements, including requiring states and grantees to reimburse misused funds.

H.R. 1427 authorizes affordable housing funds allocated under the bill to be transferred at a later date to a national affordable housing trust fund that may be subsequently enacted into law. Although the establishment of an affordable housing fund with monies allocated from the GSEs will play a significant role in providing affordable housing, a national shortage of affordable housing will still exist. A trust fund would serve as a dedicated source of revenue for the production of new housing and the preservation and rehabilitation of existing housing that is affordable for low income people.

The GAO is required to conduct a study and report to Congress within one year of enactment concerning the effect the AHF will have on availability and affordability of credit for homebuyers, and the extent to which the costs to the enterprises of funding the AHF will be passed on to homebuyers.

Section 140. Consistency with mission

This section clarifies that the changes made relating to housing goals, duty to serve, and the affordable housing fund should not be construed to authorize an enterprise to engage in any program or activity that contravenes or is inconsistent with the charter acts of the enterprises.

Section 141. Enforcement

This section expands the enforcement authority currently provided the HUD Secretary with respect to enforcement of the enterprises' housing goals. The expanded authority allows the Director to issue and serve a notice of charges and to impose cease and desist orders and civil money penalties on an enterprise, if the Director determines that the enterprise has: (1) failed to meet a housing goal; (2) failed to submit certain required reports; (3) failed to submit mortgage data and other information and reports required

under the chartering acts of the enterprises; (4) failed to submit an acceptable housing plan, if required; or (5) failed to comply with a housing plan or any other order, rule, or regulation under the applicable sections of the Housing and Community Development Act of 1992, as amended by this bill.

The amount of civil money penalties that may be imposed may not exceed \$50,000 for each day a failure to meet a housing goal, submit or comply with a required housing plan occurs; and \$20,000 per day for failure to submit required reports or information or failure to comply with any order, rule or regulation for each day a failure occurs.

The Director may directly seek enforcement in the United States District Court for the District of Columbia or the United States District Court within the jurisdiction of which the headquarters of the enterprise is located; or may request the Department of Justice to bring the action.

Section 142. Conforming amendments

Makes changes that are necessary to conform existing law with new provisions in H.R. 1427, such as eliminating references to the “Secretary of HUD” and replacing them with the “Director,” striking sections made unnecessary by earlier parts of the bill, and striking outdated provisions pertaining to the issuance of regulations.

Subtitle C—Prompt Corrective Action

Section 151. Capital classifications

This section establishes capital classifications for the Federal Home Loan Banks as well as for Fannie Mae and Freddie Mac. The regulated entities can be classified as: adequately capitalized, undercapitalized, significantly undercapitalized, and critically undercapitalized. The Director may reclassify a regulated entity at any time, if: (1) the Director determines in writing that a regulated entity is engaging in conduct that could result in a rapid depletion of core or total capital or, in the case of an enterprise, the value of the property securitized has decreased significantly; (2) after notice and hearing, the Director determines that the entity is in an unsafe or unsound condition; or (3) if the entity is engaging in an unsafe or unsound practice, as deemed by the Director under section 1371(b).

A regulated entity will make no capital distribution if, after making the distribution, the entity would be undercapitalized.

Section 152. Supervisory actions applicable to undercapitalized regulated entities

If a regulated entity is classified as undercapitalized, the Director must “closely monitor” the condition of the regulated entity and review and monitor the entity’s compliance with a capital restoration plan. Additionally, the Director will have the authority to restrict the asset growth of an undercapitalized entity. Undercapitalized entities may not acquire any interest in any entity, offer any new product or engage in any new activity, service, undertaking or offering without prior approval from the Director. If the Director determines it is necessary, the Director also may use authority and

take actions applicable to significantly undercapitalized enterprises.

Section 153. Supervisory actions applicable to significantly undercapitalized regulated entities

This section makes existing discretionary actions mandatory for significantly undercapitalized entities. The Director must take one or more supervisory actions to improve the management of the entity, including ordering a new election for the board of directors, dismissal of directors or executive officers, or requiring the entity to employ qualified management. Additionally, a significantly undercapitalized regulated entity cannot, without prior written approval by the Director, pay any bonus to any executive officer or provide compensation to any executive officer that exceeds that officer's average rate of compensation from the preceding calendar year.

Section 154. Authority over critically undercapitalized regulated entities

The Director may establish a conservatorship or receivership over a critically undercapitalized entity for the purpose of reorganizing, rehabilitating, or winding up the affairs of a regulated entity. The grounds for appointing a conservator or receiver include: assets are insufficient to cover obligations; there is a substantial dissipation of assets due to violations of law or unsafe or unsound practices; an unsafe or unsound condition to transact business; willful violations of cease-and-desist orders; concealment of books, papers, records or assets; the inability to meet obligations; losses that will deplete all of the entity's capital; any violation of law likely to cause insolvency or substantial dissipation of assets or earnings; consent by resolution of a regulated entity's board of directors; undercapitalization with no reasonable prospect of becoming adequately capitalized or failure to submit or implement a capital restoration plan; critical undercapitalization; or a determination that an entity is guilty of money laundering.

The Director must appoint the Agency as receiver for a regulated entity if the Director determines in writing that the assets of the regulated entity are and have been for the past month less than its obligations, or that the regulated entity is not and has not been for the past month generally paying its debts as those debts become due. Receivership and conservatorship appointments may be challenged in federal court.

The Agency, as conservator or receiver, may issue regulations as appropriate for the conduct of the conservatorship or receivership. The Agency succeeds to all the rights, titles, powers, and privileges of the regulated entity and of any stockholder, officer, or director of such regulated entity, and title to the books, records, and assets of any other legal custodian of such regulated entity. The Agency shall take over all assets and obligations of the regulated entity, perform all functions of the regulated entity, and preserve and conserve the assets and property of the regulated entity.

The Agency, as conservator, may take such action as may be necessary to put the regulated entity into a sound and solvent condition, and to carry out the business of the entity. As receiver, the Agency may place a regulated entity into liquidation having due re-

gard for the housing finance market and may organize a successor entity.

The Agency, as conservator or receiver, may transfer any asset or liability of the regulated entity in default without any approval, assignment or consent. Any Federal Home Loan Bank may acquire the assets of any Bank in conservatorship or receivership with the approval of the Agency. The Agency, as conservator or receiver, shall pay all valid obligations of the regulated entity, to the extent proceeds of operations or sales are available. The Agency shall have the authority to issue subpoenas for the purposes of carrying out its authorities, and may contract for services relating to the carrying out of its functions, actions, activities, or duties. The Agency also is granted any incidental authorities it may need to carry out its powers as conservator or receiver.

The Agency, as receiver, must promptly publish and mail notice to the creditors of the regulated entities to present their claims to the receiver. The receiver may allow or disallow claims by creditors according to the provisions set forth in this section. The right of a conservator or receiver shall be subject to the limitations on the powers of a receiver under section 402 through 407 of the Federal Deposit Insurance Corporation Improvement Act of 1991 concerning financial system risk.

Mortgages, or interests in pools of mortgages, held in trust, custodial, or agency capacity by a regulated entity shall not be available to satisfy the claims of creditors generally. Such mortgages or interest in a pool of mortgages shall be held by the conservator or receiver for the beneficial owners of such mortgages in accordance with the terms of the agreement creating such trust, custodial, or agency agreement. This provision is intended to protect the interests of holders of mortgage-backed securities by ensuring that the assets backing such securities do not become entangled in the insolvency estate of a regulated entity.

The Agency as conservator or receiver may disaffirm or repudiate any contract or lease to which the regulated entity is a party the performance of which the conservator or receiver determines to be burdensome and the repudiation of which will promote the orderly administration of the affairs of the regulated entity. Specific provisions are established for the treatment of qualified financial contracts, which include securities or commodity contracts, forward contracts, repurchase agreements, swap agreements and master agreements. No provisions of this subsection applies to extensions of credit from any Federal Home Loan Bank or Federal Reserve Bank to any regulated entity, or to any securities interest in the assets of the regulated entity securing such extension of credit.

The Agency may organize a limited-life regulated entity (LLRE) if a regulated entity is in default or it is in danger of default. The Director shall grant a temporary charter to the LLRE and the LLRE shall assume the liabilities of the regulated entity, purchase the assets of the regulated entity, and perform any other temporary functions which the Agency may prescribe. The Agency will not have the authority to revoke the charter of a regulated entity.

Section 155. Conforming amendments

This section makes changes that are necessary to conform existing law to the new provisions included in H.R. 1427.

Subtitle D—Enforcement Actions

Section 161. Cease-and-desist proceedings

If a regulated entity or regulated entity affiliated party is engaged in, has engaged in, or is about to engage in, an unsafe or unsound practice or is violating, has violated, or is about to violate a law, rule, regulation or condition imposed in writing by the Director in connection with an application or request, the Director may issue and serve a notice of charges on the regulated entity or regulated entity-affiliated party with respect to these actions. The Director may deem an entity to be engaged in unsafe and unsound practices if the entity receives a less than satisfactory rating for asset quality, management, earnings, or liquidity in its most recent report of examination.

Section 162. Temporary cease-and-desist proceedings

Whenever the Director determines that the violation or threatened violation or unsafe or unsound practice specified in the notice of charges is likely to cause insolvency or a significant dissipation of assets or earnings or is likely to weaken the condition of the regulated entity prior to completion of the proceedings for issuance of a permanent cease-and-desist order, the Director may issue a temporary cease-and-desist order requiring the regulated entity to discontinue such violation or practice and to take affirmative action to prevent or remedy such condition. The Agency may enforce these orders through its independent litigation authority.

Section 163. Prejudgment attachment

In any action brought pursuant to this title, or to enforce an order for money damages, restitution, or civil money penalties, the Director or the Attorney General may seek prohibitions against the withdrawal, transfer, removal, dissipation of any funds, assets, or other property.

Section 164. Enforcement and jurisdiction

The Director is granted independent litigation authority to enforce notices and orders issued under the capital and enforcement provisions of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992. This is in addition to the general authority granted under section 102 to enforce the government-sponsored enterprise provisions of the Housing and Community Development Act of 1992, as amended, any regulation or order thereunder, or any other provision of law, rule, regulation, or order, or in any other action, suit, or proceeding to which the Director is a party or in which the Director is interested, and in the administration of conservatorships and receiverships.

Section 165. Civil money penalties

This section establishes three tiers of civil monetary penalties that can be imposed on regulated entities or regulated entity-affiliated parties for violations of this title, the authorizing statutes, or any order, condition, rule, regulation, or the engaging in unsafe or unsound practices.

Under the first tier, violations of this title, the authorizing statutes, or any order, condition, rule, regulation, or the engaging in

unsafe or unsound practices shall result in civil money penalties of not more than \$10,000 for each day the violation continues.

Under the second tier, if a regulated entity or regulated entity-affiliated party commits any violation described above, recklessly engages in an unsafe or unsound practice, or breaches any fiduciary duty and these actions are part of a pattern of misconduct, will result more than a minimal loss, or result in pecuniary gain or benefit, the party shall forfeit and pay a civil penalty of not more than \$50,000 for each day the violation continues.

Under the third tier, if a regulated entity or regulated entity-affiliated party knowingly commits any violation described above, engages in unsafe or unsound practices, or breaches any fiduciary duty, and knowingly or recklessly causes a substantial loss to the regulated entity or a substantial pecuniary gain or benefit to such party, the party shall forfeit and pay a civil penalty not to exceed the maximum amount permitted for each day the violation continues. The maximum daily amount for any civil money penalty that can be assessed is not to exceed \$2 million for any individual and for any regulated entity.

Section 166. Removal and prohibition authority

If the Director determines that a regulated entity-affiliated party, directly or indirectly, violated any law, regulation, final cease-and-desist order, written condition or written agreement or engaged in any unsafe or unsound practice, or breach of fiduciary duty and, by reason of the violation, practice or breach, the regulated entity has suffered or will probably suffer financial loss or other damage, or the enterprise-affiliated party received a financial gain or other benefit, and the violation involves personal dishonesty or willful or continuing disregard for the safety and soundness of the entity. Under those circumstances, the Director may by written order and after notice and opportunity for hearing, suspend any regulated entity-affiliated party from office, prohibit such party from further participation in the affairs of the regulated entity, or prohibit the payment of compensation to the party if the Director determines that such action is necessary for protection of the regulated entity and serves such party with written notice of the suspension or prohibition.

Additionally, the Director may suspend or remove any regulated entity-affiliated party who is indicted or convicted of a felony involving dishonesty or breach of trust where continued service poses a threat to the regulated entity or impairs public confidence therein.

A party that is suspended and/or prohibited from participation in the affairs of a regulated entity under this section may apply to the courts for a stay of such suspension.

Section 167. Criminal penalty

This section provides that a person, who is subject to a removal or prohibition order and who knowingly participated directly or indirectly in the conduct of the affairs of any regulated entity, shall be fined not more than \$1,000,000, imprisoned for not more than 5 years, or both.

Section 168. Subpoena authority

The Agency is granted the power to issue and enforce subpoenas.

Section 169. Conforming amendments

This section includes various conforming amendments.

Subtitle E—General Provisions

Section 181. Boards of enterprises

The boards of Fannie Mae and Freddie Mac shall consist of 13 persons elected by the shareholders, or such other number that the Director determines.

Section 182. Report on portfolio operations, safety and soundness, and mission of enterprises

Within a year, the Agency must submit a report to Congress on: the portfolio holdings of Fannie Mae and Freddie Mac; a description of risk implications for the enterprises of such holdings and the consequent risk management undertaken by the enterprises (including the use of derivatives for hedging purposes) compared with off-balance sheet obligations of the enterprises; analyses of portfolio holdings for safety and soundness, mission fulfillment, and potential systemic risk implications for the enterprises, the housing and capital markets and the financial system of portfolio holdings (including whether such holdings should be limited or reduced over time).

Section 183. Conforming and technical amendments

Makes changes necessary to conform existing law with new provisions included in H.R. 1427, such as setting the pay scale for the Director and Deputy Directors, striking sections made unnecessary by other parts of the bill, and establishing an Office of the Inspector General.

Section 184. Study of alternative secondary market systems

The Agency, in consultation with the Federal Reserve Board, the Department of the Treasury, and the Department of Housing and Urban Development, shall conduct a study of the effects on financial and housing finance markets of alternatives to the current secondary market system for housing finance. Issues specified in this section must be addressed in the study. The Agency will submit a report to Congress on the study within 24 months of the effective date.

TITLE II—FEDERAL HOME LOAN BANKS

Section 201. Definitions

New definitions are provided.

Section 202. Directors

The management of each Federal Home Loan Bank is vested in a board of 13 directors, or such other number as the Director determines appropriate, with terms of four years. All directors of a Bank who are not independent directors shall be elected by the members. Officers or directors of members of a Federal Home Loan Bank lo-

cated in the district in which the Bank is located will have a majority of the board seats. This provision preserves the requirement in current law for the Agency to maintain the total number of elected directors representing members in any state at a number at least equal to the total number of elected directors representing that state as of December 31, 1960. This provision would not apply to directorships in any Federal Home Loan Bank resulting from the merger of one or more Banks. At least two-fifths of the directors will be independent members appointed by the Agency from a list recommended by the Federal Housing Enterprise Board, with at least 2 being public interest directors. In appointing independent members, the Agency may consult with each Federal Home Loan Bank about the knowledge, skills, and expertise needed on the Bank's board, and must take into consideration the demographic makeup of the community most served by the Affordable Housing Program of the Bank. Each Bank may pay directors for reasonable compensation and expenses, subject to the approval of the Director, which shall be reported to Congress in the Agency's annual report.

Section 203. Federal Housing Finance Agency oversight of Federal Home Loan Banks

The Federal Housing Finance Board is abolished and replaced by the Federal Housing Finance Agency.

The Director may enforce Federal Home Loan Bank compliance with the Affordable Housing Program and Community Investment Program requirements in the same manner and to the same extent as the Director may monitor and enforce the housing goals for the enterprises.

Section 204. Joint activities of Banks

Subject to regulation of the Director, any two or more Federal Home Loan Banks may establish a joint office for the purpose of performing functions for or providing services to the Banks on a common or collective basis, or may require the Office of Finance to perform those functions or services. This section is not intended to broaden the activities of the Banks, but to provide the Banks a means through which they can more efficiently conduct some of their business operations.

Section 205. Sharing of information between federal home loan banks

Not later than six months after the effective date, the Director shall prescribe rules to ensure that each Federal Home Loan Bank has access to information that the Bank needs to determine the nature and extent of its joint and several liability within the Bank System.

Section 206. Reorganization of banks and voluntary merger

Any two or more Federal Home Loan Banks may merge upon approval of their boards and of the Director of the Agency. The Director shall promulgate regulations establishing the conditions and procedures for the consideration and approval of any voluntary merger.

Section 207. Securities and Exchange Commission disclosure

This section exempts the Federal Home Loan Banks from compliance with some disclosure, reporting and other requirements under the Securities Exchange Act of 1934 (the “’34 Act”), the Securities Act of 1933 (the “’33 Act”), and the Investment Company Act of 1940. In particular, shares of Federal Home Loan Bank stock are deemed exempted securities under the ’33 and ’34 Acts; Federal Home Loan Bank obligations are deemed “exempted securities” under the ’33 and ’34 Acts, “government securities” under the ’34 Act and the Investment Company Act of 1940, and are excluded from the definition of “government securities broker” and “government securities dealer” under the ’34 Act and the Investment Company Act of 1940.

In issuing any final regulations to implement these provisions, the Securities and Exchange Commission must consider the “distinctive characteristics” of the Federal Home Loan Banks when evaluating the accounting treatment of REFCORP, the role of the Federal Home Loan Banks’ combined financial statements, the accounting classification of redeemable capital stock, and the accounting treatment related to the joint and several liability for the Federal Home Loan Banks’ consolidated obligations.

Section 208. Community financial institution members

The threshold amount of total assets necessary for a Federal Home Loan Bank member to qualify as a community financial institution, and thus to become eligible to obtain long-term advances for small business, small farm, and small agribusiness funding purposes, and to use such loans as collateral for advances, is raised from \$500 million to \$1 billion. Community financial institutions may also use advances for community development lending and such loans as collateral for advances.

Section 209. Technical and conforming amendments

Makes changes necessary to conform existing law with new provisions included in H.R. 1427, such as eliminating references to the “Office of Federal Housing Enterprise Oversight” and the “Federal Housing Finance Board” and replacing them with the “Director of the Federal Housing Finance Agency.” Amends the Sarbanes-Oxley Act of 2002 by adding the Agency to the list of those federal agencies with which the Public Company Accounting Oversight Board may share information without loss of confidentiality.

Section 210. Study of affordable housing program use for long term care facilities

GAO is required to study the use of the Federal Home Loan Banks’ Affordable Housing Program to fund long-term care facilities for low- and moderate-income individuals and its applicability to the affordable housing funds of the enterprises. Not later than one year from the date of enactment, GAO will submit a report to the Director and to Congress regarding the results of the study.

Section 211. Effective date

Except as specifically provided, this title will be effective 6 months from the date of enactment.

TITLE III—TRANSFER OF FUNCTIONS, PERSONNEL, AND
PROPERTY OF OFFICE OF FEDERAL HOUSING ENTER-
PRISE OVERSIGHT, FEDERAL HOUSING FINANCE BOARD
AND DEPARTMENT OF HOUSING AND URBAN DEVELOP-
MENT

Subtitle A—Office of Federal Housing Enterprise Oversight

Section 301. Abolishment of OFHEO

The Office of Federal Housing Enterprise Oversight (OFHEO) and the positions of the Director and Deputy Director of OFHEO are abolished six months after the date of enactment. During that six-month period, the Director of OFHEO will, for the purpose of winding up the affairs of OFHEO, manage the Office. OFHEO also will fulfill all its current duties under law during this time period. The bill contains various provisions for an orderly transfer of functions.

Section 302. Continuation and coordination of certain regulations

All regulations, determinations and resolutions that were issued by OFHEO and in effect on the date of abolishment will continue to be in effect and enforceable by or against the Director of the Agency until modified, terminated, set aside or superseded by the Agency, any court of competent jurisdiction, or operation of law.

Section 303. Transfer and rights of employees of OFHEO

OFHEO employees are transferred to the Agency, will be guaranteed a position with the Agency and will retain their benefits for one year following the transfer. The Director has the right to decline a transfer of employees occupying positions in the excepted service or the Senior Executive Service or pursuant to any appointment authority established pursuant to law or Office of Personnel Management (OPM) regulations, to the extent that such authority relates to positions excepted on the basis of their confidential, policy-making, policy-determining or policy-advocating responsibilities, and noncareer positions in the Senior Executive Service. If the Director determines, at the end of the 1-year period that a reorganization of the combined workforce is required, that reorganization shall be deemed a major reorganization for purposes of affording affected employees' retirement.

Section 304. Transfer of property and facilities

The property of OFHEO will become the property of the Agency.

Subtitle B—Federal Housing Finance Board

Section 321. Termination of the Federal Housing Finance Board

The Federal Housing Finance Board is abolished six months after enactment. During that six-month period, the Finance Board, will for the purposes of winding up the affairs of the Finance Board, manage the Finance Board. The Finance Board also will fulfill all its current duties under law during this time period. The bill makes various provisions for an orderly transfer of functions.

Section 322. Continuation and coordination of certain regulations

All regulations, determinations and resolutions that were issued by the Finance Board and in effect on the date of abolishment will continue to be in effect and enforceable by or against the Director of the Agency until modified, terminated, set aside or superseded by the Agency, any court of competent jurisdiction, or operation of law.

Section 323. Transfer and rights of employees of the Federal Housing Finance Board

Finance Board employees are transferred to the Agency, will be guaranteed a position with the Agency and will retain their benefits for one year following the transfer. The Director has the right to decline a transfer of employees occupying positions in the excepted service or the Senior Executive Service or pursuant to any appointment authority established pursuant to law or OPM regulations, to the extent that such authority relates to positions excepted on the basis of their confidential, policy-making, policy-determining or policy-advocating responsibilities, and noncareer positions in the Senior Executive Service. If the Director determines, at the end of the 1-year period that a reorganization of the combined workforce is required, that reorganization shall be deemed a major reorganization for purposes of affording affected employees' retirement.

Section 324. Transfer of property and facilities

The property of Finance Board will become the property of the Agency.

Subtitle C—Department of Housing: and Urban Development

Section 341. Termination of enterprise-related functions

The Secretary of HUD, in consultation with the Director of OFHEO, will determine, within three months of enactment, the HUD functions, duties and activities regarding oversight or regulation of the enterprises, and employees of HUD necessary to perform such functions, duties and activities. During the six-month period beginning on the date of enactment, HUD will, for the purpose of winding up the affairs of HUD regarding enterprise-related functions, manage the enterprise-related employees and functions of HUD. HUD also will fulfill all its current duties under law during this time period. The bill makes various provisions for an orderly transfer of functions.

Section 342. Continuation and coordination of certain regulations

All regulations, orders and determinations that were issued by HUD and in effect on the date of termination abolishment will continue to be in effect and enforceable by or against the Director of the Agency until modified, terminated, set aside or superseded by the Agency, any court of competent jurisdiction, or operation of law.

Section 343. Transfer and rights of employees of Department of Housing and Urban Development

Enterprise-related employees of HUD will be transferred to the Agency, will be guaranteed a position with the Agency and will retain their benefits for one year following the transfer. Enterprise-

related employees of HUD may decline transfer to a position at the Agency, and in such case shall be guaranteed a position at HUD and shall not be involuntarily separated or reduced in grade or compensation for 12 months after the date that the transfer would otherwise have occurred, except for cause. The Director has the right to decline a transfer of employees occupying positions in the excepted service or the Senior Executive Service or pursuant to any appointment authority established pursuant to law or OPM regulations, to the extent that such authority relates to positions excepted on the basis of their confidential, policy-making, policy-determining or policy-advocating responsibilities, and noncareer positions in the Senior Executive Service. If the Director determines, at the end of the 1-year period that a reorganization of the combined workforce is required, that reorganization shall be deemed a major reorganization for purposes of affording affected employees' retirement.

Section 344. Transfer of appropriations, property, and facilities

The property and unexpended appropriations of HUD related to enterprise oversight will transfer to the Agency.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**TITLE XIII OF THE HOUSING AND COMMUNITY
DEVELOPMENT ACT OF 1992**

**TITLE XIII—GOVERNMENT SPONSORED
ENTERPRISES**

* * * * *

SEC. 1303. DEFINITIONS.

For purposes of this title:

(1) **AFFILIATE.**—Except as provided by the Director, the term “affiliate” means any entity that controls, is controlled by, or is under common control with, an enterprise.

(2) **AGENCY.**—*The term “Agency” means the Federal Housing Finance Agency.*

(3) **AUTHORIZING STATUTES.**—*The term “authorizing statutes” means—*

(A) the Federal National Mortgage Association Charter Act;

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

(C) the Federal Home Loan Bank Act.

(4) **BOARD.**—*The term “Board” means the Federal Housing Enterprise Board established under section 1313B.*

[(2)] (5) CAPITAL DISTRIBUTION.—

(A) **IN GENERAL.**—The term “capital distribution” means—

(i) any dividend or other distribution in cash or in kind made with respect to any shares of, or other ownership interest in, an enterprise, except a dividend consisting only of shares of **the enterprise** *the regulated entity*;

(ii) any payment made by an enterprise to repurchase, redeem, retire, or otherwise acquire any of its shares, including any extension of credit made to finance an acquisition by **the enterprise** *the regulated entity* of such shares; and

(iii) any transaction that the Director determines by regulation to be, in substance, the distribution of capital.

(B) EXCEPTION.—Any payment made by an enterprise to repurchase its shares for the purpose of fulfilling an obligation of **the enterprise** *the regulated entity* under an employee stock ownership plan that is qualified under section 401 of the Internal Revenue Code of 1986 or any substantially equivalent plan, as determined by the Director, shall not be considered a capital distribution.

(3) (6) COMPENSATION.—The term “compensation” means any payment of money or the provision of any other thing of current or potential value in connection with employment.

(7) CONFORMING MORTGAGE.—*The term “conforming mortgage” means, with respect to an enterprise, a conventional mortgage having an original principal obligation that does not exceed the dollar limitation, in effect at the time of such origination, under, as applicable—*

(A) *section 302(b)(2) of the Federal National Mortgage Association Charter Act; or*

(B) *section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act.*

(4) (8) CORE CAPITAL.—The term “core capital” means, with respect to an enterprise, the sum of the following (as determined in accordance with generally accepted accounting principles):

(A) * * *

* * * * *

(5) (9) DIRECTOR.—The term “Director” means the Director of the **Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development** *Federal Housing Finance Agency*.

(6) (10) ENTERPRISE.—The term “enterprise” means—

(A) the Federal National Mortgage Association and any affiliate thereof; and

(B) the Federal Home Loan Mortgage Corporation and any affiliate thereof.

(7) (11) EXECUTIVE OFFICER.—The term “executive officer” means, with respect to **an enterprise** *a regulated entity*, the chairman of the board of directors, chief executive officer, chief financial officer, president, vice chairman, any executive vice president, and any senior vice president in charge of a principal business unit, division, or function.

(12) EXTREMELY LOW-INCOME.—*The term “extremely low-income” means—*

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

(B) in the case of rental units, income not in excess of 30 percent of the area median income, with adjustments for smaller and larger families, as determined by the Secretary.

(13) *FEDERAL HOME LOAN BANK.*—The term “Federal home loan bank” means a bank established under the authority of the Federal Home Loan Bank Act.

[(8)] (14) *LOW-INCOME.*—The term “low-income” means—

(A) in the case of owner-occupied units, income not in excess of 80 percent of area median income; and

(B) in the case of rental units, income not in excess of 80 percent of area median income, with adjustments for smaller and larger families, as determined by the [Secretary] Director.

(15) *LOW-INCOME AREA.*—The term “low income area” means a census tract or block numbering area in which the median income does not exceed 80 percent of the median income for the area in which such census tract or block numbering area is located, and, for the purposes of section 1332(a)(2), shall include families having incomes not greater than 100 percent of the area median income who reside in minority census tracts.

[(9)] (16) *MEDIAN INCOME.*—The term “median income” means, with respect to an area, the unadjusted median family income for the area, as determined and published annually by the [Secretary] Director.

[(10)] (17) *MODERATE-INCOME.*—The term “moderate-income” means—

(A) in the case of owner-occupied units, income not in excess of area median income; and

(B) in the case of rental units, income not in excess of area median income, with adjustments for smaller and larger families, as determined by the [Secretary] Director.

[(11)] (18) *MORTGAGE PURCHASES.*—The term “mortgage purchases” includes mortgages purchased for portfolio or securitization.

[(12)] (19) *MULTIFAMILY HOUSING.*—The term “multifamily housing” means a residence consisting of more than 4 dwelling units.

[(13)] *NEW PROGRAM.*—The term “new program” means any program for the purchasing, servicing, selling, lending on the security of, or otherwise dealing in, conventional mortgages that—

[(A)] is significantly different from programs that have been approved under this Act or that were approved or engaged in by an enterprise before the date of the enactment of this Act; or

[(B)] represents an expansion, in terms of the dollar volume or number of mortgages or securities involved, of programs above limits expressly contained in any prior approval.

[(14)] *OFFICE.*—The term “Office” means the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development.

[(15) SECRETARY.—The term “Secretary” means the Secretary of Housing and Urban Development.]

(20) REGULATED ENTITY.—The term “regulated entity” means—

- (A) the Federal National Mortgage Association and any affiliate thereof;
- (B) the Federal Home Loan Mortgage Corporation and any affiliate thereof; and
- (C) each Federal home loan bank.

(21) REGULATED ENTITY-AFFILIATED PARTY.—The term “regulated entity-affiliated party” means—

- (A) any director, officer, employee, or agent for, a regulated entity, or controlling shareholder of an enterprise;
- (B) any shareholder, affiliate, consultant, or joint venture partner of a regulated entity, and any other person, as determined by the Director (by regulation or on a case-by-case basis) that participates in the conduct of the affairs of a regulated entity, except that a shareholder of a regulated entity shall not be considered to have participated in the affairs of that regulated entity solely by reason of being a member or customer of the regulated entity;
- (C) any independent contractor for a regulated entity (including any attorney, appraiser, or accountant), if—

- (i) the independent contractor knowingly or recklessly participates in—
 - (I) any violation of any law or regulation;
 - (II) any breach of fiduciary duty; or
 - (III) any unsafe or unsound practice; and
- (ii) such violation, breach, or practice caused, or is likely to cause, more than a minimal financial loss to, or a significant adverse effect on, the regulated entity; and

(D) any not-for-profit corporation that receives its principal funding, on an ongoing basis, from any regulated entity.

(22) RURAL AREA.—The term “rural area” has the meaning given such term in section 520 of the Housing Act of 1949 (42 U.S.C. 1490), except that such term includes micropolitan areas and tribal trust lands.

[(16)] (23) SINGLE FAMILY HOUSING.—The term “single family housing” means a residence consisting of 1 to 4 dwelling units.

[(17)] (24) STATE.—The term “State” means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

[(18)] (25) TOTAL CAPITAL.—The term “total capital” means, with respect to an enterprise, the sum of the following:

(A) * * *

* * * * *

[(19)] (26) VERY LOW-INCOME.—The term “very low-income” means—

(A) in the case of owner-occupied units, income not in excess of **[60]** 50 percent of area median income; and

(B) in the case of rental units, income not in excess of **[60]** 50 percent of area median income, with adjustments for smaller and larger families, as determined by the **[Secretary]** Director.

* * * * *

Subtitle A—Supervision and Regulation of Enterprises

PART 1—FINANCIAL SAFETY AND SOUNDNESS REGULATOR

[SEC. 1311. ESTABLISHMENT OF OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT.

[[There is hereby established an office within the Department of Housing and Urban Development, which shall be known as the Office of Federal Housing Enterprise Oversight.

[SEC. 1312. DIRECTOR.

[(a) APPOINTMENT.—The Office shall be under the management of a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States, have a demonstrated understanding of financial management or oversight, and have a demonstrated understanding of mortgage security markets and housing finance. An individual may not be appointed as Director if the individual has served as an executive officer or director of an enterprise at any time during the 3-year period ending upon the nomination of such individual for appointment as Director.

[(b) TERM.—The Director shall be appointed for a term of 5 years.

[(c) VACANCY.—A vacancy in the position of Director shall be filled in the manner in which the original appointment was made under subsection (a).

[(d) SERVICE AFTER END OF TERM.—A Director may serve after the expiration of the term for which the Director was appointed until a successor Director has been appointed.

[(e) DEPUTY DIRECTOR.—

[(1) IN GENERAL.—The Office shall have a Deputy Director who shall be appointed by the Director from among individuals who are citizens of the United States, have a demonstrated understanding of financial management or oversight, and have a demonstrated understanding of mortgage security markets and housing finance. An individual may not be appointed as Deputy Director if the individual has served as an executive officer or director of an enterprise at any time during the 3-year period ending upon the appointment of such individual as Deputy Director.

[(2) FUNCTIONS.—The Deputy Director shall have such functions, powers, and duties as the Director shall prescribe. In the event of the death, resignation, sickness, or absence of the Director, the Deputy Director shall serve as acting Director until

the return of the Director or the appointment of a successor pursuant to subsection (c).

【SEC. 1313. DUTY AND AUTHORITY OF DIRECTOR.

【(a) DUTY.—The duty of the Director shall be to ensure that the enterprises are adequately capitalized and operating safely, in accordance with this title.

【(b) AUTHORITY EXCLUSIVE OF SECRETARY.—The Director is authorized, without the review or approval of the Secretary, to make such determinations, take such actions, and perform such functions as the Director determines necessary regarding—

【(1) the issuance of regulations to carry out this part, subtitle B, and subtitle C (including the establishment of capital standards pursuant to subtitle B);

【(2) examinations of the enterprises under section 1317;

【(3) determining the capital levels of the enterprises and classification of the enterprises within capital classifications established under subtitle B;

【(4) decisions to appoint conservators for the enterprises;

【(5) administrative and enforcement actions under subtitle B, actions taken under subtitle C with respect to enforcement of subtitle B, and other matters relating to safety and soundness;

【(6) approval of payments of capital distributions by the enterprises under section 303(c)(2) of the Federal National Mortgage Association Charter Act and section 303(b)(2) of the Federal Home Loan Mortgage Corporation Act;

【(7) requiring the enterprises to submit reports under section 1314 of this title, section 309(k) of the Federal National Mortgage Association Charter Act, and section 307(c) of the Federal Home Loan Mortgage Corporation Act;

【(8) prohibiting the payment of excessive compensation by the enterprises to any executive officer of the enterprises under section 1318;

【(9) the management of the Office, including the establishment and implementation of annual budgets, the hiring of, and compensation levels for, personnel of the Office, and annual assessments for the costs of the Office;

【(10) conducting research and financial analysis; and

【(11) the submission of reports required by the Director under this title.

【(c) AUTHORITY SUBJECT TO APPROVAL OF SECRETARY.—Any determinations, actions, and functions of the Director not referred to in subsection (b) shall be subject to the review and approval of the Secretary.

【(d) DELEGATION OF AUTHORITY.—The Director may delegate to officers and employees of the Office any of the functions, powers, and duties of the Director, as the Director considers appropriate.

【(e) INDEPENDENCE IN PROVIDING INFORMATION TO CONGRESS.—The Director shall not be required to obtain the prior approval, comment, or review of any officer or agency of the United States before submitting to the Congress, or any committee or subcommittee thereof, any reports, recommendations, testimony, or comments if such submissions include a statement indicating that the views expressed therein are those of the Director and do not necessarily represent the views of the Secretary or the President.】

SEC. 1311. ESTABLISHMENT OF THE FEDERAL HOUSING FINANCE AGENCY.

(a) *ESTABLISHMENT.*—There is established the Federal Housing Finance Agency, which shall be an independent agency of the Federal Government.

(b) *GENERAL SUPERVISORY AND REGULATORY AUTHORITY.*—

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

(2) *AUTHORITY OVER FANNIE MAE, FREDDIE MAC, AND FEDERAL HOME LOAN BANKS.*—The Director of the Federal Housing Finance Agency shall have general supervisory and regulatory authority over each regulated entity and shall exercise such general regulatory and supervisory authority, including such duties and authorities set forth under section 1313 of this Act, to ensure that the purposes of this Act, the authorizing statutes, and any other applicable law are carried out. The Director shall have the same supervisory and regulatory authority over any joint office of the Federal home loan banks, including the Office of Finance of the Federal Home Loan Banks, as the Director has over the individual Federal home loan banks.

(c) *SAVINGS PROVISION.*—The authority of the Director to take actions under subtitles B and C shall not in any way limit the general supervisory and regulatory authority granted to the Director.

SEC. 1312. DIRECTOR.

(a) *ESTABLISHMENT OF POSITION.*—There is established the position of the Director of the Federal Housing Finance Agency, who shall be the head of the Agency.

(b) *APPOINTMENT; TERM.*—

(1) *APPOINTMENT.*—The Director shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals who are citizens of the United States, have a demonstrated understanding of financial management or oversight, and have a demonstrated understanding of capital markets, including the mortgage securities markets and housing finance.

(2) *TERM AND REMOVAL.*—The Director shall be appointed for a term of 5 years and may be removed by the President only for cause.

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

(4) *SERVICE AFTER END OF TERM.*—An individual may serve as the Director after the expiration of the term for which appointed until a successor has been appointed.

(5) *TRANSITIONAL PROVISION.*—Notwithstanding paragraphs (1) and (2), the Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development shall serve as the Director until a successor has been appointed under paragraph (1).

(c) *DEPUTY DIRECTOR OF THE DIVISION OF ENTERPRISE REGULATION.*—

(1) *IN GENERAL.*—The Agency shall have a Deputy Director of the Division of Enterprise Regulation, who shall be appointed by the Director from among individuals who are citizens of the United States, and have a demonstrated understanding of financial management or oversight and of mortgage securities markets and housing finance.

(2) *FUNCTIONS.*—The Deputy Director of the Division of Enterprise Regulation shall have such functions, powers, and duties with respect to the oversight of the enterprises as the Director shall prescribe.

(d) *DEPUTY DIRECTOR OF THE DIVISION OF FEDERAL HOME LOAN BANK REGULATION.*—

(1) *IN GENERAL.*—The Agency shall have a Deputy Director of the Division of Federal Home Loan Bank Regulation, who shall be appointed by the Director from among individuals who are citizens of the United States, have a demonstrated understanding of financial management or oversight and of the Federal Home Loan Bank System and housing finance.

(2) *FUNCTIONS.*—The Deputy Director of the Division of Federal Home Loan Bank Regulation shall have such functions, powers, and duties with respect to the oversight of the Federal home loan banks as the Director shall prescribe.

(e) *DEPUTY DIRECTOR FOR HOUSING.*—

(1) *IN GENERAL.*—The Agency shall have a Deputy Director for Housing, who shall be appointed by the Director from among individuals who are citizens of the United States, and have a demonstrated understanding of the housing markets and housing finance and of community and economic development.

(2) *FUNCTIONS.*—The Deputy Director for Housing shall have such functions, powers, and duties with respect to the oversight of the housing mission and goals of the enterprises, and with respect to oversight of the housing finance and community and economic development mission of the Federal home loan banks, as the Director shall prescribe.

(f) *LIMITATIONS.*—The Director and each of the Deputy Directors may not—

(1) have any direct or indirect financial interest in any regulated entity or regulated entity-affiliated party;

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

(3) have served as an executive officer or director of any regulated entity, or regulated entity-affiliated party, at any time during the 3-year period ending on the date of appointment of such individual as Director or Deputy Director.

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

SEC. 1313. DUTIES AND AUTHORITIES OF DIRECTOR.

(a) *DUTIES.*—

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

(A) to oversee the operations of each regulated entity and any joint office of the Federal Home Loan Banks; and

(B) to ensure that—

(i) each regulated entity operates in a safe and sound manner, including maintenance of adequate capital and internal controls;

(ii) the operations and activities of each regulated entity foster liquid, efficient, competitive, and resilient national housing finance markets that minimize the cost of housing finance (including activities relating to mortgages on housing for low- and moderate- income families involving a reasonable economic return that may be less than the return earned on other activities);

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

(iv) each regulated entity carries out its statutory mission only through activities that are consistent with this title and the authorizing statutes.

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

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

(B) to exercise such incidental powers as may be necessary or appropriate to fulfill the duties and responsibilities of the Director in the supervision and regulation of each regulated entity.

(b) DELEGATION OF AUTHORITY.—The Director may delegate to officers or employees of the Agency, including each of the Deputy Directors, any of the functions, powers, or duties of the Director, as the Director considers appropriate.

(c) LITIGATION AUTHORITY.—

(1) IN GENERAL.—In enforcing any provision of this title, any regulation or order prescribed under this title, or any other provision of law, rule, regulation, or order, or in any other action, suit, or proceeding to which the Director is a party or in which the Director is interested, and in the administration of conservatorships and receiverships, the Director may act in the Director's own name and through the Director's own attorneys, or request that the Attorney General of the United States act on behalf of the Director.

(2) CONSULTATION WITH ATTORNEY GENERAL.—The Director shall provide notice to, and consult with, the Attorney General of the United States before taking an action under paragraph (1) of this subsection or under section 1344(a), 1345(d), 1348(c), 1372(e), 1375(a), 1376(d), or 1379D(c), except that, if the Director determines that any delay caused by such prior notice and consultation may adversely affect the safety and soundness responsibilities of the Director under this title, the Director shall notify the Attorney General as soon as reasonably possible after taking such action.

(3) SUBJECT TO SUIT.—Except as otherwise provided by law, the Director shall be subject to suit (other than suits on claims for money damages) by a regulated entity or director or officer

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

SEC. 1313A. PRUDENTIAL MANAGEMENT AND OPERATIONS STANDARDS.

(a) STANDARDS.—The Director shall establish standards, by regulation, guideline, or order, for each regulated entity relating to—

(1) adequacy of internal controls and information systems, including information security and privacy policies and practices, taking into account the nature and scale of business operations;

(2) independence and adequacy of internal audit systems;

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

(4) management of interest rate risk exposure;

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

(6) adequacy and maintenance of liquidity and reserves;

(7) management of any asset and investment portfolio;

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

(9) maintenance of adequate records, in accordance with consistent accounting policies and practices that enable the Director to evaluate the financial condition of the regulated entity;

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

(11) overall risk management processes, including adequacy of oversight by senior management and the board of directors and of processes and policies to identify, measure, monitor, and control material risks, including reputational risks, and for adequate, well-tested business resumption plans for all major systems with remote site facilities to protect against disruptive events; and

(12) such other operational and management standards as the Director determines to be appropriate.

(b) FAILURE TO MEET STANDARDS.—

(1) PLAN REQUIREMENT.—

(A) IN GENERAL.—*If the Director determines that a regulated entity fails to meet any standard established under subsection (a)—*

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

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

(B) *CONTENTS.*—Any plan required under subparagraph (A) shall specify the actions that the regulated entity will take to correct the deficiency. If the regulated entity is undercapitalized, the plan may be a part of the capital restoration plan for the regulated entity under section 1369C.

(C) *DEADLINES FOR SUBMISSION AND REVIEW.*—The Director shall by regulation establish deadlines that—

(i) provide the regulated entities with reasonable time to submit plans required under subparagraph (A), and generally require a regulated entity to submit a plan not later than 30 days after the Director determines that the entity fails to meet any standard established under subsection (a); and

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

(2) *REQUIRED ORDER UPON FAILURE TO SUBMIT OR IMPLEMENT PLAN.*—If a regulated entity fails to submit an acceptable plan within the time allowed under paragraph (1)(C), or fails in any material respect to implement a plan accepted by the Director, the following shall apply:

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

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

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

(ii) Require the regulated entity—

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

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

(iii) Require the regulated entity to take any other action that the Director determines will better carry out the purposes of this section than any of the actions described in this subparagraph.

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

(A) the Director determines that the regulated entity fails to meet any standard prescribed under subsection (a);

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

(C) during the 18-month period before the date on which the regulated entity first failed to meet the standard, the

entity underwent extraordinary growth, as defined by the Director.

(c) *OTHER ENFORCEMENT AUTHORITY NOT AFFECTED.*—The authority of the Director under this section is in addition to any other authority of the Director.

SEC. 1313B. FEDERAL HOUSING ENTERPRISE BOARD.

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

(b) *LIMITATIONS.*—The Board may not exercise any executive authority, and the Director may not delegate to the Board any of the functions, powers, or duties of the Director.

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

(1) one member shall be the Secretary of the Treasury;

(2) one member shall be the Secretary of Housing and Urban Development;

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

(4) two members, who shall be appointed by the President, by and with the advise and consent of the Senate, who are experts or experienced in the field of financial services, housing finance, affordable housing, or mortgage lending.

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

(d) *MEETINGS.*—

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

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

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

(1) the safety and soundness of the regulated entities;

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

(3) the overall operational status of the regulated entities;

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

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

(6) such other matters relating to the Agency and its fulfillment of its mission, as the Board determines appropriate.

SEC. 1314. AUTHORITY TO REQUIRE REPORTS BY [ENTERPRISES] REGULATED ENTITIES.

(a) **[SPECIAL REPORTS AND REPORTS OF FINANCIAL CONDITION] REGULAR AND SPECIAL REPORTS.**—

(1) **[FINANCIAL CONDITION] REGULAR REPORTS.**—The Director may require **[an enterprise]** a regulated entity to submit **[reports of financial condition and operations]** regular reports on the condition (including financial condition), management,

activities, or operations of the regulated entity, as the Director considers appropriate (in addition to the annual and quarterly reports required under section 309(k) of the Federal National Mortgage Association Charter Act and section 307(c) of the Federal Home Loan Mortgage Corporation Act).

(2) SPECIAL REPORTS.—The Director may also require [an enterprise] *a regulated entity* to submit special reports *on any of the topics specified in paragraph (1) or such other topics* whenever, in the judgment of the Director, such reports are necessary to carry out the purposes of this title.

(3) LIMITATION.—The Director may not require the inclusion, in any report pursuant to paragraph (1) or (2), of any information that is not reasonably obtainable by [the enterprise] *the regulated entity*.

(4) NOTICE AND DECLARATION.—The Director shall notify [the enterprise] *the regulated entity*, a reasonable period in advance of the date for submission of any report under this subsection, of any specific information to be contained in the report and the date for the submission of the report. Each report under this subsection shall contain a declaration by the president, vice president, treasurer, or any other officer designated by the board of directors of [the enterprise] *the regulated entity* to make such declaration, that the report is true and correct to the best of such officer's knowledge and belief.

(b) CAPITAL DISTRIBUTIONS.—The Director may require [an enterprise] *a regulated entity* to submit a report to the Director after the declaration of any capital distribution by [the enterprise] *the regulated entity* and before making the capital distribution. The report shall be made in such form and under such circumstances and shall contain such information as the Director shall require.

(c) REPORTS OF FRAUDULENT FINANCIAL TRANSACTIONS.—

(1) REQUIREMENT TO REPORT.—*The Director shall require a regulated entity to submit to the Director a timely report upon discovery by the regulated entity that it has purchased or sold a fraudulent loan or financial instrument or suspects a possible fraud relating to a purchase or sale of any loan or financial instrument. The Director shall require the regulated entities to establish and maintain procedures designed to discover any such transactions.*

(2) PROTECTION FROM LIABILITY FOR REPORTS.—

(A) IN GENERAL.—*If a regulated entity makes a report pursuant to paragraph (1), or a regulated entity-affiliated party makes, or requires another to make, such a report, and such report is made in a good faith effort to comply with the requirements of paragraph (1), such regulated entity or regulated entity-affiliated party shall not be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such report or for any failure to provide notice of such report to the person who is the subject of such report or any other person identified in the report.*

(B) RULE OF CONSTRUCTION.—*Subparagraph (A) shall not be construed as creating—*

(i) any inference that the term “person”, as used in such subparagraph, may be construed more broadly than its ordinary usage so as to include any government or agency of government; or

(ii) any immunity against, or otherwise affecting, any civil or criminal action brought by any government or agency of government to enforce any constitution, law, or regulation of such government or agency.

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

(1) **REQUIRED DISCLOSURE.**—The Director shall, by regulation, require each regulated entity to submit a report annually, in a format designated by the Director, containing the following information:

(A) **TOTAL VALUE.**—The total value of contributions made by the regulated entity to nonprofit organizations during its previous fiscal year.

(B) **SUBSTANTIAL CONTRIBUTIONS.**—If the value of contributions made by the regulated entity to any nonprofit organization during its previous fiscal year exceeds the designated amount, the name of that organization and the value of contributions.

(C) **SUBSTANTIAL CONTRIBUTIONS TO INSIDER-AFFILIATED CHARITIES.**—Identification of each contribution whose value exceeds the designated amount that were made by the regulated entity during the enterprise’s previous fiscal year to any nonprofit organization of which a director, officer, or controlling person of the regulated entity, or a spouse thereof, was a director or trustee, the name of such nonprofit organization, and the value of the contribution.

(2) **DEFINITIONS.**—For purposes of this subsection—

(A) the term “designated amount” means such amount as may be designated by the Director by regulation, consistent with the public interest and the protection of investors for purposes of this subsection; and

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

(3) **PUBLIC AVAILABILITY.**—The Director shall make the information submitted pursuant to this subsection publicly available.

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

(1) be presented in a prominent location in each such report and in a manner that permits a ready comparison of such income to income otherwise required to be included in such reports under regulations issued under such section; and

(2) be submitted to the Securities and Exchange Commission in a form and manner suitable for entry into the EDGAR system of such Commission for public availability under such system.

SEC. 1315. PERSONNEL.

(a) **OFFICE PERSONNEL.—The** *IN GENERAL.*—*Subject to title III of the Federal Housing Finance Reform Act of 2007, the Director may appoint and fix the compensation of such officers and employees of the [Office] Agency as the Director considers necessary to carry out the functions of the Director and the [Office] Agency. Officers and employees may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates.*

* * * * *

(c) **PERSONNEL OF OTHER FEDERAL AGENCIES.**—In carrying out the duties of the [Office] Agency, the Director may use information, services, staff, and facilities of any executive agency, independent agency, or department on a reimbursable basis, with the consent of such agency or department.

[(d) REIMBURSEMENT OF HUD.—The Director shall reimburse the Department of Housing and Urban Development for reasonable costs incurred by the Department that are directly related to the operations of the Office.]

[(e) (d) OUTSIDE EXPERTS AND CONSULTANTS.—Notwithstanding any provision of law limiting pay or compensation, the Director may appoint and compensate such outside experts and consultants as the Director determines necessary to assist the work of the [Office] Agency.]

[(f) EQUAL OPPORTUNITY REPORT.—Not later than the expiration of the 180-day period beginning upon the appointment of the Director under section 1312, the Director shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report containing—

[(1) a complete description of the equal opportunity, affirmative action, and minority business enterprise utilization programs of the Office; and

[(2) such recommendations for administrative and legislative action as the Director determines appropriate to carry out such programs.]

SEC. 1316. FUNDING.

[(a) ANNUAL ASSESSMENTS.—The Director may, to the extent provided in appropriation Acts, establish and collect from the enterprises annual assessments in an amount not exceeding the amount sufficient to provide for reasonable costs and expenses of the Office, including the expenses of any examinations under section 1317. The initial annual assessment shall include any startup costs of the Office and any anticipated costs and expenses of the Office for the following fiscal year.]

(a) ANNUAL ASSESSMENTS.—The Director shall establish and collect from the regulated entities annual assessments in an amount not exceeding the amount sufficient to provide for reasonable costs and expenses of the Agency, including—

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

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

(3) *such amounts in excess of actual expenses for any given year as deemed necessary by the Director to maintain a working capital fund in accordance with subsection (e); and*

(4) *the wind up of the affairs of the Office of Federal Housing Enterprise Oversight and the Federal Housing Finance Board under title III of the Federal Housing Finance Reform Act of 2007.*

(b) ALLOCATION OF ANNUAL ASSESSMENT TO **[ENTERPRISES]** REGULATED ENTITIES.—

(1) AMOUNT OF PAYMENT.—**[Each enterprise]** *Each regulated entity* shall pay to the Director a proportion of the annual assessment made pursuant to subsection (a) that bears the same ratio to the total annual assessment that the total assets of **[each enterprise]** *each regulated entity* bears to the total assets of **[both enterprises]** *all of the regulated entities*.

(2) TIMING OF PAYMENT.—The annual assessment shall be payable semiannually for each fiscal year, on October 1 and April 1.

[(3) DEFINITION.—For the purpose of this section, the term “total assets” means, with respect to an enterprise, the sum of—

(3) *DEFINITION OF TOTAL ASSETS.—For purposes of this section, the term “total assets” means as follows:*

(A) *ENTERPRISES.—With respect to an enterprise, the sum of—*

[(A)] *(i) on-balance-sheet assets of the enterprise, as determined in accordance with generally accepted accounting principles;*

[(B)] *(ii) the unpaid principal balance of outstanding mortgage-backed securities issued or guaranteed by the enterprise that are not included in [subparagraph (A)] clause (i); and*

[(C)] *(iii) other off-balance-sheet obligations as determined by the Director.*

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

[(c) DEFICIENCIES DUE TO INCREASED COSTS OF REGULATION.—The semiannual payments made pursuant to subsection (b) by any enterprise that is not classified (for purposes of subtitle B) as adequately capitalized may be increased, as necessary, in the discretion of the Director to pay additional estimated costs of regulation of the enterprise.]

(c) *INCREASED COSTS OF REGULATION.—*

(1) *INCREASE FOR INADEQUATE CAPITALIZATION.—The semiannual payments made pursuant to subsection (b) by any regulated entity that is not classified (for purposes of subtitle B) as adequately capitalized may be increased, as necessary, in the discretion of the Director to pay additional estimated costs of regulation of the regulated entity.*

(2) *ADJUSTMENT FOR ENFORCEMENT ACTIVITIES.—The Director may adjust the amounts of any semiannual payments for an*

assessment under subsection (a) that are to be paid pursuant to subsection (b) by a regulated entity, as necessary in the discretion of the Director, to ensure that the costs of enforcement activities under this Act for a regulated entity are borne only by such regulated entity.

(3) **ADDITIONAL ASSESSMENT FOR DEFICIENCIES.**—*If at any time, as a result of increased costs of regulation of a regulated entity that is not classified (for purposes of subtitle B) as adequately capitalized or as the result of supervisory or enforcement activities under this Act for a regulated entity, the amount available from any semiannual payment made by such regulated entity pursuant to subsection (b) is insufficient to cover the costs of the Agency with respect to such entity, the Director may make and collect from such regulated entity an immediate assessment to cover the amount of such deficiency for the semiannual period. If, at the end of any semiannual period during which such an assessment is made, any amount remains from such assessment, such remaining amount shall be deducted from the assessment for such regulated entity for the following semiannual period.*

(d) **SURPLUS.**—**【If】** *Except with respect to amounts collected pursuant to subsection (a)(3), if any amount from any annual assessment collected from 【an enterprise】 a regulated entity remains unobligated at the end of the year for which the assessment was collected, such amount shall be credited to the assessment to be collected from the regulated entity for the following year.*

【(e) INITIAL SPECIAL ASSESSMENT.—*Not later than the expiration of the 30-day period beginning on the date of the enactment of this Act, the enterprises shall each pay into the Federal Housing Enterprises Oversight Fund established under subsection (f) an initial assessment of \$1,500,000 to cover the startup costs of the Office, including space and modifications thereof, capital equipment, supplies, recruitment, and activities of the Office during the period preceding the first annual assessment under subsection (a). Any amounts collected from an enterprise under this subsection shall be credited against the first annual assessment collected pursuant to subsection (a), and are hereby appropriated, and shall be available and used, without fiscal year limitation, as provided in this section.*

【(f) FUND.—*There is established in the Treasury of the United States a fund to be known as the Federal Housing Enterprises Oversight Fund. Any assessments collected pursuant to this section shall be deposited in the Fund. Amounts in the Fund shall be available, to the extent provided in appropriation Acts and subsection (e), for—*

【(1) carrying out the responsibilities of the Director relating to the enterprises; and

【(2) necessary administrative and nonadministrative expenses of the Office to carry out the purposes of this title.

【(g) BUDGET AND FINANCIAL REPORTS.—

【(1) FINANCIAL OPERATING PLANS AND FORECASTS.—*Before the beginning of each fiscal year, the Director shall submit a copy of the financial operating plans and forecasts for the Office to the Secretary and the Director of the Office of Management and Budget.*

【(2) REPORTS OF OPERATIONS.—As soon as practicable after the end of each fiscal year and each quarter thereof, the Director shall submit a copy of the report of the results of the operations of the Office during such period to the Secretary and the Director of the Office of Management and Budget.

【(3) INCLUSION IN PRESIDENT'S BUDGET.—The annual plans, forecasts, and reports required under this subsection shall be included (A) in the Budget of the United States in the appropriate form, and (B) in the congressional justifications of the Department of Housing and Urban Development for each fiscal year in a form determined by the Secretary.】

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

(f) *TREATMENT OF ASSESSMENTS.*—

(1) *DEPOSIT.*—*Amounts received by the Director from assessments under this section may be deposited by the Director in the manner provided in section 5234 of the Revised Statutes (12 U.S.C. 192) for monies deposited by the Comptroller of the Currency.*

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

(3) *NO APPORTIONMENT OF FUNDS.*—*Notwithstanding any other provision of law, the amounts received by the Director from any assessment under this section shall not be subject to apportionment for the purpose of chapter 15 of title 31, United States Code, or under any other authority.*

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

(5) *AVAILABILITY OF OVERSIGHT FUND AMOUNTS.*—*Notwithstanding any other provision of law, any amounts remaining in the Federal Housing Enterprises Oversight Fund established under this section (as in effect before the effective date under section 185 of the Federal Housing Finance Reform Act of 2007), and any amounts remaining from assessments on the Federal Home Loan banks pursuant to section 18(b) of the Federal Home Loan Bank Act (12 U.S.C. 1438(b)), shall, upon such effective date, be treated for purposes of this subsection as amounts received from assessments under this section.*

(6) *TREASURY INVESTMENTS.*—

(A) *AUTHORITY.*—*The Director may request the Secretary of the Treasury to invest such portions of amount received by the Director from assessments paid under this section that, in the Director's discretion, are not required to meet the current working needs of the Agency.*

(B) *GOVERNMENT OBLIGATIONS.*—*Pursuant to a request under subparagraph (A), the Secretary of the Treasury shall invest such amounts in government obligations guar-*

anteed as to principal and interest by the United States with maturities suitable to the needs of Agency and bearing interest at a rate determined by the Secretary of the Treasury taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity.

(g) *BUDGET AND FINANCIAL MANAGEMENT.—*

(1) *FINANCIAL OPERATING PLANS AND FORECASTS.—The Director shall provide to the Director of the Office of Management and Budget copies of the Director's financial operating plans and forecasts as prepared by the Director in the ordinary course of the Agency's operations, and copies of the quarterly reports of the Agency's financial condition and results of operations as prepared by the Director in the ordinary course of the Agency's operations.*

(2) *FINANCIAL STATEMENTS.—The Agency shall prepare annually a statement of assets and liabilities and surplus or deficit; a statement of income and expenses; and a statement of sources and application of funds.*

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

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

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

(h) *AUDIT OF AGENCY.—*

(1) *IN GENERAL.—The Comptroller General shall annually audit the financial transactions of the Agency in accordance with the U.S. generally accepted government auditing standards as may be prescribed by the Comptroller General of the United States. The audit shall be conducted at the place or places where accounts of the Agency are normally kept. The representatives of the Government Accountability Office shall have access to the personnel and to all books, accounts, documents, papers, records (including electronic records), reports, files, and all other papers, automated data, things, or property belonging to or under the control of or used or employed by the Agency pertaining to its financial transactions and necessary to facilitate the audit, and such representatives shall be afforded full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians. All such books, accounts, documents, records, reports, files, papers, and property of the Agency shall remain in possession and custody*

of the Agency. The Comptroller General may obtain and duplicate any such books, accounts, documents, records, working papers, automated data and files, or other information relevant to such audit without cost to the Comptroller General and the Comptroller General's right of access to such information shall be enforceable pursuant to section 716(c) of title 31, United States Code.

(2) *REPORT.—The Comptroller General shall submit to the Congress a report of each annual audit conducted under this subsection. The report to the Congress shall set forth the scope of the audit and shall include the statement of assets and liabilities and surplus or deficit, the statement of income and expenses, the statement of sources and application of funds, and such comments and information as may be deemed necessary to inform Congress of the financial operations and condition of the Agency, together with such recommendations with respect thereto as the Comptroller General may deem advisable. A copy of each report shall be furnished to the President and to the Agency at the time submitted to the Congress.*

(3) *ASSISTANCE AND COSTS.—For the purpose of conducting an audit under this subsection, the Comptroller General may, in the discretion of the Comptroller General, employ by contract, without regard to section 5 of title 41, United States Code, professional services of firms and organizations of certified public accountants for temporary periods or for special purposes. Upon the request of the Comptroller General, the Director of the Agency shall transfer to the Government Accountability Office from funds available, the amount requested by the Comptroller General to cover the full costs of any audit and report conducted by the Comptroller General. The Comptroller General shall credit funds transferred to the account established for salaries and expenses of the Government Accountability Office, and such amount shall be available upon receipt and without fiscal year limitation to cover the full costs of the audit and report.*

SEC. 1317. EXAMINATIONS.

(a) *ANNUAL EXAMINATION.—The Director shall annually conduct an on-site examination under this section of [each enterprise] each regulated entity to determine the condition of [the enterprise] the regulated entity for the purpose of ensuring its financial safety and soundness. Each examination under this subsection of a regulated entity shall include a review of the procedures required to be established and maintained by the regulated entity pursuant to section 1314(c) (relating to fraudulent financial transactions) and the report regarding each such examination shall describe any problems with such procedures maintained by the regulated entity.*

(b) *OTHER EXAMINATIONS.—In addition to annual examinations under subsection (a), the Director may conduct an examination under this section of a regulated entity whenever the Director determines that an examination is necessary [to determine the condition of an enterprise for the purpose of ensuring its financial safety and soundness] or appropriate.*

(c) *EXAMINERS.—The Director shall appoint examiners to conduct examinations under this section. The Director may contract with the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corpora-*

tion, or the Director of the Office of Thrift Supervision for the services of examiners *to conduct examinations under this section*. The Director shall reimburse such agencies for any costs of providing examiners [from amounts available in the Federal Housing Enterprises Oversight Fund].

* * * * *

(e) **TECHNICAL EXPERTS.**—The Director may obtain the services of any technical experts the Director considers appropriate to provide temporary technical assistance relating to examinations to the Director, officers, and employees of the [Office] Agency. The Director shall describe, in the record of each examination, the nature and extent of any such temporary technical assistance.

(f) **OATHS, EVIDENCE, AND SUBPOENA POWERS.**—In connection with examinations under this section, the Director shall have the authority provided under section [1379B] 1379D.

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

(1) **APPLICABILITY.**—*This section applies with respect to any position of examiner, accountant, specialist in financial markets, specialist in information technology, and economist at the Agency, with respect to supervision and regulation of the regulated entities, that is in the competitive service.*

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

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

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

(3) **RULE OF CONSTRUCTION.**—*The appointment of a candidate to a position under the authority of this subsection shall not be considered to cause such position to be converted from the competitive service to the excepted service.*

SEC. 1318. PROHIBITION [OF EXCESSIVE] AND WITHHOLDING OF EXECUTIVE COMPENSATION.

(a) **IN GENERAL.**—The Director shall prohibit [the enterprises] *the regulated entities* from providing compensation to any executive officer of [the enterprise] *the regulated entity* that is not reasonable and comparable with compensation for employment in other similar businesses (including other publicly held financial institutions or major financial services companies) involving similar duties and responsibilities.

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

(c) *WITHHOLDING OF COMPENSATION.*—In carrying out subsection (a), the Director may require a regulated entity to withhold any payment, transfer, or disbursement of compensation to an executive officer, or to place such compensation in an escrow account, during the review of the reasonableness and comparability of compensation.

[(b)] (d) *PROHIBITION OF SETTING COMPENSATION.*—In carrying out subsection (a), the Director may not prescribe or set a specific level or range of compensation.

[SEC. 1319. AUTHORITY TO PROVIDE FOR REVIEW OF ENTERPRISES BY RATING ORGANIZATION.]

SEC. 1319. REVIEWS OF REGULATED ENTITIES.

The Director may, on such terms and conditions as the Director deems appropriate, contract with any entity that [is a nationally recognized statistical rating organization, as such term is defined in section 3(a) of the Securities Exchange Act of 1934] *the Director considers appropriate, including an entity that is registered under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78a) as a nationally registered statistical rating organization, to conduct a review of [the enterprises] the regulated entities.*

SEC. 1319A. [EQUAL OPPORTUNITY IN SOLICITATION OF CONTRACTS] MINORITY AND WOMEN INCLUSION; DIVERSITY REQUIREMENTS.

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

(b) *INCLUSION IN ALL LEVELS OF BUSINESS ACTIVITIES.*—Each regulated entity shall develop and implement standards and procedures to ensure, to the maximum extent possible, the inclusion and utilization of minorities (as such term is defined in section 1204(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1811 note)) and women, and minority- and women-owned businesses (as such terms are defined in section 21A(r)(4) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(r)(4)) (including financial institutions, investment banking firms, mortgage banking firms, asset management firms, broker-dealers, financial services firms, underwriters, accountants, brokers, investment consultants, and providers of legal services) in all business and activities of the regulated entity at all levels, including in procurement, insurance, and all types of contracts (including contracts for the issuance or guarantee of any debt, equity, or mortgage-related securities, the management of its mortgage and securities portfolios, the making of its equity investments, the purchase, sale and servicing of single- and multi-family mortgage loans, and the implementation of its affordable housing program and initiatives). The processes established by each regulated entity for review and evaluation for contract proposals and to hire service providers shall include a component that gives consideration to the diversity of the applicant.

(c) *APPLICABILITY.*—This section shall apply to all contracts of a regulated entity for services of any kind, including services that require the services of investment banking, asset management entities,

broker-dealers, financial services entities, underwriters, accountants, investment consultants, and providers of legal services.

(d) *INCLUSION IN ANNUAL REPORTS.*—Each regulated entity shall include, in the annual report submitted by the entity to the Director pursuant to section 309(k) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(k)), section 307(c) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1456(c)), and section 20 of the Federal Home Loan Bank Act (12 U.S.C. 1440), as applicable, detailed information describing the actions taken by the entity pursuant to this section, which shall include a statement of the total amounts paid by the entity to third party contractors since the last such report and the percentage of such amounts paid to businesses described in subsection (b) of this section.

[(a) *IN GENERAL.*—Each enterprise] (e) *OUTREACH.*—Each regulated entity shall establish a minority outreach program to ensure the inclusion (to the maximum extent possible) in contracts entered into by the enterprises of minorities and women and businesses owned by minorities and women, including financial institutions, investment banking firms, underwriters, accountants, brokers, and providers of legal services.

[(b) *REPORT.*—Not later than the expiration of the 180-day period beginning on the date of the enactment of this Act, each enterprise shall submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report describing the actions taken by the enterprise pursuant to subsection (a).]

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

(1) heavily recruiting at historically Black colleges and universities, Hispanic-serving institutions, women's colleges, and colleges that typically serve majority minority populations;

(2) sponsoring and recruiting at job fairs in urban communities, and placing employment advertisements in newspapers and magazines oriented toward women and people of color;

(3) partnering with organizations that are focused on developing opportunities for minorities and women to place talented young minorities and women in industry internships, summer employment, and full-time positions; and

(4) where feasible, partnering with inner-city high schools, girls' high schools, and high schools with majority minority populations to establish or enhance financial literacy programs and provide mentoring.

SEC. 1319B. ANNUAL REPORTS BY DIRECTOR.

(a) *GENERAL REPORT.*—The Director shall submit to the Committee on [Banking, Finance and Urban Affairs] *Financial Services* of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, not later than June 15 of each year, a written report, which shall include—

(1) a description of the actions taken, and being undertaken, by the Director to carry out this title;

(2) a description of the financial safety and soundness of [each enterprise] *each regulated entity*, including the results

and conclusions of the annual examinations of **the enterprises** *the regulated entities* conducted under section 1317(a);

(3) any recommendations for legislation to enhance the financial safety and soundness of **the enterprises; and** *the regulated entities;*

[(4) a description of—

[(A) whether the procedures established by each enterprise pursuant to section 102(b)(3) of the Flood Disaster Protection Act of 1973 are adequate and being complied with, and

[(B) the results and conclusions of any examination, as determined necessary by the Director, to determine the compliance of the enterprises with the requirements of section 102(b)(3) of such Act, which shall include a description of the methods used to determine compliance and the types and sources of deficiencies (if any), and identify any corrective measures that have been taken to remedy any such deficiencies,

except that the information described in this paragraph shall be included only in each of the first, third, and fifth annual reports under this subsection required to be submitted after the expiration of the 1-year period beginning on the date of enactment of the Riegle Community Development and Regulatory Improvement Act of 1994.]

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

(A) the safety and soundness of the regulated entities;

(B) any material deficiencies in the conduct of the operations of the regulated entities;

(C) the overall operational status of the regulated entities;

and

(D) an evaluation of the performance of the regulated entities in carrying out their missions;

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

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

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

(b) **REPORT ON ENFORCEMENT ACTIONS.**—Not later than March 15 of each year, the Director shall submit to the Committee on **Banking, Finance and Urban Affairs** *Financial Services* of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a written report describing, for the preceding calendar year, the requests by the Director to the Attorney General for enforcement actions under subtitle C and describing the disposition of each request, which shall include statements of—

(1) * * *

* * * * *

SEC. 1319C. PUBLIC DISCLOSURE OF FINAL ORDERS AND AGREEMENTS.

(a) **IN GENERAL.**—The Director shall make available to the public—

(1) any written agreement or other written statement for which a violation may be redressed by the Director or any modification to or termination thereof, unless the Director, in the Director's discretion, determines that public disclosure would be contrary to the public interest or determines under subsection (c) that public disclosure would seriously threaten the financial health or security of [the enterprise] *the regulated entity*;

* * * * *

(c) **DELAY OF PUBLIC DISCLOSURE UNDER EXCEPTIONAL CIRCUMSTANCES.**—If the Director makes a determination in writing that the public disclosure of any final order pursuant to subsection (a) would seriously threaten the financial health or security of [the enterprise] *the regulated entity*, the Director may delay the public disclosure of such order for a reasonable time.

* * * * *

SEC. 1319D. LIMITATION ON SUBSEQUENT EMPLOYMENT.

Neither the Director nor any former officer or employee of the [Office] Agency who, while employed by the [Office] Agency, was compensated at a rate in excess of the lowest rate for a position classified higher than GS-15 of the General Schedule under section 5107 of title 5, United States Code, may accept compensation from [an enterprise] *a regulated entity* during the 2-year period beginning on the date of separation from employment by the [Office] Agency.

SEC. 1319E. AUDITS BY GAO.

The Comptroller General shall audit the operations of the [Office] Agency in accordance with generally accepted Government auditing standards. All books, records, accounts, reports, files, and property belonging to, or used by, the [Office] Agency shall be made available to the Comptroller General. Audits under this section shall be conducted annually for the first 2 fiscal years following the date of the enactment of this Act and as appropriate thereafter.

SEC. 1319F. INFORMATION, RECORDS, AND MEETINGS.

For purposes of subchapter II of chapter 5 of title 5, United States Code[—

 (1) the Office, and

 (2) the Department of Housing and Urban Development, with respect to activities under this title,

shall be considered agencies responsible for the regulation or supervision of financial institutions.], *the Agency shall be considered an agency responsible for the regulation or supervision of financial institutions.*

SEC. 1319G. REGULATIONS AND ORDERS.

[(a) **AUTHORITY.**—The Director shall issue any regulations and orders necessary to carry out the duties of the Director and to carry out this title before the expiration of the 18-month period beginning on the appointment of the Director under section 1312. Such regulations and orders shall be subject to the approval of the Secretary only to the extent provided in subsections (b) and (c) of section 1313.]

(a) *AUTHORITY.*—*The Director shall issue any regulations, guidelines, and orders necessary to carry out the duties of the Director under this title and each of the authorizing statutes to ensure that the purposes of this title and such statutes are accomplished.*

(b) *NOTICE AND COMMENT.*—*Any regulations issued by the Director under this section, this title, or any of the authorizing statutes shall be issued after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5, United States Code.*

[(c) *CONGRESSIONAL REVIEW.*—*The Director may not publish any regulation for comment under subsection (b) unless, not less than 15 days before it is published for comment, the Director has submitted a copy of the regulation, in the form it is intended to be proposed, to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate.*]

SEC. 1319H. PRIVILEGES NOT AFFECTED BY DISCLOSURE.

(a) *IN GENERAL.*—*The submission by any person of any information to the Agency for any purpose in the course of any supervisory or regulatory process of the Agency shall not be construed as waiving, destroying, or otherwise affecting any privilege such person may claim with respect to such information under Federal or State law as to any person or entity other than the Agency.*

(b) *RULE OF CONSTRUCTION.*—*No provision of subsection (a) may be construed as implying or establishing that—*

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

(2) *any person would waive any privilege applicable to any information by submitting the information to the Agency, but for this subsection.*

[PART 2—AUTHORITY OF SECRETARY]

**PART 2—PRODUCT APPROVAL BY DIRECTOR,
CORPORATE GOVERNANCE, AND ESTABLISH-
MENT OF HOUSING GOALS**

Subpart A—General Authority

[SEC. 1321. REGULATORY AUTHORITY.

【Except for the authority of the Director of the Office of Federal Housing Enterprise Oversight described in section 1313(b) and all other matters relating to the safety and soundness of the enterprises, the Secretary of Housing and Urban Development shall have general regulatory power over each enterprise and shall make such rules and regulations as shall be necessary and proper to ensure that this part and the purposes of the Federal National Mortgage Association Charter Act and the Federal Home Loan Mortgage Corporation Act are accomplished.

[SEC. 1322. PRIOR APPROVAL AUTHORITY FOR NEW PROGRAMS.

[(a) AUTHORITY.—The Secretary shall require each enterprise to obtain the approval of the Secretary for any new program of the enterprise before implementing the program.

[(b) STANDARD FOR APPROVAL.—

[(1) PERMANENT STANDARD.—Except as provided in paragraph (2), the Secretary shall approve any new program of an enterprise for purposes of subsection (a) unless—

[(A) for a new program of the Federal National Mortgage Association, the Secretary determines that the program is not authorized under paragraph (2), (3), (4), or (5) of section 302(b) of the Federal National Mortgage Association Charter Act, or under section 304 of such Act;

[(B) for a new program of the Federal Home Loan Mortgage Corporation, the Secretary determines that the program is not authorized under section 305(a) (1), (4), or (5) of the Federal Home Loan Mortgage Corporation Act; or

[(C) the Secretary determines that the new program is not in the public interest.

[(2) TRANSITION STANDARD.—Before the date occurring 12 months after the date of the effectiveness of the regulations under section 1361(e) establishing the risk-based capital test, the Secretary shall approve any new program of an enterprise for purposes of subsection (a) unless—

[(A) The Secretary makes a determination as described in paragraph (1) (A), (B), or (C); or

[(B) the Director determines that the new program would risk significant deterioration of the financial condition of the enterprise.

[(c) PROCEDURE FOR APPROVAL.—

[(1) SUBMISSION OF REQUEST.—To obtain the approval of the Secretary for purposes of subsection (a), an enterprise shall submit to the Secretary a written request for approval of the new program that describes the program.

[(2) RESPONSE.—The Secretary shall, not later than the expiration of the 45-day period beginning upon the submission of a request for approval, approve the request or submit to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report explaining the reasons for not approving the request. The Secretary may extend such period for a single additional 15-day period only if the Secretary requests additional information from the enterprise.

[(3) FAILURE TO RESPOND.—If the Secretary fails to approve the request or fails to submit a report under paragraph (2) during the period under such paragraph, the request shall be considered to have been approved.

[(4) REVIEW OF DISAPPROVAL.—

[(A) UNAUTHORIZED NEW PROGRAMS.—If the Secretary submits a report under paragraph (2) of this subsection disapproving a request for approval on the grounds under subparagraph (A) or (B) of subsection (b)(1), the Secretary shall provide the enterprise submitting the request with a

timely opportunity to review and supplement the administrative record.

[(B) NEW PROGRAMS NOT IN PUBLIC INTEREST.—If the Secretary submits a report under paragraph (2) of this subsection disapproving a request for approval on the grounds under subsection (b)(1)(C) or (b)(2)(B), the Secretary shall provide the enterprise submitting the request notice of, and opportunity for, a hearing on the record regarding such disapproval.]

SEC. 1321. PRIOR APPROVAL AUTHORITY FOR PRODUCTS OF ENTERPRISES.

(a) *IN GENERAL.*—The Director shall require each enterprise to obtain the approval of the Director for any product of the enterprise before initially offering the product.

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

(1) in the case of a product of the Federal National Mortgage Association, the Director determines that the product is authorized under paragraph (2), (3), (4), or (5) of section 302(b) or section 304 of the Federal National Mortgage Association Charter Act, (12 U.S.C. 1717(b), 1719);

(2) in the case of a product of the Federal Home Loan Mortgage Corporation, the Director determines that the product is authorized under paragraph (1), (4), or (5) of section 305(a) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a));

(3) the product is in the public interest;

(4) the product is consistent with the safety and soundness of the enterprise or the mortgage finance system; and

(5) the product does not materially impair the efficiency of the mortgage finance system.

(c) *PROCEDURE FOR APPROVAL.*—

(1) *SUBMISSION OF REQUEST.*—An enterprise shall submit to the Director a written request for approval of a product that describes the product in such form as prescribed by order or regulation of the Director.

(2) *REQUEST FOR PUBLIC COMMENT.*—Immediately upon receipt of a request for approval of a product, as required under paragraph (1), the Director shall publish notice of such request and of the period for public comment pursuant to paragraph (3) regarding the product, and a description of the product proposed by the request. The Director shall give interested parties the opportunity to respond in writing to the proposed product.

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

(4) *OFFERING OF PRODUCT.*—

(A) *IN GENERAL.*—Not later than 30 days after the close of the public comment period described in paragraph (3), the Director shall approve or deny the product, specifying the grounds for such decision in writing.

(B) *FAILURE TO ACT.*—If the Director fails to act within the 30-day period described in subparagraph (A), the enterprise may offer the product.

(d) *EXPEDITED REVIEW.*—

(1) *DETERMINATION AND NOTICE.*—If an enterprise determines that any new activity, service, undertaking, or offering is not a product, as defined in subsection (f), the enterprise shall provide written notice to the Director prior to the commencement of such activity, service, undertaking, or offering.

(2) *DIRECTOR DETERMINATION OF APPLICABLE PROCEDURE.*—Immediately upon receipt of any notice pursuant to paragraph (1), the Director shall make a determination under paragraph (3).

(3) *DETERMINATION AND TREATMENT AS PRODUCT.*—If the Director determines that any new activity, service, undertaking, or offering consists of, relates to, or involves a product—

(A) the Director shall notify the enterprise of the determination;

(B) the new activity, service, undertaking, or offering described in the notice under paragraph (1) shall be considered a product for purposes of this section; and

(C) the enterprise shall withdraw its request or submit a written request for approval of the product pursuant to subsection (c).

(e) *CONDITIONAL APPROVAL.*—The Director may conditionally approve the offering of any product by an enterprise, and may establish terms, conditions, or limitations with respect to such product with which the enterprise must comply in order to offer such product.

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

(1) the automated loan underwriting system of an enterprise in existence as of the date of the enactment of the Federal Housing Finance Reform Act of 2007, including any upgrade to the technology, operating system, or software to operate the underwriting system; or

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

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

(1) the safety and soundness authority of the Director over all new and existing products or activities; or

(2) the authority of the Director to review all new and existing products or activities to determine that such products or activities are consistent with the statutory mission of the enterprise.

SEC. 1322. HOUSING PRICE INDEX.

(a) *IN GENERAL.*—The Director shall establish and maintain a method of assessing the national average 1-family house price for use for adjusting the conforming loan limitations of the enterprises. In establishing such method, the Director shall take into consider-

ation the monthly survey of all major lenders conducted by the Federal Housing Finance Agency to determine the national average 1-family house price, the House Price Index maintained by the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development before the effective date under section 185 of the Federal Housing Finance Reform Act of 2007, any appropriate house price indexes of the Bureau of the Census of the Department of Commerce, and any other indexes or measures that the Director considers appropriate.

(b) GAO AUDIT.—

(1) *IN GENERAL.*—At such times as are required under paragraph (2), the Comptroller General of the United States shall conduct an audit of the methodology established by the Director under subsection (a) to determine whether the methodology established is an accurate and appropriate means of measuring changes to the national average 1-family house price.

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

(A) *ESTABLISHMENT.*—The date upon which such methodology is initially established under subsection (a) in final form by the Director.

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

(3) *REPORT.*—Within 30 days of the completion of any audit conducted under this subsection, the Comptroller General shall submit a report detailing the results and conclusions of the audit to the Director, the Committee on Financial Services of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

SEC. 1322A. CORPORATE GOVERNANCE OF ENTERPRISES.

(a) *BOARD OF DIRECTORS.*—

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

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

(3) *NON-MANAGEMENT BOARD MEMBER MEETINGS.*—The non-management directors of an enterprise shall meet at regularly scheduled executive sessions without management participation.

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

(5) *INFORMATION.*—The management of an enterprise shall provide a board member of the enterprise with such adequate and appropriate information that a reasonable board member would find important to the fulfillment of his or her fiduciary duties and obligations.

- (6) *ANNUAL REVIEW.*—At least annually, the board of directors of each enterprise shall review, with appropriate professional assistance, the requirements of laws, rules, regulations, and guidelines that are applicable to its activities and duties.
- (b) *COMMITTEES OF BOARDS OF DIRECTORS.*—
- (1) *FREQUENCY OF MEETINGS.*—Any committee of the board of directors of an enterprise shall meet with sufficient frequency to carry out its obligations and duties under applicable laws, rules, regulations, and guidelines.
- (2) *REQUIRED COMMITTEES.*—Each enterprise shall provide for the establishment, however styled, of the following committees of the board of directors:
- (A) Audit committee.
- (B) Compensation committee.
- (C) Nominating/corporate governance committee.
- Such committees shall be in compliance with the charter, independence, composition, expertise, duties, responsibilities, and other requirements set forth under section 10A(m) of the Securities Exchange Act of 1934 (15 U.S.C. 78j-1(m)), with respect to the audit committee, and under rules issued by the New York Stock Exchange, as such rules may be amended from time to time.
- (c) *COMPENSATION.*—
- (1) *IN GENERAL.*—The compensation of board members, executive officers, and employees of an enterprise—
- (A) shall not be in excess of that which is reasonable and appropriate;
- (B) shall be commensurate with the duties and responsibilities of such persons;
- (C) shall be consistent with the long-term goals of the enterprise;
- (D) shall not focus solely on earnings performance, but shall take into account risk management, operational stability and legal and regulatory compliance as well; and
- (E) shall be undertaken in a manner that complies with applicable laws, rules, and regulations.
- (2) *REIMBURSEMENT.*—If an enterprise is required to prepare an accounting restatement due to the material noncompliance of the enterprise, as a result of misconduct, with any financial reporting requirement under the securities laws, the chief executive officer and chief financial officer of the enterprise shall reimburse the enterprise as provided under section 304 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7243). This provision does not otherwise limit the authority of the Agency to employ remedies available to it under its enforcement authorities.
- (d) *CODE OF CONDUCT AND ETHICS.*—
- (1) *IN GENERAL.*—An enterprise shall establish and administer a written code of conduct and ethics that is reasonably designed to assure the ability of board members, executive officers, and employees of the enterprise to discharge their duties and responsibilities, on behalf of the enterprise, in an objective and impartial manner, and that includes standards required under section 406 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7264) and other applicable laws, rules, and regulations.

(2) *REVIEW.*—Not less than once every three years, an enterprise shall review the adequacy of its code of conduct and ethics for consistency with practices appropriate to the enterprise and make any appropriate revisions to such code.

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

(1) Corporate strategy, major plans of action, risk policy, programs for legal and regulatory compliance and corporate performance, including prudent plans for growth and allocation of adequate resources to manage operations risk.

(2) Hiring and retention of qualified executive officers and succession planning for such executive officers.

(3) Compensation programs of the enterprise.

(4) Integrity of accounting and financial reporting systems of the enterprise, including independent audits and systems of internal control.

(5) Process and adequacy of reporting, disclosures, and communications to shareholders, investors, and potential investors.

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

(7) Responsiveness of executive officers in providing accurate and timely reports to Federal regulators and in addressing the supervisory concerns of Federal regulators in a timely and appropriate manner.

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

(g) *CERTIFICATION OF DISCLOSURES.*—The chief executive officer and the chief financial officer of an enterprise shall review each quarterly report and annual report issued by the enterprise and such reports shall include certifications by such officers as required by section 302 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7241).

(h) *CHANGE OF AUDIT PARTNER.*—An enterprise may not accept audit services from an external auditing firm if the lead or coordinating audit partner who has primary responsibility for the external audit of the enterprise, or the external audit partner who has responsibility for reviewing the external audit has performed audit services for the enterprise in each of the five previous fiscal years.

(i) *COMPLIANCE PROGRAM.*—

(1) *REQUIREMENT.*—Each enterprise shall establish and maintain a compliance program that is reasonably designed to assure that the enterprise complies with applicable laws, rules, regulations, and internal controls.

(2) *COMPLIANCE OFFICER.*—The compliance program of an enterprise shall be headed by a compliance officer, however styled,

who reports directly to the chief executive officer of the enterprise. The compliance officer shall report regularly to the board of directors or an appropriate committee of the board of directors on compliance with and the adequacy of current compliance policies and procedures of the enterprise, and shall recommend any adjustments to such policies and procedures that the compliance officer considers necessary and appropriate.

(j) **RISK MANAGEMENT PROGRAM.**—

(1) **REQUIREMENT.**—Each enterprise shall establish and maintain a risk management program that is reasonably designed to manage the risks of the operations of the enterprise.

(2) **RISK MANAGEMENT OFFICER.**—The risk management program of an enterprise shall be headed by a risk management officer, however styled, who reports directly to the chief executive officer of the enterprise. The risk management officer shall report regularly to the board of directors or an appropriate committee of the board of directors on compliance with and the adequacy of current risk management policies and procedures of the enterprise, and shall recommend any adjustments to such policies and procedures that the risk management officer considers necessary and appropriate.

(k) **COMPLIANCE WITH OTHER LAWS.**—

(1) **DEREGISTERED OR UNREGISTERED COMMON STOCK.**—If an enterprise deregisters or has not registered its common stock with the Securities and Exchange Commission under the Securities Exchange Act of 1934, the enterprise shall comply or continue to comply with sections 10A(m) and 13(k) of the Securities Exchange Act of 1934 (15 U.S.C. 78j-1(m), 78m(k)) and sections 302, 304, and 406 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7241, 7243, 7264), subject to such requirements as provided by subsection (l) of this section.

(2) **REGISTERED COMMON STOCK.**—An enterprise that has its common stock registered with the Securities and Exchange Commission shall maintain such registered status, unless it provides 60 days prior written notice to the Director stating its intent to deregister and its understanding that it will remain subject to the requirements of the sections of the Securities Exchange Act of 1934 and the Sarbanes-Oxley Act of 2002, subject to such requirements as provided by subsection (l) of this section.

(l) **OTHER MATTERS.**—The Director may from time to time establish standards, by regulation, order, or guideline, regarding such other corporate governance matters of the enterprises as the Director considers appropriate.

(m) **MODIFICATION OF STANDARDS.**—In connection with standards of Federal or State law (including the Revised Model Corporation Act) or New York Stock Exchange rules that are made applicable to an enterprise by section 1710.10 of the Director's rules (12 C.F.R. 1710.10) and by subsections (a), (b), (g), (i), (j), and (k) of this section, the Director, in the Director's sole discretion, may modify the standards contained in this section or in part 1710 of the Director's rules (12 C.F.R. Part 1710) in accordance with section 553 of title 5, United States Code, and upon written notice to the enterprise.

SEC. 1322B. REQUIRED REGISTRATION UNDER SECURITIES EXCHANGE ACT OF 1934.

(a) *IN GENERAL.*—Each regulated entity shall register at least one class of the capital stock of such regulated entity, and maintain such registration with the Securities and Exchange Commission, under the Securities Exchange Act of 1934.

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

SEC. 1323. PUBLIC ACCESS TO MORTGAGE INFORMATION OF ENTERPRISES.

(a) *IN GENERAL.*—The [Secretary] Director shall make available to the public, in forms useful to the public (including forms accessible by computers), the data submitted by the enterprises in the reports required under section 309(m) of the Federal National Mortgage Association Charter Act or section 307(e) of the Federal Home Loan Mortgage Corporation Act.

(b) *ACCESS.*—

(1) *PROPRIETARY DATA.*—Except as provided in paragraph (2), the [Secretary] Director may not make available to the public data that the [Secretary] Director determines pursuant to section 1326 are proprietary information.

(2) *EXCEPTION.*—The [Secretary] Director shall not restrict access to the data provided in accordance with section 309(m)(1)(A) of the Federal National Mortgage Association Charter Act or section 307(e)(1)(A) of the Federal Home Loan Mortgage Corporation Act.

(c) *FEES.*—The [Secretary] Director may charge reasonable fees to cover the cost of making data available under this section to the public.

[SEC. 1324. ANNUAL HOUSING REPORT.

[(a) *IN GENERAL.*—After reviewing and analyzing the reports submitted under section 309(n) of the Federal National Mortgage Association Charter Act and section 307(f) of the Federal Home Loan Mortgage Corporation Act, the Secretary shall submit a report, as part of the annual report under section 1328(a) of this title, on the extent to which each enterprise is achieving the annual housing goals established under subpart B of this part and the purposes of the enterprise established by law.

[(b) *CONTENTS.*—The report shall—

[(1) aggregate and analyze census tract data to assess the compliance of each enterprise with the central cities, rural areas, and other underserved areas housing goal and to determine levels of business in central cities, rural areas, underserved areas, low- and moderate-income census tracts, minority census tracts, and other geographical areas deemed appropriate by the Secretary;

[(2) aggregate and analyze data on income to assess the compliance of each enterprise with the low- and moderate-income and special affordable housing goals;

[(3) aggregate and analyze data on income, race, and gender by census tract and compare such data with larger demographic, housing, and economic trends;

[(4) examine actions that each enterprise has undertaken or could undertake to promote and expand the annual goals es-

tablished under sections 1332, 1333, and 1334, and the purposes of the enterprise established by law;

[(5) examine the primary and secondary multifamily housing mortgage markets and describe—

[(A) the availability and liquidity of mortgage credit;

[(B) the status of efforts to provide standard credit terms and underwriting guidelines for multifamily housing and to securitize such mortgage products; and

[(C) any factors inhibiting such standardization and securitization;

[(6) examine actions each enterprise has undertaken and could undertake to promote and expand opportunities for first-time homebuyers; and

[(7) describe any actions taken under section 1325(5) with respect to originators found to violate fair lending procedures.]

SEC. 1324. ANNUAL HOUSING REPORT REGARDING REGULATED ENTITIES.

(a) *IN GENERAL.*—After reviewing and analyzing the reports submitted under section 309(n) of the Federal National Mortgage Association Charter Act, section 307(f) of the Federal Home Loan Mortgage Corporation Act, and section 10(j)(11) of the Federal Home Loan Bank Act (12 U.S.C. 1430(j)(11)), the Director shall submit a report, not later than October 30 of each year, to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, on the activities of each regulated entity.

(b) *CONTENTS.*—The report shall—

(1) discuss the extent to which—

(A) each enterprise is achieving the annual housing goals established under subpart B of this part;

(B) each enterprise is complying with section 1337;

(C) each Federal home loan bank is complying with section 10(j) of the Federal Home Loan Bank Act; and

(D) each regulated entity is achieving the purposes of the regulated entity established by law;

(2) aggregate and analyze relevant data on income to assess the compliance by each enterprise with the housing goals established under subpart B;

(3) aggregate and analyze data on income, race, and gender by census tract and other relevant classifications, and compare such data with larger demographic, housing, and economic trends;

(4) examine actions that—

(A) each enterprise has undertaken or could undertake to promote and expand the annual goals established under subpart B and the purposes of the enterprise established by law; and

(B) each Federal home loan bank has taken or could undertake to promote and expand the community investment program and affordable housing program of the bank established under section subsections (i) and (j) of section 10 of the Federal Home Loan Bank Act;

(5) examine the primary and secondary multifamily housing mortgage markets and describe—

(A) the availability and liquidity of mortgage credit;

(B) the status of efforts to provide standard credit terms and underwriting guidelines for multifamily housing and to securitize such mortgage products; and

(C) any factors inhibiting such standardization and securitization;

(6) examine actions each regulated entity has undertaken and could undertake to promote and expand opportunities for first-time homebuyers, including the use of alternative credit scoring;

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

(8) discuss and analyze existing conditions and trends, including conditions and trends relating to pricing, in the housing markets and mortgage markets; and

(9) identify the extent to which each enterprise is involved in mortgage purchases and secondary market activities involving subprime loans (as identified in accordance with the regulations issued pursuant to section 134(b) of the Federal Housing Finance Reform Act of 2007) and compare the characteristics of subprime loans purchased and securitized by the enterprises to other loans purchased and securitized by the enterprises.

(c) DATA COLLECTION AND REPORTING.—

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

(2) DATA POINTS.—Each monthly survey conducted by the Director under paragraph (1) shall collect data on—

(A) the characteristics of individual mortgages that are eligible for purchase by the enterprises and the characteristics of individual mortgages that are not eligible for purchase by the enterprises including, in both cases, information concerning—

(i) the price of the house that secures the mortgage;

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

(iii) the terms of the mortgage;

(iv) the creditworthiness of the borrower or borrowers; and

(v) whether the mortgage, in the case of a conforming mortgage, was purchased by an enterprise; and

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

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

(4) DEFINITION.—For purposes of this subsection, the term “identifiable form” means any representation of information that permits the identity of a borrower to which the information relates to be reasonably inferred by either direct or indirect means.

SEC. 1325. FAIR HOUSING.

The **Secretary** *Director* shall—

(1) * * *

(2) by regulation, require each enterprise to submit data to the **Secretary** *Director* to assist the **Secretary** *Director* in investigating whether a mortgage lender with which the enterprise does business has failed to comply with the Fair Housing Act;

(3) by regulation, require each enterprise to submit data to the **Secretary** *Director* to assist in investigating whether a mortgage lender with which the enterprise does business has failed to comply with the Equal Credit Opportunity Act, and shall submit any such information received to the appropriate Federal agencies, as provided in section 704 of the Equal Credit Opportunity Act, for appropriate action;

* * * * *

SEC. 1326. PROHIBITION OF PUBLIC DISCLOSURE OF PROPRIETARY INFORMATION.

(a) **IN GENERAL.**—The **Secretary** *Director* may, by regulation or order, provide that certain information shall be treated as proprietary information and not subject to disclosure under section 1323 of this title, section 309(n)(3) of the Federal National Mortgage Association Charter Act, or section 307(f)(3) of the Federal Home Loan Mortgage Corporation Act.

(b) **PROTECTION OF INFORMATION ON HOUSING ACTIVITIES.**—The **Secretary** *Director* shall not provide public access to, or disclose to the public, any information required to be submitted by an enterprise under section 309(n) of the Federal National Mortgage Association Charter Act or section 307(f) of the Federal Home Loan Mortgage Corporation Act that the **Secretary** *Director* determines is proprietary.

* * * * *

[SEC. 1327. AUTHORITY TO REQUIRE REPORTS BY ENTERPRISES.

[The Secretary shall require each enterprise to submit reports on its activities to the Secretary as the Secretary considers appropriate.

[SEC. 1328. REPORTS BY SECRETARY.

[(a) ANNUAL REPORT.—The Secretary shall, not later than June 30 of each year, submit a report to the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on the activities of each enterprise.

[(b) VIEWS ON BUDGET AND FINANCIAL PLANS OF ENTERPRISES.—On an annual basis, the Secretary shall provide the Committees referred to in subsection (a) with comments on the plans, forecasts, and reports required under section 1316(g).]

SEC. 1327. ANNUAL REPORTS ON AFFORDABLE HOUSING STOCK.

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

and the changes in such levels, in communities throughout the United States.

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

(1) the level of affordable housing inventory, including affordable rental dwelling units and affordable homeownership dwelling units;

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

(A) any additions to such inventory, disaggregated by the category of such additions (including new construction or housing conversion);

(B) any subtractions from such inventory, disaggregated by the category of such subtractions (including abandonment, demolition, or upgrade to market-rate housing);

(C) the number of new affordable dwelling units placed in service; and

(D) the number of affordable housing dwelling units withdrawn from service;

(3) the types of financing used to build any dwelling units added to such inventory level and the period during which such units are required to remain affordable;

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

(5) such other information as the Director may require.

(c) *REPORT.*—For each annual study conducted pursuant to this section, the regulated entities shall submit to the Congress, and make publicly available, a report setting forth the findings of the study.

(d) *REGULATIONS AND TIMING.*—The Director shall, by regulation, establish requirements for the studies and reports under this section, including deadlines for the submission of such annual reports and standards for determining affordable housing.

Subpart B—Housing Goals

§ 1331. ESTABLISHMENT.

[(a) *IN GENERAL.*—The Secretary shall establish, by regulation, housing goals under this subpart for each enterprise. The housing goals shall include a low- and moderate-income housing goal pursuant to section 1332, a special affordable housing goal pursuant to section 1333, and a central cities, rural areas, and other underserved areas housing goal pursuant to section 1334. The Secretary shall implement this subpart in a manner consistent with section 301(3) of the Federal National Mortgage Association Charter Act and section 301(b)(3) of the Federal Home Loan Mortgage Corporation Act.

[(b) *CONSIDERATION OF UNITS IN MULTIFAMILY HOUSING.*—In establishing any goal under this subpart, the Secretary may take into consideration the number of housing units financed by any mortgage on multifamily housing purchased by an enterprise.

[(c) ADJUSTMENT OF HOUSING GOALS.—Except as otherwise provided in this title, from year to year the Secretary may, by regulation, adjust any housing goal established under this subpart.

[SEC. 1332. LOW- AND MODERATE-INCOME HOUSING GOAL.

[(a) IN GENERAL.—The Secretary shall establish an annual goal for the purchase by each enterprise of mortgages on housing for low- and moderate-income families. The Secretary may establish separate specific subgoals within the goal under this section and such subgoals shall not be enforceable under the provisions of section 1336, any other provision of this title, or any provision of the Federal National Mortgage Association Charter Act or the Federal Home Loan Mortgage Corporation Act.

[(b) FACTORS TO BE APPLIED.—In establishing the goal under this section, the Secretary shall consider—

[(1) national housing needs;

[(2) economic, housing, and demographic conditions;

[(3) the performance and effort of the enterprises toward achieving the low- and moderate-income housing goal in previous years;

[(4) the size of the conventional mortgage market serving low- and moderate-income families relative to the size of the overall conventional mortgage market;

[(5) the ability of the enterprises to lead the industry in making mortgage credit available for low- and moderate-income families; and

[(6) the need to maintain the sound financial condition of the enterprises.

[(c) USE OF BORROWER AND TENANT INCOME.—

[(1) IN GENERAL.—The Secretary shall monitor the performance of each enterprise in carrying out this section and shall evaluate such performance (for purposes of section 1336) based on—

[(A) in the case of an owner-occupied dwelling, the mortgagor's income at the time of origination of the mortgage; or

[(B) in the case of a rental dwelling—

[(i) the income of the prospective or actual tenants of the property, where such data are available; or

[(ii) the rent levels affordable to low- and moderate-income families, where the data referred to in clause (i) are not available.

[(2) AFFORDABILITY.—For the purpose of paragraph (1)(B)(ii), a rent level shall be considered affordable if it does not exceed 30 percent of the maximum income level of the income categories referred to in this section, with appropriate adjustments for unit size as measured by the number of bedrooms.

[(d) TRANSITION.—

[(1) INTERIM TARGET.—Notwithstanding any other provision of this section, during the 2-year period beginning on January 1, 1993, the annual target under this section for low- and moderate-income mortgage purchases for each enterprise shall be 30 percent of the total number of dwelling units financed by mortgage purchases of the enterprise.

[(2) INTERIM GOAL.—During such 2-year period, the Secretary shall establish a separate annual goal for each enterprise, the achievement of which shall require—

[(A) an enterprise that is not meeting the target under paragraph (1) upon January 1, 1993, to improve its performance relative to such target annually and, to the maximum extent feasible, to meet such target at the conclusion of such 2-year period; and

[(B) an enterprise that is meeting the target under paragraph (1) upon January 1, 1993, to improve its performance relative to the target.

[(3) IMPLEMENTATION.—The Secretary shall establish any requirements necessary to implement the transition provisions under this subsection by notice, after providing the enterprises with an opportunity to review and comment not less than 30 days before the issuance of such notice. Such notice shall be issued not later than the expiration of the 90-day period beginning upon the date of the enactment of this Act and shall be effective upon issuance.

[SEC. 1333. SPECIAL AFFORDABLE HOUSING GOAL.

[(a) ESTABLISHMENT.—

[(1) IN GENERAL.—The Secretary shall establish a special annual goal designed to adjust the purchase by each enterprise of mortgages on rental and owner-occupied housing to meet the then-existing unaddressed needs of, and affordable to, low-income families in low-income areas and very low-income families. The special affordable housing goal established under this section for an enterprise shall not be less than 1 percent of the dollar amount of the mortgage purchases by the enterprise for the previous year.

[(2) STANDARDS.—In establishing the special affordable housing goal for an enterprise, the Secretary shall consider—

[(A) data submitted to the Secretary in connection with the special affordable housing goal for previous years;

[(B) the performance and efforts of the enterprise toward achieving the special affordable housing goal in previous years;

[(C) national housing needs within the categories set forth in this section;

[(D) the ability of the enterprise to lead the industry in making mortgage credit available for low-income and very low-income families; and

[(E) the need to maintain the sound financial condition of the enterprise.

[(b) FULL CREDIT ACTIVITIES.—

[(1) IN GENERAL.—The Secretary shall give full credit toward achievement of the special affordable housing goal under this section (for purposes of section 1336) to the following activities:

[(A) FEDERALLY RELATED MORTGAGES.—The purchase or securitization of federally insured or guaranteed mortgages, if—

[(i) such mortgages cannot be readily securitized through the Government National Mortgage Association or any other Federal agency;

[(ii) participation of the enterprise substantially enhances the affordability of the housing subject to such mortgages; and

[(iii) the mortgages involved are on housing that otherwise qualifies under such goal to be considered for purposes of such goal.

[(B) PORTFOLIOS.—The purchase or refinancing of existing, seasoned portfolios of loans, if—

[(i) the seller is engaged in a specific program to use the proceeds of such sales to originate additional loans that meet such goal; and

[(ii) such purchases or refinancings support additional lending for housing that otherwise qualifies under such goal to be considered for purposes of such goal.

[(C) RTC AND FDIC LOANS.—The purchase of direct loans made by the Resolution Trust Corporation or the Federal Deposit Insurance Corporation, if such loans—

[(i) are not guaranteed by such agencies themselves or other Federal agencies;

[(ii) are made with recourse provisions similar to those offered through private mortgage insurance or other conventional sellers; and

[(iii) are made for the purchase of housing that otherwise qualifies under such goal to be considered for purposes of such goal.

[(2) EXCLUSION.—No credit toward the achievement of the special affordable housing goal may be given to the purchase or securitization of mortgages associated with the refinancing of the existing enterprise portfolios.

[(c) USE OF BORROWER AND TENANT INCOME.—

[(1) IN GENERAL.—The Secretary shall monitor the performance of each enterprise in carrying out this section and shall evaluate such performance (for purposes of section 1336) based on—

[(A) in the case of an owner-occupied dwelling, the mortgagor's income at the time of origination of the mortgage; or

[(B) in the case of a rental dwelling—

[(i) the income of the prospective or actual tenants of the property, where such data are available; or

[(ii) the rent levels affordable to low-income and very low-income families, where the data referred to in clause (i) are not available.

[(2) AFFORDABILITY.—For the purpose of paragraph (1)(B)(ii), a rent level shall be considered affordable if it does not exceed 30 percent of the maximum income level of the income categories referred to in this section, with appropriate adjustments for unit size as measured by the number of bedrooms.

[(d) TRANSITION.—

[(1) FNMA MORTGAGE PURCHASES.—Notwithstanding any other provision of this section, during the 2-year period beginning on January 1, 1993, the special affordable housing goal for the Federal National Mortgage Association shall include mortgage purchases of not less than \$2,000,000,000 (for such

2-year period), with one-half of such purchases consisting of mortgages on single family housing and one-half consisting of mortgages on multifamily housing.

[(2) FHLMC MORTGAGE PURCHASES.—Notwithstanding any other provision of this section, during the 2-year period beginning on January 1, 1993, the special affordable housing goal for the Federal Home Loan Mortgage Corporation shall include mortgage purchases of not less than \$1,500,000,000 (for such 2-year period), with one-half of such purchases consisting of mortgages on single family housing and one-half consisting of mortgages on multifamily housing.

[(3) INCOME CHARACTERISTICS FOR MORTGAGE PURCHASES.—

[(A) MULTIFAMILY MORTGAGES.—The special affordable housing goals established under paragraphs (1) and (2) shall provide that, of mortgages on multifamily housing that are purchased and contribute to the achievement of such goals—

[(i) 45 percent shall be mortgages on multifamily housing affordable to low-income families; and

[(ii) 55 percent shall be mortgages on multifamily housing in which—

[(I) at least 20 percent of the units are affordable to families whose incomes do not exceed 50 percent of the median income for the area; or

[(II) at least 40 percent of the units are affordable to very low-income families.

[(B) SINGLE FAMILY MORTGAGES.—The special affordable housing goals established under paragraphs (1) and (2) shall provide that, of mortgages on single family housing that are purchased and contribute to the achievement of such goals—

[(i) 45 percent shall be mortgages of low-income families who live in census tracts in which the median income does not exceed 80 percent of the area median income; and

[(ii) 55 percent shall be mortgages of very low-income families.

[(C) COMPLIANCE WITH SPECIAL AFFORDABLE HOUSING GOALS.—Only the portion of mortgages on multifamily housing purchased by an enterprise that are attributable to units affordable to low-income families shall contribute to the achievement of the special affordable housing goals under subparagraph (A)(ii).

[(4) IMPLEMENTATION.—The Secretary shall establish any requirements necessary to implement the transition provisions under this subsection by notice, after providing the enterprises with an opportunity to review and comment not less than 30 days before the issuance of such notice. Such notice shall be issued not later than the expiration of the 90-day period beginning upon the date of the enactment of this Act and shall be effective upon issuance.

[SEC. 1334. CENTRAL CITIES, RURAL AREAS, AND OTHER UNDERSERVED AREAS HOUSING GOAL.

[(a) IN GENERAL.—The Secretary shall establish an annual goal for the purchase by each enterprise of mortgages on housing lo-

cated in central cities, rural areas, and other underserved areas. The Secretary may establish separate subgoals within the goal under this section and such subgoals shall not be enforceable under the provisions of section 1336, any other provision of this title, or any provision of the Federal National Mortgage Association Charter Act or the Federal Home Loan Mortgage Corporation Act.

[(b) FACTORS TO BE APPLIED.—In establishing the housing goal under this section, the Secretary shall consider—

[(1) urban and rural housing needs and the housing needs of underserved areas;

[(2) economic, housing, and demographic conditions;

[(3) the performance and efforts of the enterprises toward achieving the central cities, rural areas, and other underserved areas housing goal in previous years;

[(4) the size of the conventional mortgage market for central cities, rural areas, and other underserved areas relative to the size of the overall conventional mortgage market;

[(5) the ability of the enterprises to lead the industry in making mortgage credit available throughout the United States, including central cities, rural areas, and other underserved areas; and

[(6) the need to maintain the sound financial condition of the enterprises.

[(c) LOCATION OF PROPERTIES.—The Secretary shall monitor the performance of each enterprise in carrying out this section and shall evaluate such performance (for purposes of section 1336) based on the location of the properties subject to mortgages purchased by each enterprise.

[(d) TRANSITION.—

[(1) INTERIM TARGET.—Notwithstanding any other provision of this section, during the 2-year period beginning on January 1, 1993, the annual target under this section for purchases by each enterprise of mortgages on housing located in central cities shall be 30 percent of the total number of dwelling units financed by mortgage purchases of the enterprise.

[(2) INTERIM GOAL.—During such 2-year period, the Secretary shall establish a separate annual goal for each enterprise, the achievement of which shall require—

[(A) an enterprise that is not meeting the target under paragraph (1) upon January 1, 1993, to improve its performance relative to such target annually and, to the maximum extent feasible, to meet such target at the conclusion of such 2-year period; and

[(B) an enterprise that is meeting the target under paragraph (1) upon January 1, 1993, to improve its performance relative to the target.

[(3) DEFINITION OF CENTRAL CITY.—For purposes of this subsection, the term “central city” means any political subdivision designated as a central city by the Office of Management and Budget.

[(4) IMPLEMENTATION.—The Secretary shall establish any requirements necessary to implement the transition provisions under this subsection by notice, after providing the enterprises with an opportunity to review and comment not less than 30 days before the issuance of such notice. Such notice shall be

issued not later than the expiration of the 90-day period beginning upon the date of the enactment of this Act and shall be effective upon issuance.】

SEC. 1331. ESTABLISHMENT OF HOUSING GOALS.

(a) *IN GENERAL.*—The Director shall establish, effective for the first year that begins after the effective date under section 185 of the Federal Housing Finance Reform Act of 2007 and each year thereafter, annual housing goals, with respect to the mortgage purchases by the enterprises, as follows:

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

(2) *MULTIFAMILY SPECIAL AFFORDABLE HOUSING GOALS.*—A multifamily special affordable housing goal under section 1333.

(b) *ELIMINATING INTEREST RATE DISPARITIES.*—

(1) *IN GENERAL.*—Upon request by the Director, an enterprise shall provide to the Director, in a form determined by the Director, data the Director may review to determine whether there exist disparities in interest rates charged on mortgages to borrowers who are minorities as compared with comparable mortgages to borrowers of similar creditworthiness who are not minorities.

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

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

(B) require the enterprise to submit additional data with respect to any lender or lenders, as appropriate and to the extent practicable, to the Director who shall submit any such additional data to the regulatory or enforcement agency for appropriate action; and

(C) require the enterprise to undertake remedial actions, as appropriate, pursuant to section 1325(5) (12 U.S.C. 4545(5)).

(3) *ANNUAL REPORT TO CONGRESS.*—The Director shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report describing the actions taken, and being taken, by the Director to carry out this subsection. No such report shall identify any lender or lenders who have not been found to have engaged in discriminatory lending practices pursuant to a final adjudication on the record, and after opportunity for an administrative hearing, in accordance with subchapter II of chapter 5 of title 5, United States Code.

(4) *PROTECTION OF IDENTITY OF INDIVIDUALS.*—In carrying out this subsection, the Director shall ensure that no property-related or financial information that would enable a borrower to be identified shall be made public.

(c) *TIMING.*—The Director shall establish an annual deadline by which the Director shall establish the annual housing goals under this subpart for each year, taking into consideration the need for the enterprises to reasonably and sufficiently plan their operations and

activities in advance, including operations and activities necessary to meet such annual goals.

SEC. 1332. SINGLE-FAMILY HOUSING GOALS.

(a) *IN GENERAL.*—The Director shall establish annual goals for the purchase by each enterprise of conventional, conforming, single-family, purchase money mortgages financing owner-occupied and rental housing for each of the following categories of families:

- (1) Low-income families.
- (2) Families that reside in low-income areas.
- (3) Very low-income families.

(b) *REFINANCE SUBGOAL.*—

(1) *IN GENERAL.*—The Director shall establish a separate subgoal within each goal under subsection (a)(1) for the purchase by each enterprise of mortgages for low-income families on single family housing given to pay off or prepay an existing loan secured by the same property. The Director shall, for each year, determine whether each enterprise has complied with the subgoal under this subsection in the same manner provided under this section for determining compliance with the housing goals.

(2) *ENFORCEMENT.*—For purposes of section 1336, the subgoal established under paragraph (1) of this subsection shall be considered to be a housing goal established under this section. Such subgoal shall not be enforceable under any other provision of this title (including subpart C of this part) other than section 1336 or under any provision of the Federal National Mortgage Association Charter Act or the Federal Home Loan Mortgage Corporation Act.

(c) *DETERMINATION OF COMPLIANCE.*—The Director shall determine, for each year that the housing goals under this section are in effect pursuant to section 1331(a), whether each enterprise has complied with the single-family housing goals established under this section for such year. An enterprise shall be considered to be in compliance with such a goal for a year only if, for each of the types of families described in subsection (a), the percentage of the number of conventional, conforming, single-family, owner-occupied or rental, as applicable, purchase money mortgages purchased by each enterprise in such year that serve such families, meets or exceeds the target for the year for such type of family that is established under subsection (d).

(d) *ANNUAL TARGETS.*—

(1) *IN GENERAL.*—Except as provided in paragraph (2), for each of the types of families described in subsection (a), the target under this subsection for a year shall be the average percentage, for the three years that most recently precede such year and for which information under the Home Mortgage Disclosure Act of 1975 is publicly available, of the number of conventional, conforming, single-family, owner-occupied or rental, as applicable, purchase money mortgages originated in such year that serves such type of family, as determined by the Director using the information obtained and determined pursuant to paragraphs (3) and (4).

(2) *AUTHORITY TO INCREASE TARGETS.*—

(A) *IN GENERAL.*—The Director may, for any year, establish by regulation, for any or all of the types of families de-

scribed in subsection (a), percentage targets that are higher than the percentages for such year determined pursuant to paragraph (1), to reflect expected changes in market performance related to such information under the Home Mortgage Disclosure Act of 1975.

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

- (i) National housing needs.
- (ii) Economic, housing, and demographic conditions.
- (iii) The performance and effort of the enterprises toward achieving the housing goals under this section in previous years.
- (iv) The size of the conventional mortgage market serving each of the types of families described in subsection (a) relative to the size of the overall conventional mortgage market.
- (v) The ability of the enterprise to lead the industry in making mortgage credit available.
- (vi) The need to maintain the sound financial condition of the enterprises.

(3) **HMDA INFORMATION.**—The Director shall annually obtain information submitted in compliance with the Home Mortgage Disclosure Act of 1975 regarding conventional, conforming, single-family, owner-occupied or rental, as applicable, purchase money mortgages originated and purchased for the previous year.

(4) **CONFORMING MORTGAGES.**—In determining whether a mortgage is a conforming mortgage for purposes of this paragraph, the Director shall consider the original principal balance of the mortgage loan to be the principal balance as reported in the information referred to in paragraph (3), as rounded to the nearest thousand dollars.

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

(1) **NOTICE.**—Within 30 days of making a determination under subsection (c) regarding a compliance of an enterprise for a year with a housing goal established under this section and before any public disclosure thereof, the Director shall provide notice of the determination to the enterprise, which shall include an analysis and comparison, by the Director, of the performance of the enterprise for the year and the targets for the year under subsection (d).

(2) **COMMENT PERIOD.**—The Director shall provide each enterprise an opportunity to comment on the determination during the 30-day period beginning upon receipt by the enterprise of the notice.

(f) **USE OF BORROWER INCOME.**—In monitoring the performance of each enterprise pursuant to the housing goals under this section and evaluating such performance (for purposes of section 1336), the Director shall consider a mortgagor's income to be such income at the time of origination of the mortgage.

(g) **CONSIDERATION OF UNITS IN SINGLE-FAMILY RENTAL HOUSING.**—In establishing any goal under this subpart, the Director may take into consideration the number of housing units financed by any

mortgage on single-family rental housing purchased by an enterprise

SEC. 1333. MULTIFAMILY SPECIAL AFFORDABLE HOUSING GOAL.

(a) *ESTABLISHMENT.*—

(1) *IN GENERAL.*—*The Director shall establish, by regulation, an annual goal for the purchase by each enterprise of each of the following types of mortgages on multifamily housing:*

(A) *Mortgages that finance dwelling units for low-income families.*

(B) *Mortgages that finance dwelling units for very low-income families.*

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

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

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

(A) *national multifamily mortgage credit needs;*

(B) *the performance and effort of the enterprise in making mortgage credit available for multifamily housing in previous years;*

(C) *the size of the multifamily mortgage market;*

(D) *the ability of the enterprise to lead the industry in making mortgage credit available, especially for underserved markets, such as for small multifamily projects of 5 to 50 units, multifamily properties in need of rehabilitation, and multifamily properties located in rural areas; and*

(E) *the need to maintain the sound financial condition of the enterprise.*

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

(1) *are secured by a guarantee of the enterprise; or*

(2) *are not investment grade and are purchased by the enterprise.*

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

(1) *the income of the prospective or actual tenants of the property, where such data are available; or*

(2) where the data referred to in paragraph (1) are not available, rent levels affordable to low-income and very low-income families.

A rent level shall be considered to be affordable for purposes of this subsection for an income category referred to in this subsection if it does not exceed 30 percent of the maximum income level of such income category, with appropriate adjustments for unit size as measured by the number of bedrooms.

(d) **DETERMINATION OF COMPLIANCE.**—The Director shall, for each year that the housing goal under this section is in effect pursuant to section 1331(a), determine whether each enterprise has complied with such goal and the additional requirements under subsection (a)(2).

SEC. 1334. DISCRETIONARY ADJUSTMENT OF HOUSING GOALS.

(a) **AUTHORITY.**—An enterprise may petition the Director in writing at any time during a year to reduce the level of any goal for such year established pursuant to this subpart.

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

(1) market and economic conditions or the financial condition of the enterprise require such action; or

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

(c) **DETERMINATION.**—The Director shall make a determination regarding any proposed reduction within 30 days of receipt of the petition regarding the reduction. The Director may extend such period for a single additional 15-day period, but only if the Director requests additional information from the enterprise. A denial by the Director to reduce the level of any goal under this section may be appealed to the United States District Court for the District of Columbia or the United States district court in the jurisdiction in which the headquarters of an enterprise is located.

SEC. 1335. DUTY TO SERVE UNDERSERVED MARKETS AND OTHER REQUIREMENTS.

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

(1) **DUTY.**—In accordance with the purpose of the enterprises under section 301(3) of the Federal National Mortgage Association Charter Act (12 U.S.C. 1716) and section 301(b)(3) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 note) to undertake activities relating to mortgages on housing for very low-, low-, and moderate-income families involving a reasonable economic return that may be less than the return earned on other activities, each enterprise shall have the duty to increase the liquidity of mortgage investments and improve the distribution of investment capital available for mortgage financing for underserved markets.

(2) **UNDERSERVED MARKETS.**—To meet its duty under paragraph (1), each enterprise shall comply with the following requirements with respect to the following underserved markets:

(A) *MANUFACTURED HOUSING.*—The enterprise shall lead the industry in developing loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages on manufactured homes for very low-, low-, and moderate-income families.

(B) *AFFORDABLE HOUSING PRESERVATION.*—The enterprise shall lead the industry in developing loan products and flexible underwriting guidelines to facilitate a secondary market to preserve housing affordable to very low-, low-, and moderate-income families, including housing projects subsidized under—

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

(ii) the program under section 236 of the National Housing Act;

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

(iv) the supportive housing for the elderly program under section 202 of the Housing Act of 1959;

(v) the supportive housing program for persons with disabilities under section 811 of the Cranston-Gonzalez National Affordable Housing Act;

(vi) the programs under title IV of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11361 et seq.), but only permanent supportive housing projects subsidized under such programs; and

(vii) the rural rental housing program under section 515 of the Housing Act of 1949.

(C) *RURAL AND OTHER UNDERSERVED MARKETS.*—The enterprise shall lead the industry in developing loan products and flexible underwriting guidelines to facilitate a secondary market for mortgages on housing for very low-, low-, and moderate-income families in rural areas, and for mortgages for housing for any other underserved market for very low-, low-, and moderate-income families that the Secretary identifies as lacking adequate credit through conventional lending sources. Such underserved markets may be identified by borrower type, market segment, or geographic area.

[(a)] (b) *IN GENERAL.*—To meet the [low- and moderate-income housing goal under section 1332, the special affordable housing goal under section 1333, and the central cities, rural areas, and other underserved areas housing goal under section 1334] housing goals established under this subpart and to carry out the duty under subsection (a) of this section, each enterprise shall—

(1) * * *

* * * * *

(3) take affirmative steps to—

(A) * * *

* * * * *

which shall include developing appropriate and prudent underwriting standards, business practices, repurchase requirements, pricing, fees, and procedures; and

(4) develop the institutional capacity to help finance low- and moderate-income housing, including housing for first-time homebuyers[; and].

[(5) assist in maintaining the affordability of assisted units in eligible multifamily housing projects with expiring contracts, as defined under the Multifamily Assisted Housing Reform and Affordability Act of 1997.]

[(b) AFFORDABLE HOUSING GOALS.—Actions taken under subsection (a)(5) shall constitute part of the contribution of each entity in meeting its affordable housing goals under sections 1332, 1333, and 1334 for any fiscal year, as determined by the Secretary.]

(c) EVALUATION AND REPORTING OF COMPLIANCE.—

(1) IN GENERAL.—*Not later than 6 months after the effective date under section 185 of the Federal Housing Finance Reform Act of 2007, the Director shall establish a manner for evaluating whether, and the extent to which, the enterprises have complied with the duty under subsection (a) to serve underserved markets and for rating the extent of such compliance. Using such method, the Director shall, for each year, evaluate such compliance and rate the performance of each enterprise as to extent of compliance. The Director shall include such evaluation and rating for each enterprise for a year in the report for that year submitted pursuant to section 1319B(a).*

(2) SEPARATE EVALUATIONS.—*In determining whether an enterprise has complied with the duty referred to in paragraph (1), the Director shall separately evaluate whether the enterprise has complied with such duty with respect to each of the underserved markets identified in subsection (a), taking into consideration—*

(A) the development of loan products and more flexible underwriting guidelines;

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

(C) the volume of loans purchased in each of such underserved markets.

(3) MANUFACTURED HOUSING MARKET.—*In determining whether an enterprise has complied with the duty under subparagraph (A) of subsection (a)(2), the Director may consider loans secured by both real and personal property.*

SEC. 1336. MONITORING AND ENFORCING COMPLIANCE WITH HOUSING GOALS.

(a) IN GENERAL.—

(1) AUTHORITY.—The [Secretary] Director shall monitor and enforce compliance with the housing goals established under [sections 1332, 1333, and 1334,] *this subpart and with the duty under section 1335(a) of each enterprise with respect to underserved markets, as provided in this section.*

(2) GUIDELINES.—The [Secretary] Director shall establish guidelines to measure the extent of compliance with the housing goals, which, *except as provided in paragraph (4), may assign full credit, partial credit, or no credit toward achievement of the housing goals to different categories of mortgage pur-*

chase activities of the enterprises, based on such criteria as the **【Secretary】** *Director* deems appropriate.

* * * * *

(3) **EXTENT OF COMPLIANCE.**—In determining compliance with the housing goals established under this subpart, the **【Secretary】** *Director*—

(A) shall consider any single mortgage purchased by an enterprise as contributing to the achievement of each housing goal for which such mortgage purchase qualifies; and

(B) may take into consideration the number of housing units financed by any mortgage on housing purchased by an enterprise.

(4) **ENFORCEMENT OF DUTY TO PROVIDE MORTGAGE CREDIT TO UNDERSERVED MARKETS.**—*The duty under section 1335(a) of each enterprise to serve underserved markets (as determined in accordance with section 1335(c)) shall be enforceable under this section to the same extent and under the same provisions that the housing goals established under this subpart are enforceable. Such duty shall not be enforceable under any other provision of this title (including subpart C of this part) other than this section or under any provision of the Federal National Mortgage Association Charter Act or the Federal Home Loan Mortgage Corporation Act.*

(5) **ADDITIONAL CREDIT.**—*The Director shall assign more than 125 percent credit toward achievement, under this section, of the housing goals for mortgage purchase activities of the enterprises that comply with the requirements of such goals and support—*

(A) *housing that meets energy efficiency or other environmental standards that are established by a Federal, State, or local governmental authority with respect to the geographic area where the housing is located or are otherwise widely recognized; or*

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

The availability of additional credit under this paragraph shall not be used to increase any housing goal, subgoal, or target established under this subpart.

(b) **NOTICE AND PRELIMINARY DETERMINATION OF FAILURE TO MEET GOALS.**—

【(1) NOTICE.—If the Secretary determines that an enterprise has failed, or that there is a substantial probability that an enterprise will fail, to meet any housing goal established under section 1332, 1333, or 1334, the Secretary shall provide written notice to the enterprise of such a determination, the reasons for such determination, the requirement to submit a housing plan under subsection (c) of this section, and the information on which the Secretary based the determination or imposed such requirement.**】**

(1) **NOTICE.**—*If the Director preliminarily determines that an enterprise has failed, or that there is a substantial probability that an enterprise will fail, to meet any housing goal established under this subpart, the Director shall provide written notice to the enterprise of such a preliminary determination, the*

reasons for such determination, and the information on which the Director based the determination.

(2) RESPONSE PERIOD.—

(A) IN GENERAL.—During the 30-day period beginning on the date that an enterprise is provided notice under paragraph (1), the enterprise may submit to the **【Secretary】 Director** any written information that the enterprise considers appropriate for consideration by the **【Secretary】 Director** in *finally* determining whether such failure has occurred or whether the achievement of such goal was or is feasible.

【(B) EXTENDED PERIOD.—The Secretary may extend the period under subparagraph (A) for good cause for not more than 30 additional days.

【(C) SHORTENED PERIOD.—The Secretary may shorten the period under subparagraph (A) for good cause.]

(B) EXTENSION OR SHORTENING OF PERIOD.—*The Director may—*

- (i) extend the period under subparagraph (A) for good cause for not more than 30 additional days; and*
- (ii) shorten the period under subparagraph (A) for good cause.*

【(D) (C) FAILURE TO RESPOND.—The failure of an enterprise to provide information during the 30-day period under this paragraph (as extended or shortened) shall waive any right of the enterprise to comment on the proposed determination or action of the **【Secretary】 Director**.

(3) CONSIDERATION OF INFORMATION AND DETERMINATION.—

(A) IN GENERAL.—After the expiration of the response period under paragraph (2) or upon receipt of information provided during such period by the enterprise, whichever occurs earlier, the **【Secretary】 Director** shall **【determine】** *issue a final determination of* (i) whether the enterprise has failed, or there is a substantial probability that the enterprise will fail, to meet the housing goal, and (ii) whether (taking into consideration market and economic conditions and the financial condition of the enterprise) the achievement of the housing goal was or is feasible.

(B) CONSIDERATIONS.—In making such *final* determinations, the **【Secretary】 Director** shall take into consideration any relevant information submitted by the enterprise during the response period.

(C) NOTICE.—The **【Secretary】 Director** shall provide written notice to the enterprise, the Committee on **【Banking, Finance and Urban Affairs】 Financial Services** of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate, of—

- (i) each *final* determination that an enterprise has failed, or that there is a substantial probability that the enterprise will fail, to meet a housing goal;
- (ii) each *final* determination that the achievement of a housing goal was or is feasible; and
- (iii) the reasons for each such *final* determination.

Such notice shall respond to any information submitted during the response period.

[(c) HOUSING PLANS.—

[(1) REQUIREMENT.—If the [Secretary] Director finds pursuant to subsection (b), that an enterprise has failed, or that there is a substantial probability that an enterprise will fail, to meet any housing goal established under section 1332, 1333, or 1334, and that the achievement of the housing goal was or is feasible, the Secretary shall require the enterprise to submit a housing plan under this subsection for approval by the Secretary.]

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

(1) REQUIREMENT.—*If the Director finds, pursuant to subsection (b), that there is a substantial probability that an enterprise will fail, or has actually failed, to meet any housing goal under this subpart and that the achievement of the housing goal was or is feasible, the Director may require that the enterprise submit a housing plan under this subsection. If the Director makes such a finding and the enterprise refuses to submit such a plan, submits an unacceptable plan, fails to comply with the plan or the Director finds that the enterprise has failed to meet any housing goal under this subpart, in addition to requiring an enterprise to submit a housing plan, the Director may issue a cease and desist order in accordance with section 1341, impose civil money penalties in accordance with section 1345, or order other remedies as set forth in paragraph (7) of this subsection.*

(2) [CONTENTS.—Each housing plan] HOUSING PLAN.—*If the Director requires a housing plan under this section, such a plan shall be a feasible plan describing the specific actions the enterprise will take—*

(A) to achieve the goal for the next calendar year; or

(B) if the [Secretary] Director determines that there is a substantial probability that the enterprise will fail to meet a goal in the current year, to make such improvements *and changes in its operations* as are reasonable in the remainder of such year.

The plan shall be sufficiently specific to enable the [Secretary] Director to monitor compliance periodically.

(3) DEADLINE FOR SUBMISSION.—The [Secretary] Director shall, by regulation, establish a deadline for an enterprise to *comply with any remedial action or submit a housing plan to the [Secretary] Director*, which may not be more than 45 days after the enterprise is provided notice [under subsection (b)(3) that a housing plan is required]. The regulations shall provide that the [Secretary] Director may extend the deadline to the extent that the [Secretary] Director determines necessary. Any extension of the deadline shall be in writing and for a time certain.

(4) APPROVAL.—[The Secretary shall review each housing plan submitted under this subsection and, not later than 30 days after submission of the plan, approve or disapprove the plan. The Secretary may extend the period for approval or disapproval for a single additional 30-day period if the Secretary determines it necessary.] *The Director shall review each submission by an enterprise, including a housing plan submitted*

under this subsection, and not later than 30 days after submission, approve or disapprove the plan or other action. The Director may extend the period for approval or disapproval for a single additional 30-day period if the Director determines such extension necessary. The [Secretary] Director shall approve any plan that the [Secretary] Director determines is likely to succeed, and conforms with the Federal National Mortgage Association Charter Act or the Federal Home Loan Mortgage Corporation Act (as applicable), this title, and any other applicable laws and regulations.

(5) NOTICE OF APPROVAL AND DISAPPROVAL.—The [Secretary] Director shall provide written notice to any enterprise submitting a housing plan of the approval or disapproval of the plan (which shall include the reasons for any disapproval of the plan) and of any extension of the period for approval or disapproval.

(6) RESUBMISSION.—If the initial housing plan submitted by an enterprise is disapproved, the enterprise shall submit an amended plan acceptable to the [Secretary] Director within 30 days or such longer period that the [Secretary] Director determines is in the public interest.

(7) ADDITIONAL REMEDIES FOR FAILURE TO MEET GOALS.—*In addition to ordering a housing plan under this section, issuing cease and desist orders under section 1341, and ordering civil money penalties under section 1345, the Director may seek other actions when an enterprise fails to meet a goal, and exercise appropriate enforcement authority available to the Director under this Act to prohibit the enterprise from initially offering any product (as such term is defined in section 1321(f)) or engaging in any new activities, services, undertakings, and offerings and to order the enterprise to suspend products and activities, services, undertakings, and offerings pending its achievement of the goal.*

[SEC. 1337. REPORTS DURING TRANSITION.

[Each enterprise shall submit to the Secretary, the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate, a report for each transitional housing goal for the enterprise under section 1332(d), 1333(d), or 1334(d), describing the actions the enterprise plans to take to meet such goal. Each such report shall be submitted within 45 days after the establishment of the goal for which the report is submitted.

[SEC. 1338. EFFECTIVE DATE OF TRANSITION GOALS.

[The housing goals established under sections 1332(d), 1333(d), and 1334(d) shall not become effective until January 1, 1993.]

SEC. 1337. AFFORDABLE HOUSING FUND.

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

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

(2) to increase investment in housing in low-income areas, and areas designated as qualified census tracts or an area of chronic economic distress pursuant to section 143(j) of the Internal Revenue Code of 1986 (26 U.S.C. 143(j));

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

(4) to increase investment in public infrastructure development in connection with housing assisted under this section; and

(5) to leverage investments from other sources in affordable housing and in public infrastructure development in connection with housing assisted under this section.

(b) ALLOCATION OF AMOUNTS BY ENTERPRISES.—

(1) IN GENERAL.—In accordance with regulations issued by the Director under subsection (m) and subject to paragraph (2) of this subsection and subsection (i)(5), each enterprise shall allocate to the affordable housing fund established under subsection (a), in each of the years 2007 through 2011, an amount equal to 1.2 basis points for each dollar of the average total mortgage portfolio of the enterprise during the preceding year.

(2) SUSPENSION OF CONTRIBUTIONS.—The Director shall temporarily suspend the allocation under paragraph (1) by an enterprise to the affordable housing fund upon a finding by the Director that such allocations—

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

(B) are causing, or would cause, the enterprise to be classified as undercapitalized; or

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

(3) 5-YEAR SUNSET AND REPORT.—

(A) SUNSET.—The enterprises shall not be required to make allocations to the affordable housing fund in 2012 or in any year thereafter.

(B) REPORT ON PROGRAM CONTINUANCE.—Not later than June 30, 2011, the Director shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report making recommendations on whether the program under this section, including the requirement for the enterprises to make allocations to the affordable housing fund, should be extended and on any modifications for the program.

(c) AFFORDABLE HOUSING NEEDS FORMULAS.—

(1) ALLOCATION FOR 2007.—

(A) ALLOCATION PERCENTAGES FOR LOUISIANA AND MISSISSIPPI.—For purposes of subsection (d)(1)(A), the allocation percentages for 2007 for the grantees under this section for such year shall be as follows:

(i) The allocation percentage for the Louisiana Housing Finance Agency shall be 75 percent.

(ii) The allocation percentage for the Mississippi Development Authority shall be 25 percent.

(B) *USE IN DISASTER AREAS.*—Affordable housing grant amounts for 2007 shall be used only as provided in subsection (g) only for such eligible activities in areas that were subject to a declaration by the President of a major disaster or emergency under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.) in connection with Hurricane Katrina or Rita of 2005.

(2) *ALLOCATION FORMULA FOR OTHER YEARS.*—The Secretary of Housing and Urban Development shall, by regulation, establish a formula to allocate, among the States (as such term is defined in section 1303) and federally recognized Indian tribes, the amounts provided by the enterprises in each year referred to subsection (b)(1), other than 2007, to the affordable housing fund established under this section. The formula shall be based on the following factors, with respect to each State and tribe:

(A) The ratio of the population of the State or federally recognized Indian tribe to the aggregate population of all the States and tribes.

(B) The percentage of families in the State or federally recognized Indian tribe that pay more than 50 percent of their annual income for housing costs.

(C) The percentage of persons in the State or federally recognized Indian tribe that are members of extremely low- or very low-income families.

(D) The cost of developing or carrying out rehabilitation of housing in the State or for the federally recognized Indian tribe.

(E) The percentage of families in the State or federally recognized Indian tribe that live in substandard housing.

(F) The percentage of housing stock in the State or for the federally recognized Indian tribe that is extremely old housing.

(G) Any other factors that the Secretary determines to be appropriate.

(3) *FAILURE TO ESTABLISH.*—If, in any year referred to in subsection (b)(1), other than 2007, the regulations establishing the formula required under paragraph (2) of this subsection have not been issued by the date that the Director determines the amounts described in subsection (d)(1) to be available for affordable housing fund grants in such year, for purposes of such year any amounts for a State (as such term is defined in section 1303 of this Act) that would otherwise be determined under subsection (d) by applying the formula established pursuant to paragraph (2) of this subsection shall be determined instead by applying, for such State, the percentage that is equal to the percentage of the total amounts made available for such year for allocation under subtitle A of title II of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12741 et seq.) that are allocated in such year, pursuant to such subtitle, to such State (including any insular area or unit of general local government, as such terms are defined in section 104 of such Act (42 U.S.C. 12704), that is treated as a State under section 1303 of this Act) and to participating jurisdictions and other eligible entities within such State.

(d) *ALLOCATION OF FORMULA AMOUNT; GRANTS.*—

(1) *FORMULA AMOUNT.*—For each year referred to in subsection (b)(1), the Director shall determine the formula amount under this section for each grantee, which shall be the amount determined for such grantee—

(A) for 2007, by applying the allocation percentages under subparagraph (A) of subsection (c)(1) to the sum of the total amounts allocated by the enterprises to the affordable housing fund for such year, less any amounts used pursuant to subsection (i)(1); and

(B) for any other year referred to in subsection (b)(1) (other than 2007), by applying the formula established pursuant to paragraph (2) of subsection (c) to the sum of the total amounts allocated by the enterprises to the affordable housing fund for such year and any recaptured amounts available pursuant to subsection (i)(4), less any amounts used pursuant to subsection (i)(1).

(2) *NOTICE.*—In each year referred to in subsection (b)(1), not later than 60 days after the date that the Director determines the amounts described in paragraph (1) to be available for affordable housing fund grants to grantees in such year, the Director shall cause to be published in the Federal Register a notice that such amounts shall be so available.

(3) *GRANT AMOUNT.*—

(A) *IN GENERAL.*—For each year referred to in subsection (b)(1), the Director shall make a grant from amounts in the affordable housing fund to each grantee in an amount that is, except as provided in subparagraph (B), equal to the formula amount under this section for the grantee. A grantee may designate a State housing finance agency, housing and community development entity, tribally designated housing entity (as such term is defined in section 4 of the Native American Housing Assistance and Self-Determination Act of 1997 (25 U.S.C. 4103)) or other qualified instrumentality of the grantee to receive such grant amounts.

(B) *REDUCTION FOR FAILURE TO OBTAIN RETURN OF MISUSED FUNDS.*—If in any year a grantee fails to obtain reimbursement or return of the full amount required under subsection (j)(1)(B) to be reimbursed or returned to the grantee during such year—

(i) except as provided in clause (ii)—

(I) the amount of the grant for the grantee for the succeeding year, as determined pursuant to subparagraph (A), shall be reduced by the amount by which such amounts required to be reimbursed or returned exceed the amount actually reimbursed or returned; and

(II) the amount of the grant for the succeeding year for each other grantee whose grant is not reduced pursuant to subclause (I) shall be increased by the amount determined by applying the formula established pursuant to subsection (c)(2) to the total amount of all reductions for all grantees for such year pursuant to subclause (I); or

(ii) in any case in which such failure to obtain reimbursement or return occurs during a year immediately

preceding a year in which grants under this subsection will not be made, the grantee shall pay to the Director for reallocation among the other grantees an amount equal to the amount of the reduction for the grantee that would otherwise apply under clause (i)(I).

(e) GRANTEE ALLOCATION PLANS.—

(1) IN GENERAL.—For each year that a grantee receives affordable housing fund grant amounts, the grantee shall establish an allocation plan in accordance with this subsection, which shall be a plan for the distribution of such grant amounts of the grantee for such year that—

(A) is based on priority housing needs, as determined by the grantee in accordance with the regulations established under subsection (m)(2)(C);

(B) complies with subsection (f); and

(C) includes performance goals, benchmarks, and timetables for the grantee for the production, preservation, and rehabilitation of affordable rental and homeownership housing with such grant amounts that comply with the requirements established by the Director pursuant to subsection (m)(2)(F).

(2) ESTABLISHMENT.—In establishing an allocation plan, a grantee shall notify the public of the establishment of the plan, provide an opportunity for public comments regarding the plan, consider any public comments received, and make the completed plan available to the public.

(3) CONTENTS.—An allocation plan of a grantee shall set forth the requirements for eligible recipients under subsection (h) to apply to the grantee to receive assistance from affordable housing fund grant amounts, including a requirement that each such application include—

(A) a description of the eligible activities to be conducted using such assistance; and

(B) a certification by the eligible recipient applying for such assistance that any housing units assisted with such assistance will comply with the requirements under this section.

(f) SELECTION OF ACTIVITIES FUNDED USING AFFORDABLE HOUSING FUND GRANT AMOUNTS.—*Affordable housing fund grant amounts of a grantee may be used, or committed for use, only for activities that—*

(1) are eligible under subsection (g) for such use;

(2) comply with the applicable allocation plan under subsection (e) of the grantee; and

(3) are selected for funding by the grantee in accordance with the process and criteria for such selection established pursuant to subsection (m)(2)(C).

(g) ELIGIBLE ACTIVITIES.—*Affordable housing fund grant amounts of a grantee shall be eligible for use, or for commitment for use, only for assistance for—*

(1) the production, preservation, and rehabilitation of rental housing, including housing under the programs identified in section 1335(a)(2)(B), except that such grant amounts may be used for the benefit only of extremely low- and very low-income families;

(2) *the production, preservation, and rehabilitation of housing for homeownership, including such forms as downpayment assistance, closing cost assistance, and assistance for interest-rate buy-downs, that—*

(A) is available for purchase only for use as a principal residence by families that qualify both as—

(i) extremely low- and very-low income families at the times described in subparagraphs (A) through (C) of section 215(b)(2) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12745(b)(2)); and

(ii) first-time homebuyers, as such term is defined in section 104 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12704), except that any reference in such section to assistance under title II of such Act shall for purposes of this section be considered to refer to assistance from affordable housing fund grant amounts;

(B) has an initial purchase price that meets the requirements of section 215(b)(1) of the Cranston-Gonzalez National Affordable Housing Act;

(C) is subject to the same resale restrictions established under section 215(b)(3) of the Cranston-Gonzalez National Affordable Housing Act and applicable to the participating jurisdiction that is the State in which such housing is located; and

(D) is made available for purchase only by, or in the case of assistance under this paragraph, is made available only to, homebuyers who have, before purchase, completed a program of counseling with respect to the responsibilities and financial management involved in homeownership that is approved by the Director; and

(3) public infrastructure development activities in connection with housing activities funded under paragraph (1) or (2).

(h) ELIGIBLE RECIPIENTS.—Affordable housing fund grant amounts of a grantee may be provided only to a recipient that is an organization, agency, or other entity (including a for-profit entity, a nonprofit entity, and a faith-based organization) that—

(1) has demonstrated experience and capacity to conduct an eligible activity under (g), as evidenced by its ability to—

(A) own, construct or rehabilitate, manage, and operate an affordable multifamily rental housing development;

(B) design, construct or rehabilitate, and market affordable housing for homeownership;

(C) provide forms of assistance, such as downpayments, closing costs, or interest-rate buy-downs, for purchasers; or

(D) construct related public infrastructure development activities in connection with such housing activities;

(2) demonstrates the ability and financial capacity to undertake, comply, and manage the eligible activity;

(3) demonstrates its familiarity with the requirements of any other Federal, State or local housing program that will be used in conjunction with such grant amounts to ensure compliance with all applicable requirements and regulations of such programs; and

(4) makes such assurances to the grantee as the Director shall, by regulation, require to ensure that the recipient will comply with the requirements of this section during the entire period that begins upon selection of the recipient to receive such grant amounts and ending upon the conclusion of all activities under subsection (g) that are engaged in by the recipient and funded with such grant amounts.

(i) LIMITATIONS ON USE.—

(1) REQUIRED AMOUNT FOR REFCORP.—Of the aggregate amount allocated pursuant to subsection (b) in each year to the affordable housing fund, 25 percent shall be used as provided in section 21B(f)(2)(E) of the Federal Home Loan Bank Act (12 U.S.C. 1441b(f)(2)(E)).

(2) REQUIRED AMOUNT FOR HOMEOWNERSHIP ACTIVITIES.—Of the aggregate amount of affordable housing fund grant amounts provided in each year to a grantee, not less than 10 percent shall be used for activities under paragraph (2) of subsection (g).

(3) MAXIMUM AMOUNT FOR PUBLIC INFRASTRUCTURE DEVELOPMENT ACTIVITIES IN CONNECTION WITH AFFORDABLE HOUSING ACTIVITIES.—Of the aggregate amount of affordable housing fund grant amounts provided in each year to a grantee, not more than 12.5 percent may be used for activities under paragraph (3) of subsection (g).

(4) DEADLINE FOR COMMITMENT OR USE.—Any affordable housing fund grant amounts of a grantee shall be used or committed for use within two years of the date of that such grant amounts are made available to the grantee. The Director shall recapture into the affordable housing fund any such amounts not so used or committed for use and allocate such amounts under subsection (d)(1) in the first year after such recapture.

(5) USE OF RETURNS.—The Director shall, by regulation provide that any return on a loan or other investment of any affordable housing fund grant amounts of a grantee shall be treated, for purposes of availability to and use by the grantee, as affordable housing fund grant amounts.

(6) PROHIBITED USES.—The Director shall—

(A) by regulation, set forth prohibited uses of affordable housing fund grant amounts, which shall include use for—

- (i) political activities;
- (ii) advocacy;
- (iii) lobbying, whether directly or through other parties;
- (iv) counseling services;
- (v) travel expenses; and
- (vi) preparing or providing advice on tax returns;

(B) by regulation, provide that, except as provided in subparagraph (C), affordable housing fund grant amounts of a grantee may not be used for administrative, outreach, or other costs of—

- (i) the grantee; or
- (ii) any recipient of such grant amounts; and

(C) by regulation, limit the amount of any affordable housing fund grant amounts of the grantee for a year that may be used for administrative costs of the grantee of car-

rying out the program required under this section to a percentage of such grant amounts of the grantee for such year, which may not exceed 10 percent.

(7) **PROHIBITION OF CONSIDERATION OF USE FOR MEETING HOUSING GOALS OR DUTY TO SERVE.**—*In determining compliance with the housing goals under this subpart and the duty to serve underserved markets under section 1335, the Director may not consider any affordable housing fund grant amounts used under this section for eligible activities under subsection (g). The Director shall give credit toward the achievement of such housing goals and such duty to serve underserved markets to purchases by the enterprises of mortgages for housing that receives funding from affordable housing fund grant amounts, but only to the extent that such purchases by the enterprises are funded other than with such grant amounts.*

(j) **ACCOUNTABILITY OF RECIPIENTS AND GRANTEES.**—

(1) **RECIPIENTS.**—

(A) **TRACKING OF FUNDS.**—*The Director shall—*

(i) *require each grantee to develop and maintain a system to ensure that each recipient of assistance from affordable housing fund grant amounts of the grantee uses such amounts in accordance with this section, the regulations issued under this section, and any requirements or conditions under which such amounts were provided; and—*

(ii) *establish minimum requirements for agreements, between the grantee and recipients, regarding assistance from the affordable housing fund grant amounts of the grantee, which shall include—*

(I) *appropriate continuing financial and project reporting, record retention, and audit requirements for the duration of the grant to the recipient to ensure compliance with the limitations and requirements of this section and the regulations under this section; and*

(II) *any other requirements that the Director determines are necessary to ensure appropriate grant administration and compliance.*

(B) **MISUSE OF FUNDS.**—

(i) **REIMBURSEMENT REQUIREMENT.**—*If any recipient of assistance from affordable housing fund grant amounts of a grantee is determined, in accordance with clause (ii), to have used any such amounts in a manner that is materially in violation of this section, the regulations issued under this section, or any requirements or conditions under which such amounts were provided, the grantee shall require that, within 12 months after the determination of such misuse, the recipient shall reimburse the grantee for such misused amounts and return to the grantee any amounts from the affordable housing fund grant amounts of the grantee that remain unused or uncommitted for use. The remedies under this clause are in addition to any other remedies that may be available under law.*

(ii) *DETERMINATION.*—A determination is made in accordance with this clause if the determination is—

(I) made by the Director; or

(II)(aa) made by the grantee;

(bb) the grantee provides notification of the determination to the Director for review, in the discretion of the Director, of the determination; and

(cc) the Director does not subsequently reverse the determination.

(2) *GRANTEES.*—

(A) *REPORT.*—

(i) *IN GENERAL.*—The Director shall require each grantee receiving affordable housing fund grant amounts for a year to submit a report, for such year, to the Director that—

(I) describes the activities funded under this section during such year with the affordable housing fund grant amounts of the grantee; and

(II) the manner in which the grantee complied during such year with the allocation plan established pursuant to subsection (e) for the grantee.

(ii) *PUBLIC AVAILABILITY.*—The Director shall make such reports pursuant to this subparagraph publicly available.

(B) *MISUSE OF FUNDS.*—If the Director determines, after reasonable notice and opportunity for hearing, that a grantee has failed to comply substantially with any provision of this section and until the Director is satisfied that there is no longer any such failure to comply, the Director shall—

(i) reduce the amount of assistance under this section to the grantee by an amount equal to the amount of affordable housing fund grant amounts which were not used in accordance with this section;

(ii) require the grantee to repay the Director an amount equal to the amount of the amount of affordable housing fund grant amounts which were not used in accordance with this section;

(iii) limit the availability of assistance under this section to the grantee to activities or recipients not affected by such failure to comply; or

(iv) terminate any assistance under this section to the grantee.

(k) *CAPITAL REQUIREMENTS.*—The utilization or commitment of amounts from the affordable housing fund shall not be subject to the risk-based capital requirements established pursuant to section 1361(a).

(l) *DEFINITIONS.*—For purposes of this section, the following definitions shall apply:

(1) *AFFORDABLE HOUSING FUND GRANT AMOUNTS.*—The term “affordable housing fund grant amounts” means amounts from the affordable housing fund established under subsection (a) that are provided to a grantee pursuant to subsection (d)(3).

(2) *GRANTEE.*—The term “grantee” means—

(A) with respect to 2007, the Louisiana Housing Finance Agency and the Mississippi Development Authority; and

(B) with respect to the years referred to in subsection (b)(1), other than 2007, each State (as such term is defined in section 1303) and each federally recognized Indian tribe.

(3) *RECIPIENT.*—The term “recipient” means an entity meeting the requirements under subsection (h) that receives assistance from a grantee from affordable housing fund grant amounts of the grantee.

(4) *TOTAL MORTGAGE PORTFOLIO.*—The term “total mortgage portfolio” means, with respect to a year, the sum, for all mortgages outstanding during that year in any form, including whole loans, mortgage-backed securities, participation certificates, or other structured securities backed by mortgages, of the dollar amount of the unpaid outstanding principal balances under such mortgages. Such term includes all such mortgages or securitized obligations, whether retained in portfolio, or sold in any form. The Director is authorized to promulgate rules further defining such term as necessary to implement this section and to address market developments.

(5) *VERY-LOW INCOME FAMILY.*—The term “very low-income family” has the meaning given such term in section 1303, except that such term includes any family that resides in a rural area that has an income that does not exceed the poverty line (as such term is defined in section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9902(2)), including any revision required by such section) applicable to a family of the size involved.

(m) *REGULATIONS.*—

(1) *IN GENERAL.*—The Director, in consultation with the Secretary of Housing and Urban Development, shall issue regulations to carry out this section.

(2) *REQUIRED CONTENTS.*—The regulations issued under this subsection shall include—

(A) a requirement that the Director ensure that the program of each grantee for use of affordable housing fund grant amounts of the grantee is audited not less than annually to ensure compliance with this section;

(B) authority for the Director to audit, provide for an audit, or otherwise verify a grantee’s activities, to ensure compliance with this section;

(C) requirements for a process for application to, and selection by, each grantee for activities meeting the grantee’s priority housing needs to be funded with affordable housing fund grant amounts of the grantee, which shall provide for priority in funding to be based upon—

(i) greatest impact;

(ii) geographic diversity;

(iii) ability to obligate amounts and undertake activities so funded in a timely manner;

(iv) in the case of rental housing projects under subsection (g)(1), the extent to which rents for units in the project funded are affordable, especially for extremely low-income families;

(v) in the case of rental housing projects under subsection (g)(1), the extent of the duration for which such rents will remain affordable;

(vi) the extent to which the application makes use of other funding sources; and

(vii) the merits of an applicant's proposed eligible activity;

(D) requirements to ensure that amounts provided to a grantee from the affordable housing fund that are used for rental housing under subsection (g)(1) are used only for the benefit of extremely low- and very-low income families;

(E) limitations on public infrastructure development activities that are eligible pursuant to subsection (g)(3) for funding with affordable housing fund grant amounts and requirements for the connection between such activities and housing activities funded under paragraph (1) or (2) of subsection (g); and

(F) requirements and standards for establishment, by grantees (including the grantees for 2007 pursuant to subsection (l)(2)(A)), of performance goals, benchmarks, and timetables for the production, preservation, and rehabilitation of affordable rental and homeownership housing with affordable housing fund grant amounts.

(n) **ENFORCEMENT OF REQUIREMENTS ON ENTERPRISE.**—Compliance by the enterprises with the requirements under this section shall be enforceable under subpart C. Any reference in such subpart to this part or to an order, rule, or regulation under this part specifically includes this section and any order, rule, or regulation under this section.

(o) **AFFORDABLE HOUSING TRUST FUND.**—If, after the enactment of this Act, in any year, there is enacted any provision of Federal law establishing an affordable housing trust fund other than under this title for use only for grants to provide affordable rental housing and affordable homeownership opportunities, and the subsequent year is a year referred to in subsection (b)(1), the Director shall in such subsequent year and any remaining years referred to in subsection (b)(1) transfer to such affordable housing trust fund the aggregate amount allocated pursuant to subsection (b) in such year to the affordable housing fund under this section, less any amounts used pursuant to subsection (i)(1). For such subsequent and remaining years, the provisions of subsections (c) and (d) shall not apply. Nothing in this subsection shall be construed to alter the terms and conditions of the affordable housing fund under this section or to extend the life of such fund.

SEC. 1338. CONSISTENCY WITH MISSION.

This subpart may not be construed to authorize an enterprise to engage in any program or activity that contravenes or is inconsistent with the Federal National Mortgage Association Charter Act or the Federal Home Loan Mortgage Corporation Act.

[Subpart C—Enforcement of Housing Goals]

Subpart C—Enforcement

SEC. 1341. CEASE-AND-DESIST PROCEEDINGS.

[(a) GROUND FOR ISSUANCE.—The Secretary may issue and serve a notice of charges under this section upon an enterprise if, in the determination of the Secretary—

[(1) the enterprise has failed to submit a housing plan that substantially complies with section 1336(c) within the applicable period;

[(2) the enterprise is engaging or has engaged, or the Secretary has reasonable cause to believe that the enterprise is about to engage, in any failure to make a good faith effort to comply with a housing plan for the enterprise submitted and approved under section 1336(c); or

[(3) the enterprise has failed to submit the information required under subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act, subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act, or section 1337 of this title.]

(a) *GROUND FOR ISSUANCE.—The Director may issue and serve a notice of charges under this section upon an enterprise if the Director determines—*

(1) the enterprise has failed to meet any housing goal established under subpart B, following a written notice and determination of such failure in accordance with section 1336;

(2) the enterprise has failed to submit a report under section 1314, following a notice of such failure, an opportunity for comment by the enterprise, and a final determination by the Director;

(3) the enterprise has failed to submit the information required under subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act, or subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act;

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

(5) the enterprise has failed to submit a housing plan that complies with section 1336(c) within the applicable period; or

(6) the enterprise has failed to comply with a housing plan under section 1336(c).

(b) PROCEDURE.—

(1) NOTICE OF CHARGES.—Each notice of charges shall contain a statement of the facts constituting the alleged conduct and shall fix a time and place at which a hearing will be held to determine on the record whether an order to cease and desist from such conduct should issue.

(2) ISSUANCE OF ORDER.—If the [Secretary] *Director* finds on the record made at such hearing that any conduct specified in the notice of charges has been established (or the enterprise consents pursuant to section 1342(a)(4)), the [Secretary] *Director* may issue and serve upon the enterprise an order [requiring the enterprise to (A) submit a housing plan in compliance with section 1336(c), (B) comply with the housing plan, or (C)

provide the information required under subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act, subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act, or section 1337 of this title.] *requiring the enterprise to—*

(A) *comply with the goal or goals;*

(B) *submit a report under section 1314;*

(C) *comply with any provision this part or any order, rule or regulation under such part;*

(D) *submit a housing plan in compliance with section 1336(c);*

(E) *comply with a housing plan submitted under section 1336(c); or*

(F) *provide the information required under subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act or subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act, as applicable.*

(c) **EFFECTIVE DATE.**—An order under this section shall become effective upon the expiration of the 30-day period beginning on the *date of the* service of the order upon the enterprise (except in the case of an order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided in the order, except to the extent that the order is stayed, modified, terminated, or set aside by action of the **【Secretary】 Director** or otherwise, as provided in this subpart.

【(d) TRANSITION PERIOD LIMITATION.—The **【Secretary】 Director** may not impose any cease-and-desist order under this section for any failure by an enterprise, during the 2-year period beginning on the January 1, 1993, to comply with an approved housing plan, unless the **【Secretary】 Director** determines that the enterprise has intentionally failed to make a good faith effort to comply with the approved plan.]

SEC. 1342. HEARINGS.

(a) * * *

(b) **ISSUANCE OF ORDER.**—

(1) **IN GENERAL.**—After any such hearing, and within 90 days after the enterprise has been notified that the case has been submitted to the **【Secretary】 Director** for final decision, the **【Secretary】 Director** shall render the decision (which shall include findings of fact upon which the decision is predicated) and shall issue and serve upon the enterprise an order or orders consistent with the provisions of this subpart.

(2) **MODIFICATION.**—Judicial review of any such order shall be exclusively as provided in section 1343. Unless such a petition for review is timely filed as provided in section 1343, and thereafter until the record in the proceeding has been filed as so provided, the **【Secretary】 Director** may at any time, modify, terminate, or set aside any such order, upon such notice and in such manner as the **【Secretary】 Director** considers proper. Upon such filing of the record, the **【Secretary】 Director** may modify, terminate, or set aside any such order with permission of the court.

SEC. 1343. JUDICIAL REVIEW.

(a) **COMMENCEMENT.**—An enterprise that is a party to a proceeding under section 1341 or 1345 may obtain review of any final order issued under such section by filing in the United States Court of Appeals for the District of Columbia Circuit, within 30 days after the date of service of such order, a written petition praying that the order of the **【Secretary】 Director** be modified, terminated, or set aside. The clerk of the court shall transmit a copy of the petition to the **【Secretary】 Director**.

(b) **FILING OF RECORD.**—Upon receiving a copy of a petition, the **【Secretary】 Director** shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code.

(c) **JURISDICTION.**—Upon the filing of a petition, such court shall have jurisdiction, which upon the filing of the record by the **【Secretary】 Director** shall (except as provided in the last sentence of section 1342(b)(2)) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the **【Secretary】 Director**.

(d) **REVIEW.**—Review of such proceedings shall be governed by chapter 7 of title 5, United States Code.

(e) **ORDER TO PAY PENALTY.**—Such court shall have the authority in any such review to order payment of any penalty imposed by the **【Secretary】 Director** under this subpart.

(f) **NO AUTOMATIC STAY.**—The commencement of proceedings for judicial review under this section shall not, unless specifically ordered by the court, operate as a stay of any order issued by the **【Secretary】 Director**.

SEC. 1344. ENFORCEMENT AND JURISDICTION.

【(a) ENFORCEMENT.—The Secretary may request the Attorney General of the United States to bring an action in the United States District Court for the District of Columbia for the enforcement of any effective notice or order issued under section 1341 or 1345. Such court shall have jurisdiction and power to order and require compliance herewith.**】**

(a) ENFORCEMENT.—The Director may, in the discretion of the Director, apply to the United States District Court for the District of Columbia, or the United States district court within the jurisdiction of which the headquarters of the enterprise is located, for the enforcement of any effective and outstanding notice or order issued under section 1341 or 1345, or request that the Attorney General of the United States bring such an action. Such court shall have jurisdiction and power to order and require compliance with such notice or order.

* * * * *

SEC. 1345. CIVIL MONEY PENALTIES.

【(a) AUTHORITY.—The Secretary may impose a civil money penalty, in accordance with the provisions of this section, on any enterprise that has failed—

【(1) to submit a housing plan that substantially complies with section 1336(c) within the applicable period;

【(2) to make a good faith effort to comply with a housing plan for the enterprise submitted and approved under section 1336(c); or

【(3) to submit the information required under subsection (m) or (n) of section 309 of the Federal National Mortgage Associa-

tion Charter Act, subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act, or section 1337 of this title.

[(b) AMOUNT OF PENALTY.—The amount of the penalty, as determined by the Secretary, may not exceed—

[(1) for any failure described in subsection (a)(1), \$25,000 for each day that the failure occurs; and

[(2) for any failure described in subsection (a) (2) or (3), \$10,000 for each day that the failure occurs.]

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

(1) *meet any housing goal established under subpart B, following a written notice and determination of such failure in accordance with section 1336(b);*

(2) *submit a report under section 1314, following a notice of such failure, an opportunity for comment by the enterprise, and a final determination by the Director;*

(3) *submit the information required under subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act, or subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act;*

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

(5) *submit a housing plan pursuant to section 1336(c) within the required period; or*

(6) *comply with a housing plan for the enterprise under section 1336(c).*

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

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

(2) *for any failure described in paragraph (2), (3), or (4) of subsection (a), \$20,000 for each day that the failure occurs.*

(c) PROCEDURES.—

(1) ESTABLISHMENT.—The [Secretary] *Director* shall establish standards and procedures governing the imposition of civil money penalties under this section. Such standards and procedures—

(A) shall provide for the [Secretary] *Director* to notify the enterprise in writing of the [Secretary's] *Director's* determination to impose the penalty, which shall be made on the record; *and*

(B) shall provide for the imposition of a penalty only after the enterprise has been given an opportunity for a hearing on the record pursuant to section 1342[; and].

[(C) may provide for review by the Director for any determination or order, or interlocutory ruling, arising from a hearing.]

(2) FACTORS IN DETERMINING AMOUNT OF PENALTY.—In determining the amount of a penalty under this section, the [Secretary] *Director* shall give consideration to such factors as the gravity of the offense, any history of prior offenses, ability to pay the penalty, injury to the public, benefits received, deterrence of future violations, and such other factors as the [Sec-

retary] *Director* may determine, by regulation, to be appropriate. *In determining the penalty under subsection (a)(1), the Director shall give consideration to the length of time the enterprise should reasonably take to achieve the goal.*

(d) ACTION TO COLLECT PENALTY.—If an enterprise fails to comply with an order by the [Secretary] *Director* imposing a civil money penalty under this section, after the order is no longer subject to review as provided by sections 1342 and 1343, the [Secretary] *Director* may [request the Attorney General of the United States to], *in the discretion of the Director*, bring an action in the United States District Court for the District of Columbia to obtain a monetary judgment against the enterprise and such other relief as may be available, *or request that the Attorney General of the United States bring such an action.* The monetary judgment may, in the court's discretion, include the attorneys fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the order imposing the penalty shall not be subject to review.

(e) SETTLEMENT BY SECRETARY.—The [Secretary] *Director* may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

[(f) TRANSITION PERIOD LIMITATION.—The Secretary may not impose any civil money penalty under this section for any failure by an enterprise, during the 2-year period beginning on January 1, 1993, to comply with an approved housing plan, unless the Secretary determines that the enterprise has intentionally failed to make a good faith effort to comply with an approved plan.]

[(g) (f) DEPOSIT OF PENALTIES.—The [Secretary] *Director* shall deposit any civil money penalties collected under this section into the general fund of the Treasury.

SEC. 1346. PUBLIC DISCLOSURE OF FINAL ORDERS AND AGREEMENTS.

(a) IN GENERAL.—The [Secretary] *Director* shall make available to the public—

(1) any written agreement or other written statement for which a violation may be redressed by the [Secretary] *Director* or any modification to or termination thereof, unless the [Secretary] *Director*, in the [Secretary's] *Director's* discretion, determines that public disclosure would be contrary to the public interest or determines under subsection (c) that public disclosure would seriously threaten the financial health or security of the enterprise;

(2) any order that is issued with respect to any administrative enforcement proceeding initiated by the [Secretary] *Director* under this subpart and that has become final in accordance with sections 1342 and 1343; and

(3) any modification to or termination of any final order made public pursuant to this subsection.

(b) HEARINGS.—All hearings with respect to any notice of charges issued by the [Secretary] *Director* shall be open to the public, unless the [Secretary] *Director*, in the [Secretary's] *Director's* discretion, determines that holding an open hearing would be contrary to the public interest.

(c) DELAY OF PUBLIC DISCLOSURE UNDER EXCEPTIONAL CIRCUMSTANCES.—If the [Secretary] *Director* makes a determination

in writing that the public disclosure of any final order pursuant to subsection (a) would seriously threaten the financial soundness of the enterprise, the **Secretary** *Director* may delay the public disclosure of such order for a reasonable time.

(d) DOCUMENTS FILED UNDER SEAL IN PUBLIC ENFORCEMENT HEARINGS.—The **Secretary** *Director* may file any document or part thereof under seal in any hearing under this subpart if the **Secretary** *Director* determines in writing that disclosure thereof would be contrary to the public interest.

(e) RETENTION OF DOCUMENTS.—The **Secretary** *Director* shall keep and maintain a record, for not less than 6 years, of all documents described in subsection (a) and all enforcement agreements and other supervisory actions and supporting documents issued with respect to or in connection with any enforcement proceeding initiated by the **Secretary** *Director* under this subpart.

(f) DISCLOSURES TO CONGRESS.—This section may not be construed to authorize the withholding, or to prohibit the disclosure, of any information to the Congress or any committee or subcommittee thereof.

SEC. 1347. NOTICE OF SERVICE.

Any service required or authorized to be made by the **Secretary** *Director* under this subpart may be made by registered mail or in such other manner reasonably calculated to give actual notice, as the **Secretary** *Director* may by regulation or otherwise provide.

SEC. 1348. SUBPOENA AUTHORITY.

(a) IN GENERAL.—In the course of or in connection with any administrative proceeding under this subpart, the **Secretary** *Director* shall have the authority—

(1) * * *

* * * * *

(4) to revoke, quash, or modify subpoenas and subpoenas duces tecum issued by the **Secretary** *Director*.

* * * * *

(c) ENFORCEMENT.—The **Secretary** *Director* may **request the Attorney General of the United States to**, *in the discretion of the Director*, bring an action in the United States district court for the judicial district in which such proceeding is being conducted, or where the witness resides or conducts business, or the United States District Court for the District of Columbia, *or request that the Attorney General of the United States bring such an action*, for enforcement of any subpoena or subpoena duces tecum issued pursuant to this section. Such courts shall have jurisdiction and power to order and require compliance therewith.

* * * * *

[SEC. 1349. REGULATIONS.

The Secretary shall issue any final regulations necessary to implement the provisions of this part (not including the provisions of sections 1332(d), 1333(d), and 1334(d), relating to transition housing goals) not later than the expiration of the 18-month period beginning on the date of the enactment of this Act. Such regulations shall be issued after notice and opportunity for public comment

pursuant to the provisions of section 553 of title 5, United States Code.]

* * * * *

[Subtitle B—Required Capital Levels for Enterprises and Special Enforcement Powers

[SEC. 1361. RISK-BASED CAPITAL LEVELS.

[(a) RISK-BASED CAPITAL TEST.—The Director shall, by regulation, establish a risk-based capital test under this section for the enterprises. When applied to an enterprise, the risk-based capital test shall determine the amount of total capital for the enterprise that is sufficient for the enterprise to maintain positive capital during a 10-year period in which the following circumstances occur (in this section referred to as the “stress period”):

[(1) CREDIT RISK.—With respect to mortgages owned or guaranteed by the enterprise and other obligations of the enterprise, losses occur throughout the United States at a rate of default and severity (based on any measurements of default reasonably related to prevailing practice for that industry in determining capital adequacy) reasonably related to the rate and severity that occurred in contiguous areas of the United States containing an aggregate of not less than 5 percent of the total population of the United States that, for a period of not less than 2 years, experienced the highest rates of default and severity of mortgage losses, in comparison with such rates of default and severity of mortgage losses in other such areas for any period of such duration.

[(2) INTEREST RATE RISK.—

[(A) IN GENERAL.—Interest rates decrease as described in subparagraph (B) or increase as described in subparagraph (C), whichever would require more capital for the enterprise.

[(B) DECREASES.—The 10-year constant maturity Treasury yield decreases during the first year of the stress period and will remain at the new level for the remainder of the stress period. The yield decreases to the lesser of—

[(i) 600 basis points below the average yield during the preceding 9 months, or

[(ii) 60 percent of the average yield during the preceding 3 years,

but in no case to a yield less than 50 percent of the average yield during the preceding 9 months.

[(C) INCREASES.—The 10-year constant maturity Treasury yield increases during the first year of the stress period and will remain at the new level for the remainder of the stress period. The yield increases to the greater of—

[(i) 600 basis points above the average yield during the preceding 9 months, or

[(ii) 160 percent of the average yield during the preceding 3 years,

but in no case to a yield greater than 175 percent of the average yield during the preceding 9 months.

【(D) DIFFERENT TERMS TO MATURITY.—Yields of Treasury instruments with other terms to maturity will change relative to the 10-year constant maturity Treasury yield in patterns and for durations that are reasonably related to historical experience and are judged reasonable by the Director.

【(E) LARGE INCREASES IN YIELDS.—If the 10-year constant maturity Treasury yield is assumed to increase by more than 50 percent over the average yield during the preceding 9 months, the Director shall adjust the losses in paragraphs (1) and (3) to reflect a correspondingly higher rate of general price inflation.

【(3) NEW BUSINESS.—

【(A) IN GENERAL.—Any contractual commitments of the enterprise to purchase mortgages or issue securities will be fulfilled. The characteristics of resulting mortgage purchases, securities issued, and other financing will be consistent with the contractual terms of such commitments, recent experience, and the economic characteristics of the stress period. No other purchases of mortgages shall be assumed, except as provided in subparagraph (B).

【(B) ADDITIONAL NEW BUSINESS.—The Director may, after consideration of each of the studies required by subparagraph (C), assume that the enterprise conducts additional new business during the stress period consistent with the following—

【(i) AMOUNT AND PRODUCT TYPES.—The amount and types of mortgages purchased and their financing will be reasonably related to recent experience and the economic characteristics of the stress period.

【(ii) LOSSES.—Default and loss severity characteristics of mortgages purchased will be reasonably related to historical experience.

【(iii) PRICING.—Prices charged by the enterprise in purchasing new mortgages will be reasonably related to recent experience and the economic characteristics of the stress period. The Director may assume that a reasonable period of time would lapse before the enterprise would recognize and react to the characteristics of the stress period.

【(iv) INTEREST RATE RISK.—Interest rate risk on new mortgages purchased will occur to an extent reasonably related to historical experience.

【(v) RESERVES.—The enterprise must maintain reserves during and at the end of the stress period on new business conducted during the first 5 years of the stress period reasonably related to the expected future losses on such business, consistent with generally accepted accounting principles and industry accounting practice.

【(C) STUDIES.—Within 1 year after regulations are first issued under subsection (e), the Director of the Congressional Budget Office, and the Comptroller General of the

United States shall each submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives a study of the advisability and appropriate form of any new business assumptions under subparagraph (B).

[(D) EFFECTIVE DATE.—The provisions of subparagraph (B) shall become effective 4 years after regulations are first issued under subsection (e).

[(4) OTHER ACTIVITIES.—Losses or gains on other activities, including interest rate and foreign exchange hedging activities, shall be determined by the Director, on the basis of available information, to be consistent with the stress period.

[(b) CONSIDERATIONS.—

[(1) IN GENERAL.—In establishing the risk-based capital test under subsection (a), the Director shall take into account appropriate distinctions among types of mortgage products, differences in seasoning of mortgages, and any other factors the Director considers appropriate.

[(2) CONSISTENCY.—Characteristics of the stress period other than those specifically set forth in subsection (a), such as prepayment experience and dividend policies, will be those determined by the Director, on the basis of available information, to be most consistent with the stress period.

[(c) RISK-BASED CAPITAL LEVEL.—For purposes of this subtitle, the risk-based capital level for an enterprise shall be equal to the sum of the following amounts:

[(1) CREDIT AND INTEREST RATE RISK.—The amount of total capital determined by applying the risk-based capital test under subsection (a) to the enterprise.

[(2) MANAGEMENT AND OPERATIONS RISK.—To provide for management and operations risk, 30 percent of the amount of total capital determined by applying the risk-based capital test under subsection (a) to the enterprise.

[(d) DEFINITIONS.—For purposes of this section:

[(1) SEASONING.—The term “seasoning” means the change over time in the ratio of the unpaid principal balance of a mortgage to the value of the property by which such mortgage loan is secured, determined on an annual basis by region, in accordance with the Constant Quality Home Price Index published by the Secretary of Commerce (or any index of similar quality, authority, and public availability that is regularly used by the Federal Government).

[(2) TYPE OF MORTGAGE PRODUCT.—The term “type of mortgage product” means a classification of one or more mortgage products, as established by the Director, which have similar characteristics from each set of characteristics under the following subparagraphs:

[(A) The property securing the mortgage is—

[(i) a residential property consisting of 1 to 4 dwelling units; or

[(ii) a residential property consisting of more than 4 dwelling units.

[(B) The interest rate on the mortgage is—

[(i) fixed; or

public acquisition and may charge a reasonable fee for such copies.]

Subtitle B—Required Capital Levels for Regulated Entities, Special Enforcement Powers, and Reviews of Assets and Liabilities

SEC. 1361. RISK-BASED CAPITAL LEVELS FOR REGULATED ENTITIES.

(a) *IN GENERAL.*—

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

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

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

(1) maintain the confidentiality of the book, record, or information in a manner that is generally consistent with the level of confidentiality established for the material by the Director or the regulated entity; and

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

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

SEC. 1362. MINIMUM CAPITAL LEVELS.

(a) **[IN GENERAL]** *ENTERPRISES.*—For purposes of this subtitle, the minimum capital level for each enterprise shall be the sum of—

(1) * * *

* * * * *

[(b) TRANSITION.—Notwithstanding subsection (a), during the 18-month period beginning upon the date of the enactment of this Act, the minimum capital level for each enterprise shall be the sum of—

[(1) 2.25 percent of the aggregate on-balance sheet assets of the enterprise, as determined in accordance with generally accepted accounting principles;

[(2) 0.40 percent of the unpaid principal balance of outstanding mortgage-backed securities and substantially equivalent instruments issued or guaranteed by the enterprise that are not included in paragraph (1); and

[(3) 0.40 percent of other off-balance sheet obligations of the enterprise not included in paragraph (2) (excluding commitments in excess of 50 percent of the average dollar amount of the commitments outstanding each quarter over the preceding 4 quarters), except that the Director shall adjust such percent-

age to reflect differences in the credit risk of such obligations in relation to the instruments included in paragraph (2).¹

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

(c) *ESTABLISHMENT OF REVISED MINIMUM CAPITAL LEVELS.*—Notwithstanding subsections (a) and (b) and notwithstanding the capital classifications of the regulated entities, the Director may, by regulations issued under section 1319G, establish a minimum capital level for the enterprises, for the Federal home loan banks, or for both the enterprises and the banks, that is higher than the level specified in subsection (a) for the enterprises or the level specified in subsection (b) for the Federal home loan banks, to the extent needed to ensure that the regulated entities operate in a safe and sound manner.

(d) *AUTHORITY TO REQUIRE TEMPORARY INCREASE.*—Notwithstanding subsections (a) and (b) and any minimum capital level established pursuant to subsection (c), the Director may, by order, increase the minimum capital level for a regulated entity on a temporary basis for such period as the Director may provide if the Director—

(1) makes any determination specified in subparagraphs (A) through (C) of section 1364(c)(1);

(2) determines that the regulated entity has violated any of the prudential standards established pursuant to section 1313A and, as a result of such violation, determines that an unsafe and unsound condition exists; or

(3) determines that an unsafe and unsound condition exists, except that a temporary increase in minimum capital imposed on a regulated entity pursuant to this paragraph shall not remain in place for a period of more than 6 months unless the Director makes a renewed determination of the existence of an unsafe and unsound condition.

(e) *AUTHORITY TO ESTABLISH ADDITIONAL CAPITAL AND RESERVE REQUIREMENTS FOR PARTICULAR PROGRAMS.*—The Director may, at any time by order or regulation, establish such capital or reserve requirements with respect to any program or activity of a regulated entity as the Director considers appropriate to ensure that the regulated entity operates in a safe and sound manner, with sufficient capital and reserves to support the risks that arise in the operations and management of the regulated entity.

(f) *PERIODIC REVIEW.*—The Director shall periodically review the amount of core capital maintained by the enterprises, the amount of capital retained by the Federal home loan banks, and the minimum capital levels established for such regulated entities pursuant to this section. The Director shall rescind any temporary minimum capital level increase if the Director determines that the circumstances or facts justifying the temporary increase are no longer present.

SEC. 1363. CRITICAL CAPITAL LEVELS.

[For] (a) *ENTERPRISES.*—For purposes of this subtitle, the critical capital level for each enterprise shall be the sum of—

(1) * * *

* * * * *

(b) *FEDERAL HOME LOAN BANKS.*—

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

(2) *CONSIDERATION OF OTHER CRITICAL CAPITAL LEVELS.*—In establishing the critical capital level under paragraph (1) for the Federal home loan banks, the Director shall take due consideration of the critical capital level established under subsection (a) for the enterprises, with such modifications as the Director determines to be appropriate to reflect the difference in operations between the banks and the enterprises.

SEC. 1364. CAPITAL CLASSIFICATIONS.

(a) **【IN GENERAL】 ENTERPRISES.**—For purposes of this subtitle, the Director shall classify the enterprises according to the following capital classifications:

(1) * * *

* * * * *

【(b) DISCRETIONARY CLASSIFICATION.—If at any time the Director determines in writing that an enterprise is engaging in conduct not approved by the Director that could result in a rapid depletion of core capital or that the value of the property subject to mortgages held or securitized by the enterprise has decreased significantly, the Director may classify the enterprise—

【(1) as undercapitalized, if the enterprise is otherwise classified as adequately capitalized;

【(2) as significantly undercapitalized, if the enterprise is otherwise classified as undercapitalized; and

【(3) as critically undercapitalized, if the enterprise is otherwise classified as significantly undercapitalized.】

(b) *FEDERAL HOME LOAN BANKS.*—

(1) *ESTABLISHMENT AND CRITERIA.*—For purposes of this subtitle, the Director shall, by regulation—

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

(B) establish criteria for each such capital classification based on the amount and types of capital held by a bank and the risk-based, minimum, and critical capital levels for the banks and taking due consideration of the capital classifications established under subsection (a) for the enterprises, with such modifications as the Director determines to be appropriate to reflect the difference in operations between the banks and the enterprises; and

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

(2) *CLASSIFICATIONS.*—The capital classifications specified under this paragraph are—

(A) adequately capitalized;

(B) undercapitalized;

(C) significantly undercapitalized; and

(D) critically undercapitalized.

(c) *DISCRETIONARY CLASSIFICATION.*—

(1) *GROUNDS FOR RECLASSIFICATION.*—*The Director may reclassify a regulated entity under paragraph (2) if—*

(A) *at any time, the Director determines in writing that the regulated entity is engaging in conduct that could result in a rapid depletion of core or total capital or, in the case of an enterprise, that the value of the property subject to mortgages held or securitized by the enterprise has decreased significantly;*

(B) *after notice and an opportunity for hearing, the Director determines that the regulated entity is in an unsafe or unsound condition; or*

(C) *pursuant to section 1371(b), the Director deems the regulated entity to be engaging in an unsafe or unsound practice.*

(2) *RECLASSIFICATION.*—*In addition to any other action authorized under this title, including the reclassification of a regulated entity for any reason not specified in this subsection, if the Director takes any action described in paragraph (1) the Director may classify a regulated entity—*

(A) *as undercapitalized, if the regulated entity is otherwise classified as adequately capitalized;*

(B) *as significantly undercapitalized, if the regulated entity is otherwise classified as undercapitalized; and*

(C) *as critically undercapitalized, if the regulated entity is otherwise classified as significantly undercapitalized.*

[(c)] (d) *QUARTERLY DETERMINATION.*—*The Director shall determine the capital classification of the [enterprises] regulated entities for purposes of this subtitle on not less than a quarterly basis (and as appropriate under subsection [(b)] (c)). [The first such determination shall be made during the 3-month period beginning on the appointment of the Director.]*

(e) *RESTRICTION ON CAPITAL DISTRIBUTIONS.*—

(1) *IN GENERAL.*—*A regulated entity shall make no capital distribution if, after making the distribution, the regulated entity would be undercapitalized.*

(2) *EXCEPTION.*—*Notwithstanding paragraph (1), the Director may permit a regulated entity, to the extent appropriate or applicable, to repurchase, redeem, retire, or otherwise acquire shares or ownership interests if the repurchase, redemption, retirement, or other acquisition—*

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

(B) *will reduce the financial obligations of the regulated entity or otherwise improve the financial condition of the entity.*

[(d)] (f) *IMPLEMENTATION.*—*Notwithstanding any other provision of this section, during the period beginning on the date of the enactment of this Act and ending upon the effective date of section 1365 (as provided in section 1365(c)), an enterprise shall be classified as adequately capitalized if the enterprise maintains an amount of core capital that is equal to or exceeds the minimum capital level for the enterprise under section 1362.*

SEC. 1365. SUPERVISORY ACTIONS APPLICABLE TO UNDERCAPITALIZED [ENTERPRISES] REGULATED ENTITIES.

(a) **MANDATORY ACTIONS.**—

(1) **REQUIRED MONITORING.**—*The Director shall—*

(A) *closely monitor the condition of any regulated entity that is classified as undercapitalized;*

(B) *closely monitor compliance with the capital restoration plan, restrictions, and requirements imposed under this section; and*

(C) *periodically review the plan, restrictions, and requirements applicable to the undercapitalized regulated entity to determine whether the plan, restrictions, and requirements are achieving the purpose of this section.*

[(1)] (2) **CAPITAL RESTORATION PLAN.**—*[An enterprise] A regulated entity that is classified as undercapitalized shall, within the time period provided in section 1369C (b) and (d), submit to the Director a capital restoration plan that complies with section 1369C and carry out the plan after approval.*

[(2)] (3) **RESTRICTION ON CAPITAL DISTRIBUTIONS.**—*[An enterprise] A regulated entity that is classified as undercapitalized may not make any capital distribution that would result in [the enterprise] the regulated entity being reclassified as significantly undercapitalized or critically undercapitalized.*

(4) **RESTRICTION OF ASSET GROWTH.**—*A regulated entity that is classified as undercapitalized shall not permit its average total assets (as such term is defined in section 1316(b) during any calendar quarter to exceed its average total assets during the preceding calendar quarter unless—*

(A) *the Director has accepted the capital restoration plan of the regulated entity;*

(B) *any increase in total assets is consistent with the plan; and*

(C) *the ratio of total capital to assets for the regulated entity increases during the calendar quarter at a rate sufficient to enable the entity to become adequately capitalized within a reasonable time.*

(5) **PRIOR APPROVAL OF ACQUISITIONS, NEW PRODUCTS, AND NEW ACTIVITIES.**—*A regulated entity that is classified as undercapitalized shall not, directly or indirectly, acquire any interest in any entity or initially offer any new product (as such term is defined in section 1321(f)) or engage in any new activity, service, undertaking, or offering unless—*

(A) *the Director has accepted the capital restoration plan of the regulated entity, the entity is implementing the plan, and the Director determines that the proposed action is consistent with and will further the achievement of the plan;*
or

(B) *the Director determines that the proposed action will further the purpose of this section.*

(b) **DISCRETIONARY RECLASSIFICATION [FROM UNDERCAPITALIZED TO SIGNIFICANTLY UNDERCAPITALIZED].**—*The Director may reclassify as significantly undercapitalized [an enterprise] a regulated entity that is classified as undercapitalized (and [the enterprise] the regulated entity shall be subject to the provisions of section 1366) if—*

(1) **the enterprise** *the regulated entity* does not submit a capital restoration plan that is substantially in compliance with section 1369C within the applicable period or the Director does not approve the capital restoration plan submitted by **the enterprise** *the regulated entity*; or

(2) the Director determines that **the enterprise** *the regulated entity* has failed to make, in good faith, reasonable efforts necessary to comply with the capital restoration plan and fulfill the schedule for the plan approved by the Director.

[(c) EFFECTIVE DATE.—This section shall take effect upon the expiration of the 1-year period beginning on the date of the effectiveness of the regulations issued under section 1361(e) establishing the risk-based capital test.]

(c) OTHER DISCRETIONARY SAFEGUARDS.—*The Director may take, with respect to a regulated entity that is classified as undercapitalized, any of the actions authorized to be taken under section 1366 with respect to a regulated entity that is classified as significantly undercapitalized, if the Director determines that such actions are necessary to carry out the purpose of this subtitle.*

SEC. 1366. SUPERVISORY ACTIONS APPLICABLE TO SIGNIFICANTLY UNDERCAPITALIZED [ENTERPRISES] REGULATED ENTITIES.

(a) MANDATORY SUPERVISORY ACTIONS.—

(1) CAPITAL RESTORATION PLAN.—**[An enterprise]** *A regulated entity* that is classified as significantly undercapitalized shall, within the time period under section 1369C (b) and (d), submit to the Director a capital restoration plan that complies with section 1369C and carry out the plan after approval.

(2) RESTRICTIONS ON CAPITAL DISTRIBUTIONS.—

(A) PRIOR APPROVAL.—**[An enterprise]** *A regulated entity* that is classified as significantly undercapitalized may not make any capital distribution that would result in **the enterprise** *the regulated entity* being reclassified as critically undercapitalized. **[An enterprise]** *A regulated entity* that is classified as significantly undercapitalized **[enterprise]** may not make any other capital distribution unless the Director approves the distribution.

(B) STANDARD FOR APPROVAL.—The Director may approve a capital distribution by **[an enterprise]** *a regulated entity* classified as significantly undercapitalized only if the Director determines that the distribution (i) will enhance the ability of **the enterprise** *the regulated entity* to meet the risk-based capital level and the minimum capital level for **the enterprise** *the regulated entity* promptly, (ii) will contribute to the long-term financial safety and soundness of **the enterprise** *the regulated entity*, or (iii) is otherwise in the public interest.

(b) [DISCRETIONARY SUPERVISORY ACTIONS] SPECIFIC ACTIONS.—In addition to any other actions taken by the Director (including actions under subsection (a)), the Director **[may, at any time, take any]** *shall carry out this section by taking, at any time, one or more of the following actions with respect to [an enterprise] a regulated entity* that is classified as significantly undercapitalized:

(1) LIMITATION ON INCREASE IN OBLIGATIONS.—Limit any increase in, or order the reduction of, any obligations of **the en-**

enterprise] *the regulated entity*, including off-balance sheet obligations.

(2) LIMITATION ON GROWTH.—Limit or prohibit the growth of the assets of [the enterprise] *the regulated entity* or require contraction of the assets of [the enterprise] *the regulated entity*.

(3) ACQUISITION OF NEW CAPITAL.—Require [the enterprise] *the regulated entity* to acquire new capital in a form and amount determined by the Director.

(4) RESTRICTION OF ACTIVITIES.—Require [the enterprise] *the regulated entity* to terminate, reduce, or modify any activity that the Director determines creates excessive risk to [the enterprise] *the regulated entity*.

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

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

(B) DISMISSAL OF DIRECTORS OR EXECUTIVE OFFICERS.—Require the regulated entity to dismiss from office any director or executive officer who had held office for more than 180 days immediately before the entity became undercapitalized. Dismissal under this subparagraph shall not be construed to be a removal pursuant to the Director's enforcement powers provided in section 1377.

(C) EMPLOY QUALIFIED EXECUTIVE OFFICERS.—Require the regulated entity to employ qualified executive officers (who, if the Director so specifies, shall be subject to approval by the Director).

[(5)] (6) RECLASSIFICATION FROM SIGNIFICANTLY TO CRITICALLY UNDERCAPITALIZED.—The Director may reclassify as critically undercapitalized [an enterprise] *a regulated entity* that is classified as significantly undercapitalized (and [the enterprise] *the regulated entity* shall be subject to the provisions of section 1367) if—

(A) [the enterprise] *the regulated entity* does not submit a capital restoration plan that is substantially in compliance with section 1369C within the applicable period or the Director does not approve the capital restoration plan submitted by [the enterprise] *the regulated entity*; or

(B) the Director determines that [the enterprise] *the regulated entity* has failed to make, in good faith, reasonable efforts necessary to comply with the capital restoration plan and fulfill the schedule for the plan approved by the Director.

[(6)] (7) CONSERVATORSHIP.—Appoint a conservator for [the enterprise] *the regulated entity* in accordance with the provisions of [section 1369 (excluding subsection (a) (1) and (2))] *section 1367*, but only if the Director determines—

(A) that the amount of core capital of [the enterprise] *the regulated entity* is less than the minimum capital level established for [the enterprise] *the regulated entity* under section 1362; and

(B) that alternative remedies available to the Director under this title are not satisfactory.

(8) *OTHER ACTION.*—Require the regulated entity to take any other action that the Director determines will better carry out the purpose of this section than any of the actions specified in this paragraph.

(c) *RESTRICTION ON COMPENSATION OF EXECUTIVE OFFICERS.*—A regulated entity that is classified as significantly undercapitalized may not, without prior written approval by the Director—

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

(2) provide compensation to any executive officer at a rate exceeding that officer's average rate of compensation (excluding bonuses, stock options, and profit sharing) during the 12 calendar months preceding the calendar month in which the regulated entity became undercapitalized.

[(c)] (d) *EFFECTIVE DATE.*—This section shall take effect upon the first classification of [the enterprises] the regulated entities within capital classifications that occurs under section 1364.

[SEC. 1367. APPOINTMENT OF CONSERVATORS FOR CRITICALLY UNDERCAPITALIZED ENTERPRISES.

[(a) *APPOINTMENT.*—

[(1) *IN GENERAL.*—Upon a determination and notice under section 1368(d) that an enterprise is critically undercapitalized and not later than 30 days after providing notice under section 1369(a)(3), the Director shall appoint a conservator for the enterprise in accordance with the provisions of section 1369 (excluding subsections (a) (1) and (2)).

[(2) *EXCEPTION.*—Notwithstanding paragraph (1), the Director may determine not to appoint a conservator for an enterprise classified as critically undercapitalized, but only pursuant to a written finding by the Director, with the written concurrence of the Secretary of the Treasury, that—

[(A) the appointment of a conservator would have serious adverse effects on economic conditions of national financial markets or on the financial stability of the housing finance market; and

[(B) the public interest would be better served by taking some other enforcement action authorized under this title.

[(b) *AUTHORITY.*—The Director shall have the authority to take any actions under sections 1365 and 1366 with respect to an enterprise under conservatorship.

[(c) *APPROVAL OF ACTIVITIES.*—

[(1) *CONSERVATOR.*—The conservator of any enterprise classified as critically undercapitalized may undertake an activity subject to the approval of the Secretary under section 1322 of this title only with the additional approval of the Director.

[(2) *NO CONSERVATOR.*—If the Director determines under subsection (a)(2) not to appoint a conservator for an enterprise classified as critically undercapitalized, the provisions of section 1366 shall apply with respect to the enterprise.

[(d) *EFFECTIVE DATE.*—This section shall take effect upon the first classification of the enterprises within capital classifications that occurs under section 1364.]

SEC. 1367. AUTHORITY OVER CRITICALLY UNDERCAPITALIZED REGULATED ENTITIES.

(a) *APPOINTMENT OF AGENCY AS CONSERVATOR OR RECEIVER.*—

(1) *IN GENERAL.*—Notwithstanding any other provision of Federal or State law, if any of the grounds under paragraph (3) exist, at the discretion of the Director, the Director may establish a conservatorship or receivership, as appropriate, for the purpose of reorganizing, rehabilitating, or winding up the affairs of a regulated entity.

(2) *APPOINTMENT.*—In any conservatorship or receivership established under this section, the Director shall appoint the Agency as conservator or receiver.

(3) *GROUND FOR APPOINTMENT.*—The grounds for appointing a conservator or receiver for a regulated entity are as follows:

(A) *ASSETS INSUFFICIENT FOR OBLIGATIONS.*—The assets of the regulated entity are less than the obligations of the regulated entity to its creditors and others.

(B) *SUBSTANTIAL DISSIPATION.*—Substantial dissipation of assets or earnings due to—

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

(ii) any unsafe or unsound practice.

(C) *UNSAFE OR UNSOUND CONDITION.*—An unsafe or unsound condition to transact business.

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

(E) *CONCEALMENT.*—Any concealment of the books, papers, records, or assets of the regulated entity, or any refusal to submit the books, papers, records, or affairs of the regulated entity, for inspection to any examiner or to any lawful agent of the Director.

(F) *INABILITY TO MEET OBLIGATIONS.*—The regulated entity is likely to be unable to pay its obligations or meet the demands of its creditors in the normal course of business.

(G) *LOSSES.*—The regulated entity has incurred or is likely to incur losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the regulated entity to become adequately capitalized (as defined in section 1364(a)(1)).

(H) *VIOLATIONS OF LAW.*—Any violation of any law or regulation, or any unsafe or unsound practice or condition that is likely to—

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

(ii) weaken the condition of the regulated entity.

(I) *CONSENT.*—The regulated entity, by resolution of its board of directors or its shareholders or members, consents to the appointment.

(J) *UNDERCAPITALIZATION.*—The regulated entity is undercapitalized or significantly undercapitalized (as defined in section 1364(a)(3) or in regulations issued pursuant to section 1364(b), as applicable), and—

(i) has no reasonable prospect of becoming adequately capitalized;

(ii) fails to become adequately capitalized, as required by—

(I) section 1365(a)(1) with respect to an undercapitalized regulated entity; or

(II) section 1366(a)(1) with respect to a significantly undercapitalized regulated entity;

(iii) fails to submit a capital restoration plan acceptable to the Agency within the time prescribed under section 1369C; or

(iv) materially fails to implement a capital restoration plan submitted and accepted under section 1369C.

(K) CRITICAL UNDERCAPITALIZATION.—The regulated entity is critically undercapitalized, as defined in section 1364(a)(4) or in regulations issued pursuant to section 1364(b), as applicable.

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

(4) MANDATORY RECEIVERSHIP.—

(A) IN GENERAL.—The Director shall appoint the Agency as receiver for a regulated entity if the Director determines, in writing, that—

(i) the assets of the regulated entity are, and during the preceding 30 calendar days have been, less than the obligations of the regulated entity to its creditors and others; or

(ii) the regulated entity is not, and during the preceding 30 calendar days has not been, generally paying the debts of the regulated entity (other than debts that are the subject of a bona fide dispute) as such debts become due.

(B) PERIODIC DETERMINATION REQUIRED FOR CRITICALLY UNDER CAPITALIZED REGULATED ENTITY.—If a regulated entity is critically undercapitalized, the Director shall make a determination, in writing, as to whether the regulated entity meets the criteria specified in clause (i) or (ii) of subparagraph (A)—

(i) not later than 30 calendar days after the regulated entity initially becomes critically undercapitalized; and

(ii) at least once during each succeeding 30-calendar day period.

(C) DETERMINATION NOT REQUIRED IF RECEIVERSHIP ALREADY IN PLACE.—Subparagraph (B) shall not apply with respect to a regulated entity in any period during which the Agency serves as receiver for the regulated entity.

(D) RECEIVERSHIP TERMINATES CONSERVATORSHIP.—The appointment under this section of the Agency as receiver of a regulated entity shall immediately terminate any conservatorship established under this title for the regulated entity.

(5) JUDICIAL REVIEW.—

(A) IN GENERAL.—If the Agency is appointed conservator or receiver under this section, the regulated entity may, within 30 days of such appointment, bring an action in the United States District Court for the judicial district in which the principal place of business of such regulated en-

tity is located, or in the United States District Court for the District of Columbia, for an order requiring the Agency to remove itself as conservator or receiver.

(B) REVIEW.—Upon the filing of an action under subparagraph (A), the court shall, upon the merits, dismiss such action or direct the Agency to remove itself as such conservator or receiver.

(6) DIRECTORS NOT LIABLE FOR ACQUIESCING IN APPOINTMENT OF CONSERVATOR OR RECEIVER.—The members of the board of directors of a regulated entity shall not be liable to the shareholders or creditors of the regulated entity for acquiescing in or consenting in good faith to the appointment of the Agency as conservator or receiver for that regulated entity.

(7) AGENCY NOT SUBJECT TO ANY OTHER FEDERAL AGENCY.—When acting as conservator or receiver, the Agency shall not be subject to the direction or supervision of any other agency of the United States or any State in the exercise of the rights, powers, and privileges of the Agency.

(b) POWERS AND DUTIES OF THE AGENCY AS CONSERVATOR OR RECEIVER.—

(1) RULEMAKING AUTHORITY OF THE AGENCY.—The Agency may prescribe such regulations as the Agency determines to be appropriate regarding the conduct of conservatorships or receiverships.

(2) GENERAL POWERS.—

(A) SUCCESSOR TO REGULATED ENTITY.—The Agency shall, as conservator or receiver, and by operation of law, immediately succeed to—

(i) all rights, titles, powers, and privileges of the regulated entity, and of any stockholder, officer, or director of such regulated entity with respect to the regulated entity and the assets of the regulated entity; and

(ii) title to the books, records, and assets of any other legal custodian of such regulated entity.

(B) OPERATE THE REGULATED ENTITY.—The Agency may, as conservator or receiver—

(i) take over the assets of and operate the regulated entity with all the powers of the shareholders, the directors, and the officers of the regulated entity and conduct all business of the regulated entity;

(ii) collect all obligations and money due the regulated entity;

(iii) perform all functions of the regulated entity in the name of the regulated entity which are consistent with the appointment as conservator or receiver; and

(iv) preserve and conserve the assets and property of such regulated entity.

(C) FUNCTIONS OF OFFICERS, DIRECTORS, AND SHAREHOLDERS OF A REGULATED ENTITY.—The Agency may, by regulation or order, provide for the exercise of any function by any stockholder, director, or officer of any regulated entity for which the Agency has been named conservator or receiver.

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

(i) necessary to put the regulated entity in a sound and solvent condition; and

(ii) appropriate to carry on the business of the regulated entity and preserve and conserve the assets and property of the regulated entity, including, if two or more Federal home loan banks have been placed in conservatorship contemporaneously, merging two or more such banks into a single Federal home loan bank.

(E) *ADDITIONAL POWERS AS RECEIVER.*—The Agency may, as receiver, place the regulated entity in liquidation and proceed to realize upon the assets of the regulated entity, having due regard to the conditions of the housing finance market.

(F) *ORGANIZATION OF NEW REGULATED ENTITIES.*—The Agency may, as receiver, organize a successor regulated entity that will operate pursuant to subsection (i).

(G) *TRANSFER OF ASSETS AND LIABILITIES.*—The Agency may, as conservator or receiver, transfer any asset or liability of the regulated entity in default without any approval, assignment, or consent with respect to such transfer. Any Federal home loan bank may, with the approval of the Agency, acquire the assets of any Bank in conservatorship or receivership, and assume the liabilities of such Bank.

(H) *PAYMENT OF VALID OBLIGATIONS.*—The Agency, as conservator or receiver, shall, to the extent of proceeds realized from the performance of contracts or sale of the assets of a regulated entity, pay all valid obligations of the regulated entity in accordance with the prescriptions and limitations of this section.

(I) *SUBPOENA AUTHORITY.*—

(i) *IN GENERAL.*—

(I) *IN GENERAL.*—The Agency may, as conservator or receiver, and for purposes of carrying out any power, authority, or duty with respect to a regulated entity (including determining any claim against the regulated entity and determining and realizing upon any asset of any person in the course of collecting money due the regulated entity), exercise any power established under section 1348.

(II) *APPLICABILITY OF LAW.*—The provisions of section 1348 shall apply with respect to the exercise of any power exercised under this subparagraph in the same manner as such provisions apply under that section.

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

(iii) *RULE OF CONSTRUCTION.*—This subsection shall not be construed to limit any rights that the Agency, in any capacity, might otherwise have under section 1317 or 1379D.

(J) *CONTRACTING FOR SERVICES.*—The Agency may, as conservator or receiver, provide by contract for the carrying

out of any of its functions, activities, actions, or duties as conservator or receiver.

(K) *INCIDENTAL POWERS.*—The Agency may, as conservator or receiver—

(i) exercise all powers and authorities specifically granted to conservators or receivers, respectively, under this section, and such incidental powers as shall be necessary to carry out such powers; and

(ii) take any action authorized by this section, which the Agency determines is in the best interests of the regulated entity or the Agency.

(3) *AUTHORITY OF RECEIVER TO DETERMINE CLAIMS.*—

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

(B) *NOTICE REQUIREMENTS.*—The receiver, in any case involving the liquidation or winding up of the affairs of a closed regulated entity, shall—

(i) promptly publish a notice to the creditors of the regulated entity to present their claims, together with proof, to the receiver by a date specified in the notice which shall be not less than 90 days after the publication of such notice; and

(ii) republish such notice approximately 1 month and 2 months, respectively, after the publication under clause (i).

(C) *MAILING REQUIRED.*—The receiver shall mail a notice similar to the notice published under subparagraph (B)(i) at the time of such publication to any creditor shown on the books of the regulated entity—

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

(ii) upon discovery of the name and address of a claimant not appearing on the books of the regulated entity within 30 days after the discovery of such name and address.

(4) *RULEMAKING AUTHORITY RELATING TO DETERMINATION OF CLAIMS.*—Subject to subsection (c), the Director may prescribe regulations regarding the allowance or disallowance of claims by the receiver and providing for administrative determination of claims and review of such determination.

(5) *PROCEDURES FOR DETERMINATION OF CLAIMS.*—

(A) *DETERMINATION PERIOD.*—

(i) *IN GENERAL.*—Before the end of the 180-day period beginning on the date on which any claim against a regulated entity is filed with the Agency as receiver, the Agency shall determine whether to allow or disallow the claim and shall notify the claimant of any determination with respect to such claim.

(ii) *EXTENSION OF TIME.*—The period described in clause (i) may be extended by a written agreement between the claimant and the Agency.

(iii) *MAILING OF NOTICE SUFFICIENT.*—The notification requirements of clause (i) shall be deemed to be

satisfied if the notice of any determination with respect to any claim is mailed to the last address of the claimant which appears—

- (I) on the books of the regulated entity;
- (II) in the claim filed by the claimant; or
- (III) in documents submitted in proof of the claim.

(iv) **CONTENTS OF NOTICE OF DISALLOWANCE.**—If any claim filed under clause (i) is disallowed, the notice to the claimant shall contain—

- (I) a statement of each reason for the disallowance; and
- (II) the procedures available for obtaining agency review of the determination to disallow the claim or judicial determination of the claim.

(B) **ALLOWANCE OF PROVEN CLAIM.**—The receiver shall allow any claim received on or before the date specified in the notice published under paragraph (3)(B)(i), or the date specified in the notice required under paragraph (3)(C), which is proved to the satisfaction of the receiver.

(C) **DISALLOWANCE OF CLAIMS FILED AFTER END OF FILING PERIOD.**—Claims filed after the date specified in the notice published under paragraph (3)(B)(i), or the date specified under paragraph (3)(C), shall be disallowed and such disallowance shall be final.

(D) **AUTHORITY TO DISALLOW CLAIMS.**—

(i) **IN GENERAL.**—The receiver may disallow any portion of any claim by a creditor or claim of security, preference, or priority which is not proved to the satisfaction of the receiver.

(ii) **PAYMENTS TO LESS THAN FULLY SECURED CREDITORS.**—In the case of a claim of a creditor against a regulated entity which is secured by any property or other asset of such regulated entity, the receiver—

(I) may treat the portion of such claim which exceeds an amount equal to the fair market value of such property or other asset as an unsecured claim against the regulated entity; and

(II) may not make any payment with respect to such unsecured portion of the claim other than in connection with the disposition of all claims of unsecured creditors of the regulated entity.

(iii) **EXCEPTIONS.**—No provision of this paragraph shall apply with respect to any extension of credit from any Federal Reserve Bank, Federal home loan bank, or the Treasury of the United States.

(E) **NO JUDICIAL REVIEW OF DETERMINATION PURSUANT TO SUBPARAGRAPH (D).**—No court may review the determination of the Agency under subparagraph (D) to disallow a claim. This subparagraph shall not affect the authority of a claimant to obtain de novo judicial review of a claim pursuant to paragraph (6).

(F) **LEGAL EFFECT OF FILING.**—

(i) **STATUTE OF LIMITATION TOLLED.**—For purposes of any applicable statute of limitations, the filing of a

claim with the receiver shall constitute a commencement of an action.

(ii) *NO PREJUDICE TO OTHER ACTIONS.*—Subject to paragraph (10), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action which was filed before the date of the appointment of the receiver, subject to the determination of claims by the receiver.

(6) *PROVISION FOR JUDICIAL DETERMINATION OF CLAIMS.*—

(A) *IN GENERAL.*—The claimant may file suit on a claim (or continue an action commenced before the appointment of the receiver) in the district or territorial court of the United States for the district within which the principal place of business of the regulated entity is located or the United States District Court for the District of Columbia (and such court shall have jurisdiction to hear such claim), before the end of the 60-day period beginning on the earlier of—

(i) the end of the period described in paragraph (5)(A)(i) with respect to any claim against a regulated entity for which the Agency is receiver; or

(ii) the date of any notice of disallowance of such claim pursuant to paragraph (5)(A)(i).

(B) *STATUTE OF LIMITATIONS.*—A claim shall be deemed to be disallowed (other than any portion of such claim which was allowed by the receiver), and such disallowance shall be final, and the claimant shall have no further rights or remedies with respect to such claim, if the claimant fails, before the end of the 60-day period described under subparagraph (A), to file suit on such claim (or continue an action commenced before the appointment of the receiver).

(7) *REVIEW OF CLAIMS.*—

(A) *OTHER REVIEW PROCEDURES.*—

(i) *IN GENERAL.*—The Agency shall establish such alternative dispute resolution processes as may be appropriate for the resolution of claims filed under paragraph (5)(A)(i).

(ii) *CRITERIA.*—In establishing alternative dispute resolution processes, the Agency shall strive for procedures which are expeditious, fair, independent, and low cost.

(iii) *VOLUNTARY BINDING OR NONBINDING PROCEDURES.*—The Agency may establish both binding and nonbinding processes, which may be conducted by any government or private party. All parties, including the claimant and the Agency, must agree to the use of the process in a particular case.

(B) *CONSIDERATION OF INCENTIVES.*—The Agency shall seek to develop incentives for claimants to participate in the alternative dispute resolution process.

(8) *EXPEDITED DETERMINATION OF CLAIMS.*—

(A) *ESTABLISHMENT REQUIRED.*—The Agency shall establish a procedure for expedited relief outside of the routine

claims process established under paragraph (5) for claimants who—

(i) allege the existence of legally valid and enforceable or perfected security interests in assets of any regulated entity for which the Agency has been appointed receiver; and

(ii) allege that irreparable injury will occur if the routine claims procedure is followed.

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

(i) determine—

(I) whether to allow or disallow such claim; or

(II) whether such claim should be determined pursuant to the procedures established under paragraph (5); and

(ii) notify the claimant of the determination, and if the claim is disallowed, provide a statement of each reason for the disallowance and the procedure for obtaining agency review or judicial determination.

(C) PERIOD FOR FILING OR RENEWING SUIT.—Any claimant who files a request for expedited relief shall be permitted to file a suit, or to continue a suit filed before the appointment of the receiver, seeking a determination of the rights of the claimant with respect to such security interest after the earlier of—

(i) the end of the 90-day period beginning on the date of the filing of a request for expedited relief; or

(ii) the date the Agency denies the claim.

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

(E) LEGAL EFFECT OF FILING.—

(i) STATUTE OF LIMITATION TOLLED.—For purposes of any applicable statute of limitations, the filing of a claim with the receiver shall constitute a commencement of an action.

(ii) NO PREJUDICE TO OTHER ACTIONS.—Subject to paragraph (10), the filing of a claim with the receiver shall not prejudice any right of the claimant to continue any action that was filed before the appointment of the receiver, subject to the determination of claims by the receiver.

(9) PAYMENT OF CLAIMS.—

(A) IN GENERAL.—The receiver may, in the discretion of the receiver, and to the extent funds are available from the assets of the regulated entity, pay creditor claims, in such

manner and amounts as are authorized under this section, which are—

- (i) allowed by the receiver;
- (ii) approved by the Agency pursuant to a final determination pursuant to paragraph (7) or (8); or
- (iii) determined by the final judgment of any court of competent jurisdiction.

(B) AGREEMENTS AGAINST THE INTEREST OF THE AGENCY.—No agreement that tends to diminish or defeat the interest of the Agency in any asset acquired by the Agency as receiver under this section shall be valid against the Agency unless such agreement is in writing, and executed by an authorized official of the regulated entity, except that such requirements for qualified financial contracts shall be applied in a manner consistent with reasonable business trading practices in the financial contracts market.

(C) PAYMENT OF DIVIDENDS ON CLAIMS.—The receiver may, in the sole discretion of the receiver, pay from the assets of the regulated entity dividends on proved claims at any time, and no liability shall attach to the Agency, by reason of any such payment, for failure to pay dividends to a claimant whose claim is not proved at the time of any such payment.

(D) RULEMAKING AUTHORITY OF THE DIRECTOR.—The Director may prescribe such rules, including definitions of terms, as the Director deems appropriate to establish a single uniform interest rate for, or to make payments of post-insolvency interest to creditors holding proven claims against the receivership estates of regulated entities following satisfaction by the receiver of the principal amount of all creditor claims.

(10) SUSPENSION OF LEGAL ACTIONS.—

(A) IN GENERAL.—After the appointment of a conservator or receiver for a regulated entity, the conservator or receiver may, in any judicial action or proceeding to which such regulated entity is or becomes a party, request a stay for a period not to exceed—

- (i) 45 days, in the case of any conservator; and
- (ii) 90 days, in the case of any receiver.

(B) GRANT OF STAY BY ALL COURTS REQUIRED.—Upon receipt of a request by any conservator or receiver under subparagraph (A) for a stay of any judicial action or proceeding in any court with jurisdiction of such action or proceeding, the court shall grant such stay as to all parties.

(11) ADDITIONAL RIGHTS AND DUTIES.—

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

(B) RIGHTS AND REMEDIES OF CONSERVATOR OR RECEIVER.—In the event of any appealable judgment, the Agency as conservator or receiver shall—

- (i) have all the rights and remedies available to the regulated entity (before the appointment of such conser-

vator or receiver) and the Agency, including removal to Federal court and all appellate rights; and

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

(C) *NO ATTACHMENT OR EXECUTION.*—No attachment or execution may issue by any court upon assets in the possession of the receiver.

(D) *LIMITATION ON JUDICIAL REVIEW.*—Except as otherwise provided in this subsection, no court shall have jurisdiction over—

(i) any claim or action for payment from, or any action seeking a determination of rights with respect to, the assets of any regulated entity for which the Agency has been appointed receiver; or

(ii) any claim relating to any act or omission of such regulated entity or the Agency as receiver.

(E) *DISPOSITION OF ASSETS.*—In exercising any right, power, privilege, or authority as conservator or receiver in connection with any sale or disposition of assets of a regulated entity for which the Agency has been appointed conservator or receiver, the Agency shall conduct its operations in a manner which maintains stability in the housing finance markets and, to the extent consistent with that goal—

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

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

(iii) ensures adequate competition and fair and consistent treatment of offerors.

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

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

(i) in the case of any contract claim, the longer of—
(I) the 6-year period beginning on the date the claim accrues; or

(II) the period applicable under State law; and

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

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

(II) the period applicable under State law.

(B) *DETERMINATION OF THE DATE ON WHICH A CLAIM ACCRUES.*—For purposes of subparagraph (A), the date on which the statute of limitations begins to run on any claim described in such subparagraph shall be the later of—

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

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

(13) *REVIVAL OF EXPIRED STATE CAUSES OF ACTION.*—

(A) *IN GENERAL.*—In the case of any tort claim described under subparagraph (B) for which the statute of limitations applicable under State law with respect to such claim has

expired not more than 5 years before the appointment of the Agency as conservator or receiver, the Agency may bring an action as conservator or receiver on such claim without regard to the expiration of the statute of limitation applicable under State law.

(B) CLAIMS DESCRIBED.—A tort claim referred to under subparagraph (A) is a claim arising from fraud, intentional misconduct resulting in unjust enrichment, or intentional misconduct resulting in substantial loss to the regulated entity.

(14) ACCOUNTING AND RECORDKEEPING REQUIREMENTS.—

(A) IN GENERAL.—The Agency as conservator or receiver shall, consistent with the accounting and reporting practices and procedures established by the Agency, maintain a full accounting of each conservatorship and receivership or other disposition of a regulated entity in default.

(B) ANNUAL ACCOUNTING OR REPORT.—With respect to each conservatorship or receivership, the Agency shall make an annual accounting or report available to the Board, the Comptroller General of the United States, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives.

(C) AVAILABILITY OF REPORTS.—Any report prepared under subparagraph (B) shall be made available by the Agency upon request to any shareholder of a regulated entity or any member of the public.

(D) RECORDKEEPING REQUIREMENT.—After the end of the 6-year period beginning on the date that the conservatorship or receivership is terminated by the Director, the Agency may destroy any records of such regulated entity which the Agency, in the discretion of the Agency, determines to be unnecessary unless directed not to do so by a court of competent jurisdiction or governmental agency, or prohibited by law.

(15) FRAUDULENT TRANSFERS.—

(A) IN GENERAL.—The Agency, as conservator or receiver, may avoid a transfer of any interest of a regulated entity-affiliated party, or any person who the conservator or receiver determines is a debtor of the regulated entity, in property, or any obligation incurred by such party or person, that was made within 5 years of the date on which the Agency was appointed conservator or receiver, if such party or person voluntarily or involuntarily made such transfer or incurred such liability with the intent to hinder, delay, or defraud the regulated entity, the Agency, the conservator, or receiver.

(B) RIGHT OF RECOVERY.—To the extent a transfer is avoided under subparagraph (A), the conservator or receiver may recover, for the benefit of the regulated entity, the property transferred, or, if a court so orders, the value of such property (at the time of such transfer) from—

(i) the initial transferee of such transfer or the regulated entity-affiliated party or person for whose benefit such transfer was made; or

(ii) any immediate or mediate transferee of any such initial transferee.

(C) *RIGHTS OF TRANSFEREE OR OBLIGEE.*—The conservator or receiver may not recover under subparagraph (B) from—

(i) any transferee that takes for value, including satisfaction or securing of a present or antecedent debt, in good faith; or

(ii) any immediate or mediate good faith transferee of such transferee.

(D) *RIGHTS UNDER THIS PARAGRAPH.*—The rights under this paragraph of the conservator or receiver described under subparagraph (A) shall be superior to any rights of a trustee or any other party (other than any party which is a Federal agency) under title 11, United States Code.

(16) *ATTACHMENT OF ASSETS AND OTHER INJUNCTIVE RELIEF.*—Subject to paragraph (17), any court of competent jurisdiction may, at the request of the conservator or receiver, issue an order in accordance with Rule 65 of the Federal Rules of Civil Procedure, including an order placing the assets of any person designated by the Agency or such conservator under the control of the court, and appointing a trustee to hold such assets.

(17) *STANDARDS OF PROOF.*—Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under paragraph (16) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

(18) *TREATMENT OF CLAIMS ARISING FROM BREACH OF CONTRACTS EXECUTED BY THE RECEIVER OR CONSERVATOR.*—

(A) *IN GENERAL.*—Notwithstanding any other provision of this subsection, any final and unappealable judgment for monetary damages entered against a receiver or conservator for the breach of an agreement executed or approved in writing by such receiver or conservator after the date of its appointment, shall be paid as an administrative expense of the receiver or conservator.

(B) *NO LIMITATION OF POWER.*—Nothing in this paragraph shall be construed to limit the power of a receiver or conservator to exercise any rights under contract or law, including to terminate, breach, cancel, or otherwise discontinue such agreement.

(19) *GENERAL EXCEPTIONS.*—

(A) *LIMITATIONS.*—The rights of a conservator or receiver appointed under this section shall be subject to the limitations on the powers of a receiver under sections 402 through 407 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4402 through 4407).

(B) *MORTGAGES HELD IN TRUST.*—

(i) *IN GENERAL.*—Any mortgage, pool of mortgages, or interest in a pool of mortgages, held in trust, custodial, or agency capacity by a regulated entity for the benefit of persons other than the regulated entity shall not be available to satisfy the claims of creditors generally.

(ii) *HOLDING OF MORTGAGES.*—Any mortgage, pool of mortgages, or interest in a pool of mortgages, described under clause (i) shall be held by the conservator or receiver appointed under this section for the beneficial owners of such mortgage, pool of mortgages, or interest in a pool of mortgages in accordance with the terms of the agreement creating such trust, custodial, or other agency arrangement.

(iii) *LIABILITY OF RECEIVER.*—The liability of a receiver appointed under this section for damages shall, in the case of any contingent or unliquidated claim relating to the mortgages held in trust, be estimated in accordance set forth in the regulations of the Director.

(c) *PRIORITY OF EXPENSES AND UNSECURED CLAIMS.*—

(1) *IN GENERAL.*—Unsecured claims against a regulated entity, or a receiver, that are proven to the satisfaction of the receiver shall have priority in the following order:

(A) Administrative expenses of the receiver.

(B) Any other general or senior liability of the regulated entity and claims of other Federal home loan banks arising from their payment obligations (including joint and several payment obligations).

(C) Any obligation subordinated to general creditors.

(D) Any obligation to shareholders or members arising as a result of their status as shareholder or members.

(2) *CREDITORS SIMILARLY SITUATED.*—All creditors that are similarly situated under paragraph (1) shall be treated in a similar manner, except that the Agency may make such other payments to creditors necessary to maximize the present value return from the sale or disposition or such regulated entity's assets or to minimize the amount of any loss realized in the resolution of cases so long as all creditors similarly situated receive not less than the amount provided under subsection (e)(2).

(3) *DEFINITION.*—The term "administrative expenses of the receiver" shall include the actual, necessary costs and expenses incurred by the receiver in preserving the assets of the regulated entity or liquidating or otherwise resolving the affairs of the regulated entity. Such expenses shall include obligations that are incurred by the receiver after appointment as receiver that the Director determines are necessary and appropriate to facilitate the smooth and orderly liquidation or other resolution of the regulated entity.

(d) *PROVISIONS RELATING TO CONTRACTS ENTERED INTO BEFORE APPOINTMENT OF CONSERVATOR OR RECEIVER.*—

(1) *AUTHORITY TO REPUDIATE CONTRACTS.*—In addition to any other rights a conservator or receiver may have, the conservator or receiver for any regulated entity may disaffirm or repudiate any contract or lease—

(A) to which such regulated entity is a party;

(B) the performance of which the conservator or receiver, in its sole discretion, determines to be burdensome; and

(C) the disaffirmance or repudiation of which the conservator or receiver determines, in its sole discretion, will promote the orderly administration of the affairs of the regulated entity.

(2) *TIMING OF REPUDIATION.*—*The conservator or receiver shall determine whether or not to exercise the rights of repudiation under this subsection within a reasonable period following such appointment.*

(3) *CLAIMS FOR DAMAGES FOR REPUDIATION.*—

(A) *IN GENERAL.*—*Except as otherwise provided under subparagraph (C) and paragraphs (4), (5), and (6), the liability of the conservator or receiver for the disaffirmance or repudiation of any contract pursuant to paragraph (1) shall be—*

(i) *limited to actual direct compensatory damages; and*

(ii) *determined as of—*

(I) *the date of the appointment of the conservator or receiver; or*

(II) *in the case of any contract or agreement referred to in paragraph (8), the date of the disaffirmance or repudiation of such contract or agreement.*

(B) *NO LIABILITY FOR OTHER DAMAGES.*—*For purposes of subparagraph (A), the term “actual direct compensatory damages” shall not include—*

(i) *punitive or exemplary damages;*

(ii) *damages for lost profits or opportunity; or*

(iii) *damages for pain and suffering.*

(C) *MEASURE OF DAMAGES FOR REPUDIATION OF FINANCIAL CONTRACTS.*—*In the case of any qualified financial contract or agreement to which paragraph (8) applies, compensatory damages shall be—*

(i) *deemed to include normal and reasonable costs of cover or other reasonable measures of damages utilized in the industries for such contract and agreement claims; and*

(ii) *paid in accordance with this subsection and subsection (e), except as otherwise specifically provided in this section.*

(4) *LEASES UNDER WHICH THE REGULATED ENTITY IS THE LESSEE.*—

(A) *IN GENERAL.*—*If the conservator or receiver disaffirms or repudiates a lease under which the regulated entity was the lessee, the conservator or receiver shall not be liable for any damages (other than damages determined under subparagraph (B)) for the disaffirmance or repudiation of such lease.*

(B) *PAYMENTS OF RENT.*—*Notwithstanding subparagraph (A), the lessor under a lease to which that subparagraph applies shall—*

(i) *be entitled to the contractual rent accruing before the later of the date—*

(I) *the notice of disaffirmance or repudiation is mailed; or*

(II) *the disaffirmance or repudiation becomes effective, unless the lessor is in default or breach of the terms of the lease;*

(ii) have no claim for damages under any acceleration clause or other penalty provision in the lease; and
 (iii) have a claim for any unpaid rent, subject to all appropriate offsets and defenses, due as of the date of the appointment, which shall be paid in accordance with this subsection and subsection (e).

(5) *LEASES UNDER WHICH THE REGULATED ENTITY IS THE LESSOR.*—

(A) *IN GENERAL.*—If the conservator or receiver repudiates an unexpired written lease of real property of the regulated entity under which the regulated entity is the lessor and the lessee is not, as of the date of such repudiation, in default, the lessee under such lease may either—

- (i) treat the lease as terminated by such repudiation;
- or
- (ii) remain in possession of the leasehold interest for the balance of the term of the lease, unless the lessee defaults under the terms of the lease after the date of such repudiation.

(B) *PROVISIONS APPLICABLE TO LESSEE REMAINING IN POSSESSION.*—If any lessee under a lease described under subparagraph (A) remains in possession of a leasehold interest under clause (ii) of such subparagraph—

(i) the lessee—

(I) shall continue to pay the contractual rent pursuant to the terms of the lease after the date of the repudiation of such lease; and

(II) may offset against any rent payment which accrues after the date of the repudiation of the lease, and any damages which accrue after such date due to the nonperformance of any obligation of the regulated entity under the lease after such date; and

(ii) the conservator or receiver shall not be liable to the lessee for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II).

(6) *CONTRACTS FOR THE SALE OF REAL PROPERTY.*—

(A) *IN GENERAL.*—If the conservator or receiver repudiates any contract for the sale of real property and the purchaser of such real property under such contract is in possession, and is not, as of the date of such repudiation, in default, such purchaser may either—

- (i) treat the contract as terminated by such repudiation; or
- (ii) remain in possession of such real property.

(B) *PROVISIONS APPLICABLE TO PURCHASER REMAINING IN POSSESSION.*—If any purchaser of real property under any contract described under subparagraph (A) remains in possession of such property under clause (ii) of such subparagraph—

(i) the purchaser—

(I) shall continue to make all payments due under the contract after the date of the repudiation of the contract; and

(II) may offset against any such payments any damages which accrue after such date due to the nonperformance (after such date) of any obligation of the regulated entity under the contract; and
 (ii) the conservator or receiver shall—

(I) not be liable to the purchaser for any damages arising after such date as a result of the repudiation other than the amount of any offset allowed under clause (i)(II);

(II) deliver title to the purchaser in accordance with the provisions of the contract; and

(III) have no obligation under the contract other than the performance required under subclause (II).

(C) ASSIGNMENT AND SALE ALLOWED.—

(i) IN GENERAL.—No provision of this paragraph shall be construed as limiting the right of the conservator or receiver to assign the contract described under subparagraph (A), and sell the property subject to the contract and the provisions of this paragraph.

(ii) NO LIABILITY AFTER ASSIGNMENT AND SALE.—If an assignment and sale described under clause (i) is consummated, the conservator or receiver shall have no further liability under the contract described under subparagraph (A), or with respect to the real property which was the subject of such contract.

(7) PROVISIONS APPLICABLE TO SERVICE CONTRACTS.—

(A) SERVICES PERFORMED BEFORE APPOINTMENT.—In the case of any contract for services between any person and any regulated entity for which the Agency has been appointed conservator or receiver, any claim of such person for services performed before the appointment of the conservator or the receiver shall be—

(i) a claim to be paid in accordance with subsections (b) and (e); and

(ii) deemed to have arisen as of the date the conservator or receiver was appointed.

(B) SERVICES PERFORMED AFTER APPOINTMENT AND PRIOR TO REPUDIATION.—If, in the case of any contract for services described under subparagraph (A), the conservator or receiver accepts performance by the other person before the conservator or receiver makes any determination to exercise the right of repudiation of such contract under this section—

(i) the other party shall be paid under the terms of the contract for the services performed; and

(ii) the amount of such payment shall be treated as an administrative expense of the conservatorship or receivership.

(C) ACCEPTANCE OF PERFORMANCE NO BAR TO SUBSEQUENT REPUDIATION.—The acceptance by any conservator or receiver of services referred to under subparagraph (B) in connection with a contract described in such subparagraph shall not affect the right of the conservator or re-

ceiver to repudiate such contract under this section at any time after such performance.

(8) CERTAIN QUALIFIED FINANCIAL CONTRACTS.—

(A) RIGHTS OF PARTIES TO CONTRACTS.—Subject to paragraphs (9) and (10) and notwithstanding any other provision of this Act, any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

(i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a regulated entity that arises upon the appointment of the Agency as receiver for such regulated entity at any time after such appointment;

(ii) any right under any security agreement or arrangement or other credit enhancement relating to one or more qualified financial contracts described in clause (i); or

(iii) any right to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more contracts and agreements described in clause (i), including any master agreement for such contracts or agreements.

(B) APPLICABILITY OF OTHER PROVISIONS.—Paragraph (10) of subsection (b) shall apply in the case of any judicial action or proceeding brought against any receiver referred to under subparagraph (A), or the regulated entity for which such receiver was appointed, by any party to a contract or agreement described under subparagraph (A)(i) with such regulated entity.

(C) CERTAIN TRANSFERS NOT AVOIDABLE.—

(i) IN GENERAL.—Notwithstanding paragraph (11) or any other Federal or State laws relating to the avoidance of preferential or fraudulent transfers, the Agency, whether acting as such or as conservator or receiver of a regulated entity, may not avoid any transfer of money or other property in connection with any qualified financial contract with a regulated entity.

(ii) EXCEPTION FOR CERTAIN TRANSFERS.—Clause (i) shall not apply to any transfer of money or other property in connection with any qualified financial contract with a regulated entity if the Agency determines that the transferee had actual intent to hinder, delay, or defraud such regulated entity, the creditors of such regulated entity, or any conservator or receiver appointed for such regulated entity.

(D) CERTAIN CONTRACTS AND AGREEMENTS DEFINED.—In this subsection:

(i) QUALIFIED FINANCIAL CONTRACT.—The term “qualified financial contract” means any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the Agency determines by regulation, resolution, or order to be a qualified financial contract for purposes of this paragraph.

(ii) *SECURITIES CONTRACT.*—The term “securities contract”—

(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, or any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Agency determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

(III) means any option entered into on a national securities exchange relating to foreign currencies;

(IV) means the guarantee by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

(V) means any margin loan;

(VI) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(VII) means any combination of the agreements or transactions referred to in this clause;

(VIII) means any option to enter into any agreement or transaction referred to in this clause;

(IX) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII); and

(X) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iii) COMMODITY CONTRACT.—The term “commodity contract” means—

(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

(II) with respect to a foreign futures commission merchant, a foreign future;

(III) with respect to a leverage transaction merchant, a leverage transaction;

(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

(V) with respect to a commodity options dealer, a commodity option;

(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(VII) any combination of the agreements or transactions referred to in this clause;

(VIII) any option to enter into any agreement or transaction referred to in this clause;

(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.

(iv) FORWARD CONTRACT.—The term “forward contract” means—

(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including, a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

(v) **REPURCHASE AGREEMENT.**—The term “repurchase agreement” (which definition also applies to a reverse repurchase agreement)—

(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers’ acceptances, qualified foreign government securities or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers’ acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers’ acceptances, securities, mortgage loans, or interests as described above, at a date

certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

(II) does not include any repurchase obligation under a participation in a commercial mortgage loan unless the Agency determines by regulation, resolution, or order to include any such participation within the meaning of such term;

(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

For purposes of this clause, the term “qualified foreign government security” means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development (as determined by regulation or order adopted by the appropriate Federal banking authority).

(vi) SWAP AGREEMENT.—The term “swap agreement” means—

(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, fu-

ture, or forward agreement; or a weather swap, weather derivative, or weather option;

(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

(III) any combination of agreements or transactions referred to in this clause;

(IV) any option to enter into any agreement or transaction referred to in this clause;

(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subclause (I), (II), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

Such term is applicable for purposes of this subsection only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000.

(vii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—Any master agreement for any contract

or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.

(viii) TRANSFER.—The term “transfer” means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the regulated entity’s equity of redemption.

(E) CERTAIN PROTECTIONS IN EVENT OF APPOINTMENT OF CONSERVATOR.—Notwithstanding any other provision of this Act (other than paragraph (13) of this subsection), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

(i) any right such person has to cause the termination, liquidation, or acceleration of any qualified financial contract with a regulated entity in a conservatorship based upon a default under such financial contract which is enforceable under applicable non-insolvency law;

(ii) any right under any security agreement or arrangement or other credit enhancement relating to one or more such qualified financial contracts; or

(iii) any right to offset or net out any termination values, payment amounts, or other transfer obligations arising under or in connection with such qualified financial contracts.

(F) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Agency, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Agency to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this subsection or to disaffirm or repudiate any such contract in accordance with subsection (d)(1) of this section.

(G) WALKAWAY CLAUSES NOT EFFECTIVE.—

(i) IN GENERAL.—Notwithstanding the provisions of subparagraphs (A) and (E), and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of a regulated entity in default.

(ii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term “walkaway clause” means a provision in a qualified financial contract that, after calculation of a value of a party’s position or an amount due to or from 1 of the parties in accordance

with its terms upon termination, liquidation, or acceleration of the qualified financial contract, either does not create a payment obligation of a party or extinguishes a payment obligation of a party in whole or in part solely because of such party's status as a non-defaulting party.

(9) *TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—In making any transfer of assets or liabilities of a regulated entity in default which includes any qualified financial contract, the conservator or receiver for such regulated entity shall either—*

(A) *transfer to 1 person—*

(i) *all qualified financial contracts between any person (or any affiliate of such person) and the regulated entity in default;*

(ii) *all claims of such person (or any affiliate of such person) against such regulated entity under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such regulated entity);*

(iii) *all claims of such regulated entity against such person (or any affiliate of such person) under any such contract; and*

(iv) *all property securing or any other credit enhancement for any contract described in clause (i) or any claim described in clause (ii) or (iii) under any such contract; or*

(B) *transfer none of the financial contracts, claims, or property referred to under subparagraph (A) (with respect to such person and any affiliate of such person).*

(10) *NOTIFICATION OF TRANSFER.—*

(A) *IN GENERAL.—If—*

(i) *the conservator or receiver for a regulated entity in default makes any transfer of the assets and liabilities of such regulated entity, and*

(ii) *the transfer includes any qualified financial contract,*

the conservator or receiver shall notify any person who is a party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver in the case of a receivership, or the business day following such transfer in the case of a conservatorship.

(B) *CERTAIN RIGHTS NOT ENFORCEABLE.—*

(i) *RECEIVERSHIP.—A person who is a party to a qualified financial contract with a regulated entity may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a receiver for the regulated entity (or the insolvency or financial condition of the regulated entity for which the receiver has been appointed)—*

(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver; or

(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

(ii) *CONSERVATORSHIP.*—A person who is a party to a qualified financial contract with a regulated entity may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(E) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a conservator for the regulated entity (or the insolvency or financial condition of the regulated entity for which the conservator has been appointed).

(iii) *NOTICE.*—For purposes of this paragraph, the Agency as receiver or conservator of a regulated entity shall be deemed to have notified a person who is a party to a qualified financial contract with such regulated entity if the Agency has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

(C) *BUSINESS DAY DEFINED.*—For purposes of this paragraph, the term “business day” means any day other than any Saturday, Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

(11) *DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.*—In exercising the rights of disaffirmance or repudiation of a conservator or receiver with respect to any qualified financial contract to which a regulated entity is a party, the conservator or receiver for such institution shall either—

(A) disaffirm or repudiate all qualified financial contracts between—

(i) any person or any affiliate of such person; and

(ii) the regulated entity in default; or

(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).

(12) *CERTAIN SECURITY INTERESTS NOT AVOIDABLE.*—No provision of this subsection shall be construed as permitting the avoidance of any legally enforceable or perfected security interest in any of the assets of any regulated entity, except where such an interest is taken in contemplation of the insolvency of the regulated entity, or with the intent to hinder, delay, or defraud the regulated entity or the creditors of such regulated entity.

(13) *AUTHORITY TO ENFORCE CONTRACTS.*—

(A) *IN GENERAL.*—Notwithstanding any provision of a contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency or the appointment of a conservator or receiver, the conser-

vator or receiver may enforce any contract or regulated entity bond entered into by the regulated entity.

(B) *CERTAIN RIGHTS NOT AFFECTED.*—No provision of this paragraph may be construed as impairing or affecting any right of the conservator or receiver to enforce or recover under a director's or officer's liability insurance contract or surety bond under other applicable law.

(C) *CONSENT REQUIREMENT.*—

(i) *IN GENERAL.*—Except as otherwise provided under this section, no person may exercise any right or power to terminate, accelerate, or declare a default under any contract to which a regulated entity is a party, or to obtain possession of or exercise control over any property of the regulated entity, or affect any contractual rights of the regulated entity, without the consent of the conservator or receiver, as appropriate, for a period of—

(I) 45 days after the date of appointment of a conservator; or

(II) 90 days after the date of appointment of a receiver.

(ii) *EXCEPTIONS.*—This paragraph shall—

(I) not apply to a director's or officer's liability insurance contract;

(II) not apply to the rights of parties to any qualified financial contracts under subsection (d)(8); and

(III) not be construed as permitting the conservator or receiver to fail to comply with otherwise enforceable provisions of such contracts.

(14) *SAVINGS CLAUSE.*—The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.

(15) *EXCEPTION FOR FEDERAL RESERVE AND FEDERAL HOME LOAN BANKS.*—No provision of this subsection shall apply with respect to—

(A) any extension of credit from any Federal home loan bank or Federal Reserve Bank to any regulated entity; or

(B) any security interest in the assets of the regulated entity securing any such extension of credit.

(e) *VALUATION OF CLAIMS IN DEFAULT.*—

(1) *IN GENERAL.*—Notwithstanding any other provision of Federal law or the law of any State, and regardless of the method which the Agency determines to utilize with respect to a regulated entity in default or in danger of default, including transactions authorized under subsection (i), this subsection shall govern the rights of the creditors of such regulated entity.

(2) *MAXIMUM LIABILITY.*—The maximum liability of the Agency, acting as receiver or in any other capacity, to any person

having a claim against the receiver or the regulated entity for which such receiver is appointed shall equal the lesser of—

(A) the amount such claimant would have received if the Agency had liquidated the assets and liabilities of such regulated entity without exercising the authority of the Agency under subsection (i) of this section; or

(B) the amount of proceeds realized from the performance of contracts or sale of the assets of the regulated entity.

(f) **LIMITATION ON COURT ACTION.**—Except as provided in this section or at the request of the Director, no court may take any action to restrain or affect the exercise of powers or functions of the Agency as a conservator or a receiver.

(g) **LIABILITY OF DIRECTORS AND OFFICERS.**—

(1) **IN GENERAL.**—A director or officer of a regulated entity may be held personally liable for monetary damages in any civil action by, on behalf of, or at the request or direction of the Agency, which action is prosecuted wholly or partially for the benefit of the Agency—

(A) acting as conservator or receiver of such regulated entity, or

(B) acting based upon a suit, claim, or cause of action purchased from, assigned by, or otherwise conveyed by such receiver or conservator,

for gross negligence, including any similar conduct or conduct that demonstrates a greater disregard of a duty of care (than gross negligence) including intentional tortious conduct, as such terms are defined and determined under applicable State law.

(2) **NO LIMITATION.**—Nothing in this paragraph shall impair or affect any right of the Agency under other applicable law.

(h) **DAMAGES.**—In any proceeding related to any claim against a director, officer, employee, agent, attorney, accountant, appraiser, or any other party employed by or providing services to a regulated entity, recoverable damages determined to result from the improvident or otherwise improper use or investment of any assets of the regulated entity shall include principal losses and appropriate interest.

(i) **LIMITED-LIFE REGULATED ENTITIES.**—

(1) **ORGANIZATION.**—

(A) **PURPOSE.**—If a regulated entity is in default, or if the Agency anticipates that a regulated entity will default, the Agency may organize a limited-life regulated entity with those powers and attributes of the regulated entity in default or in danger of default that the Director determines necessary, subject to the provisions of this subsection. The Director shall grant a temporary charter to the limited-life regulated entity, and the limited-life regulated entity shall operate subject to that charter.

(B) **AUTHORITIES.**—Upon the creation of a limited-life regulated entity under subparagraph (A), the limited-life regulated entity may—

(i) assume such liabilities of the regulated entity that is in default or in danger of default as the Agency may, in its discretion, determine to be appropriate, provided that the liabilities assumed shall not exceed the amount of assets of the limited-life regulated entity;

(ii) purchase such assets of the regulated entity that is in default, or in danger of default, as the Agency may, in its discretion, determine to be appropriate; and

(iii) perform any other temporary function which the Agency may, in its discretion, prescribe in accordance with this section.

(2) CHARTER.—

(A) CONDITIONS.—The Agency may grant a temporary charter if the Agency determines that the continued operation of the regulated entity in default or in danger of default is in the best interest of the national economy and the housing markets.

(B) TREATMENT AS BEING IN DEFAULT FOR CERTAIN PURPOSES.—A limited-life regulated entity shall be treated as a regulated entity in default at such times and for such purposes as the Agency may, in its discretion, determine.

(C) MANAGEMENT.—A limited-life regulated entity, upon the granting of its charter, shall be under the management of a board of directors consisting of not fewer than 5 nor more than 10 members appointed by the Agency.

(D) BYLAWS.—The board of directors of a limited-life regulated entity shall adopt such bylaws as may be approved by the Agency.

(3) CAPITAL STOCK.—No capital stock need be paid into a limited-life regulated entity by the Agency.

(4) INVESTMENTS.—Funds of a limited-life regulated entity shall be kept on hand in cash, invested in obligations of the United States or obligations guaranteed as to principal and interest by the United States, or deposited with the Agency, or any Federal Reserve bank.

(5) EXEMPT STATUS.—Notwithstanding any other provision of Federal or State law, the limited-life regulated entity, its franchise, property, and income shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority.

(6) WINDING UP.—

(A) IN GENERAL.—Subject to subparagraph (B), unless Congress authorizes the sale of the capital stock of the limited-life regulated entity, not later than 2 years after the date of its organization, the Agency shall wind up the affairs of the limited-life regulated entity.

(B) EXTENSION.—The Director may, in the discretion of the Director, extend the status of the limited-life regulated entity for 3 additional 1-year periods.

(7) TRANSFER OF ASSETS AND LIABILITIES.—

(A) IN GENERAL.—

(i) TRANSFER OF ASSETS AND LIABILITIES.—The Agency, as receiver, may transfer any assets and liabilities of a regulated entity in default, or in danger of default, to the limited-life regulated entity in accordance with paragraph (1).

(ii) SUBSEQUENT TRANSFERS.—At any time after a charter is transferred to a limited-life regulated entity, the Agency, as receiver, may transfer any assets and li-

abilities of such regulated entity in default, or in danger in default, as the Agency may, in its discretion, determine to be appropriate in accordance with paragraph (1).

(iii) *EFFECTIVE WITHOUT APPROVAL.*—The transfer of any assets or liabilities of a regulated entity in default, or in danger of default, transferred to a limited-life regulated entity shall be effective without any further approval under Federal or State law, assignment, or consent with respect thereto.

(8) *PROCEEDS.*—To the extent that available proceeds from the limited-life regulated entity exceed amounts required to pay obligations, such proceeds may be paid to the regulated entity in default, or in danger of default.

(9) *POWERS.*—

(A) *IN GENERAL.*—Each limited-life regulated entity created under this subsection shall have all corporate powers of, and be subject to the same provisions of law as, the regulated entity in default or in danger of default to which it relates, except that—

(i) the Agency may—

(I) remove the directors of a limited-life regulated entity; and

(II) fix the compensation of members of the board of directors and senior management, as determined by the Agency in its discretion, of a limited-life regulated entity;

(ii) the Agency may indemnify the representatives for purposes of paragraph (1)(B), and the directors, officers, employees, and agents of a limited-life regulated entity on such terms as the Agency determines to be appropriate; and

(iii) the board of directors of a limited-life regulated entity—

(I) shall elect a chairperson who may also serve in the position of chief executive officer, except that such person shall not serve either as chairperson or as chief executive officer without the prior approval of the Agency; and

(II) may appoint a chief executive officer who is not also the chairperson, except that such person shall not serve as chief executive officer without the prior approval of the Agency.

(B) *STAY OF JUDICIAL ACTION.*—Any judicial action to which a limited-life regulated entity becomes a party by virtue of its acquisition of any assets or assumption of any liabilities of a regulated entity in default shall be stayed from further proceedings for a period of up to 45 days at the request of the limited-life regulated entity. Such period may be modified upon the consent of all parties.

(10) *OBTAINING OF CREDIT AND INCURRING OF DEBT.*—

(A) *IN GENERAL.*—The limited-life regulated entity may obtain unsecured credit and incur unsecured debt in the ordinary course of business.

(B) *INABILITY TO OBTAIN CREDIT.*—If the limited-life regulated entity is unable to obtain unsecured credit the Director may authorize the obtaining of credit or the incurring of debt—

(i) with priority over any or all administrative expenses;

(ii) secured by a lien on property that is not otherwise subject to a lien; or

(iii) secured by a junior lien on property that is subject to a lien.

(C) *LIMITATIONS.*—

(i) *IN GENERAL.*—The Director, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property that is subject to a lien (other than mortgages that collateralize the mortgage-backed securities issued or guaranteed by the regulated entity) only if—

(I) the limited-life regulated entity is unable to obtain such credit otherwise; and

(II) there is adequate protection of the interest of the holder of the lien on the property which such senior or equal lien is proposed to be granted.

(ii) *BURDEN OF PROOF.*—In any hearing under this subsection, the Director has the burden of proof on the issue of adequate protection.

(D) *EFFECT ON DEBTS AND LIENS.*—The reversal or modification on appeal of an authorization under this paragraph to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

(11) *ISSUANCE OF PREFERRED DEBT.*—A limited-life regulated entity may, subject to the approval of the Director and subject to such terms and conditions as the Director may prescribe, issue notes, bonds, or other debt obligations of a class to which all other debt obligations of the limited-life regulated entity shall be subordinate in right and payment.

(12) *NO FEDERAL STATUS.*—

(A) *AGENCY STATUS.*—A limited-life regulated entity is not an agency, establishment, or instrumentality of the United States.

(B) *EMPLOYEE STATUS.*—Representatives for purposes of paragraph (1)(B), interim directors, directors, officers, employees, or agents of a limited-life regulated entity are not, solely by virtue of service in any such capacity, officers or employees of the United States. Any employee of the Agency or of any Federal instrumentality who serves at the request of the Agency as a representative for purposes of paragraph (1)(B), interim director, director, officer, employee, or agent of a limited-life regulated entity shall not—

(i) solely by virtue of service in any such capacity lose any existing status as an officer or employee of the United States for purposes of title 5, United States Code, or any other provision of law; or

(ii) receive any salary or benefits for service in any such capacity with respect to a limited-life regulated entity in addition to such salary or benefits as are obtained through employment with the Agency or such Federal instrumentality.

(13) **ADDITIONAL POWERS.**—In addition to any other powers granted under this subsection, a limited-life regulated entity may—

(A) extend a maturity date or change in an interest rate or other term of outstanding securities;

(B) issue securities of the limited-life regulated entity, for cash, for property, for existing securities, or in exchange for claims or interests, or for any other appropriate purposes; and

(C) take any other action not inconsistent with this section.

(j) **OTHER EXEMPTIONS.**—When acting as a receiver, the following provisions shall apply with respect to the Agency:

(1) **EXEMPTION FROM TAXATION.**—The Agency, including its franchise, its capital, reserves, and surplus, and its income, shall be exempt from all taxation imposed by any State, country, municipality, or local taxing authority, except that any real property of the Agency shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed, except that, notwithstanding the failure of any person to challenge an assessment under State law of the value of such property, and the tax thereon, shall be determined as of the period for which such tax is imposed.

(2) **EXEMPTION FROM ATTACHMENT AND LIENS.**—No property of the Agency shall be subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the Agency, nor shall any involuntary lien attach to the property of the Agency.

(3) **EXEMPTION FROM PENALTIES AND FINES.**—The Agency shall not be liable for any amounts in the nature of penalties or fines, including those arising from the failure of any person to pay any real property, personal property, probate, or recording tax or any recording or filing fees when due.

(k) **PROHIBITION OF CHARTER REVOCATION.**—In no case may a receiver appointed pursuant to this section revoke, annul, or terminate the charter of a regulated entity.

SEC. 1368. NOTICE OF CLASSIFICATION AND ENFORCEMENT ACTION.

(a) **NOTICE.**—Before taking any action referred to in subsection (b), the Director shall provide to [the enterprise] the regulated entity written notice of the proposed action, which states the reasons for the proposed action and the information on which the proposed action is based.

(b) **APPLICABILITY.**—The requirements of subsection (a) shall apply to the following actions:

(1) Classification or reclassification of [an enterprise] *a regulated entity* within a particular capital classification under section 1364.

* * * * *

(c) RESPONSE PERIOD.—

(1) IN GENERAL.—During the 30-day period beginning on the date that [an enterprise] *a regulated entity* is provided notice under subsection (a) of a proposed action, [the enterprise] *the regulated entity* may submit to the Director any information relevant to the action that [the enterprise] *the regulated entity* considers appropriate for consideration by the Director in determining whether to take such action. The Director may, at the discretion of the Director, hold an informal administrative hearing to receive and discuss such information and the proposed determination.

(2) EXTENDED PERIOD.—The Director may extend the period under paragraph (1) for good cause for not more than 30 additional days.

(3) SHORTENED PERIOD.—The Director may shorten the period under paragraph (1) if the Director determines that the condition of [the enterprise] *the regulated entity* so requires or [the enterprise] *the regulated entity* consents.

(4) FAILURE TO RESPOND.—The failure of [an enterprise] *a regulated entity* to provide information during the response period under this subsection (as extended or shortened) shall waive any right of [the enterprise] *the regulated entity* to comment on the proposed action of the Director.

(d) CONSIDERATION OF INFORMATION AND DETERMINATION.—After the expiration of the response period under subsection (c) or upon receipt of information provided during such period by [the enterprise] *the regulated entity*, whichever occurs earlier, the Director shall determine whether to take the action proposed, taking into consideration any relevant information submitted by [the enterprise] *the regulated entity* during the response period. The Director shall provide written notice of a determination to take action and the reasons for such determination to [the enterprise] *the regulated entity*, the Committee on [Banking, Finance and Urban Affairs] *Financial Services* of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate. Such notice shall respond to any information submitted during the response period.

(e) EFFECTIVE DATE OF ACTIONS.—An action referred to in subsection (b) shall take effect upon receipt by [the enterprise] *the regulated entity* of notice of the determination of the Director under subsection (d), unless otherwise provided in such notice.

[SEC. 1369. APPOINTMENT OF CONSERVATORS.

[(a) APPOINTMENT.—

[(1) DISCRETIONARY AUTHORITY.—The Director may, after providing notice under paragraph (3), appoint a conservator for an enterprise upon a determination in writing—

[(A) that alternative remedies available to the Director under this title are not satisfactory; and

[(B) that—

[(i) the enterprise is not likely to pay its obligations in the normal course of business;

[(ii) the enterprise has incurred or is reasonably likely to incur losses that would deplete substantially all of its core capital and it is unlikely that the enterprise will replenish its core capital within a reasonable period;

[(iii) the enterprise has concealed or is concealing books, papers, records, or assets of the enterprise that are material to the discharge of the Director's responsibilities under this subtitle, or has refused or is refusing to submit such books, papers, records, or information regarding the affairs of the enterprise for inspection to the Director upon request; or

[(iv) the enterprise has willfully violated, or is willfully violating, a final cease-and-desist order under section 1371.

[(2) CONSENT OF ENTERPRISE.—Notwithstanding paragraph (1), the Director may appoint a conservator for an enterprise if the enterprise, by an affirmative vote of a majority of the members of its board of directors or by an affirmative vote of a majority of its shareholders, consents to such appointment.

[(3) NOTICE.—Upon making a determination under paragraph (1) of this subsection or under section 1366 or 1367 to appoint a conservator for an enterprise, or upon consent of the enterprise under paragraph (2) to such an appointment, the Director shall provide written notice to the enterprise, the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and the Committee on Banking, Housing, and Urban Affairs of the Senate—

[(A) that a conservator will be appointed for the enterprise;

[(B) stating the reasons for the appointment of the conservator; and

[(C) identifying the person or governmental agency that the Director intends to appoint as conservator.

[(4) QUALIFICATIONS.—The conservator shall be—

[(A) the Director or any other governmental agency; or

[(B) any person that—

[(i) has no claim against, or financial interest in, the enterprise or other basis for a conflict of interest; and

[(ii) has the financial and management expertise necessary to direct the operations and affairs of the enterprise.

[(b) JUDICIAL REVIEW.—

[(1) TIMING AND JURISDICTION.—Except as provided in paragraph (2), an enterprise for which a conservator is appointed (pursuant to this section or section 1366 or 1367) may bring an action in the United States District Court for the District of Columbia for an order requiring the Director to terminate the appointment of the conservator. The court, upon the merits, shall dismiss such action or shall direct the Director to terminate the appointment of the conservator. Such an action may be commenced only during the 20-day period beginning upon the appointment of the conservator.

[(2) CONSENSUAL APPOINTMENTS.—Appointment of a conservator pursuant to consent of the enterprise under subsection (a)(2) shall not be subject to judicial review under this subsection.

[(3) STANDARD OF REVIEW.—A decision of the Director to appoint a conservator may be set aside under this subsection only if the court finds that the decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with applicable laws.

[(4) LIMITATION ON JURISDICTION.—Except as otherwise provided in this subsection, no court may take any action regarding the removal of a conservator or otherwise restrain or affect the exercise of powers or functions of a conservator.

[(c) REPLACEMENT.—The Director may, without notice or hearing, replace a conservator with another conservator. Such replacement shall not affect the right of the enterprise under subsection (b) to obtain judicial review of the decision of the Director to appoint a conservator.

[(d) EXAMINATIONS.—The Director may examine and supervise any enterprise in conservatorship during the period in which the enterprise continues to operate as a going concern.

[(e) TERMINATION.—

[(1) DISCRETIONARY.—At any time the Director determines that termination of a conservatorship pursuant to an appointment under subsection (a) is in the public interest and may safely be accomplished, the Director may terminate the conservatorship and permit the enterprise to resume the transaction of its business subject to such terms, conditions, and limitations as the Director may prescribe.

[(2) MANDATORY.—The Director shall terminate a conservatorship initiated pursuant to section 1366 or 1367 upon a determination by the Director that the enterprise has maintained an amount of core capital that is equal to or exceeds the minimum capital level for the enterprise established under section 1362, and may by written order prescribe such terms, conditions, and limitations on the enterprise as the Director considers appropriate.

[(3) TERMS.—Any terms, conditions, and limitations imposed by the Director upon termination of a conservatorship shall be enforceable and reviewable under the provisions of sections 1374 and 1375, to the same extent as any cease-and-desist order issued pursuant to subtitle C.

[SEC. 1369A. POWERS OF CONSERVATORS.

[(a) GENERAL POWERS.—A conservator shall have all the powers of the shareholders, directors, and officers of the enterprise under conservatorship and may operate the enterprise in the name of the enterprise, unless the Director provides otherwise.

[(b) ADDITIONAL POWER.—A conservator may avoid any security interest taken by a creditor with the intent to hinder, delay, or defraud the enterprise or the creditors of the enterprise.

[(c) LIMITATIONS BY DIRECTOR.—A conservator shall be subject to any rules, regulations, and orders issued from time to time by the Director and, except as otherwise specifically provided in such rules, regulations, or orders or in section 1369B, shall have the same rights and privileges and be subject to the same duties, re-

strictions, penalties, conditions, and limitations applicable to directors, officers, or employees of the enterprise.

[(d) ENFORCEMENT OF CONTRACTS.—

[(1) IN GENERAL.—A conservator may enforce any contract described in paragraph (2), notwithstanding any provision of the contract providing for the termination, default, acceleration, or other exercise of rights upon, or solely by reason of, the insolvency of the enterprise or the appointment of a conservator.

[(2) ENFORCEABLE CONTRACTS.—Any contract that is within a class of contracts shall be enforceable under paragraph (1) if the Director—

[(A) determines that the continued enforceability of such class of contracts is necessary to achieve the purpose of the conservatorship; and

[(B) specifically provides for the enforceability of such class of contracts in a regulation or order, issued for the purpose of this subsection, which describes such class.

[(3) APPLICABILITY.—This subsection and any regulation or order issued under this subsection shall apply only to contracts entered into, modified, extended, or renewed after the effective date of the regulation or order.

[(e) STAYS.—

[(1) IN GENERAL.—Not later than 45 days after appointment pursuant to section 1366, 1367, or 1369, or 45 days after receipt of actual notice of an action or proceeding that is pending at the time of appointment, a conservator may request that any judicial action or proceeding to which the conservator or the enterprise is or may become a party be stayed for a period not exceeding 45 days after the request. Upon petition, the court shall grant such stay as to all parties.

[(2) FEDERAL AGENCY AS CONSERVATOR.—In any case in which the conservator appointed for an enterprise is a Federal agency or an officer or employee of the Federal Government, the conservator may make a request for a stay under paragraph (1) only with the prior consent of the Attorney General and subject to the direction and control of the Attorney General.

[(f) PAYMENT OF CREDITORS.—The Director may require a conservator to set aside and make available for payment to creditors any amounts that the Director determines may safely be used for such purpose. All creditors who are similarly situated shall be treated in a similar manner.

[(g) COMPENSATION OF CONSERVATOR AND EMPLOYEES.—A conservator and professional employees (other than Federal employees) appointed to represent or assist the conservator may be compensated for activities conducted as conservator. Compensation may not be provided in amounts greater than the compensation paid to employees of the Federal Government for similar services, except that the Director may provide for compensation at higher rates (but not in excess of rates prevailing in the private sector), if the Director determines that compensation at higher rates is necessary in order to recruit and retain competent personnel.

[(h) EXPENSES.—All expenses of a conservatorship pursuant to this section (including compensation pursuant to subsection (f))

shall be paid by the enterprise under conservatorship and shall be secured by a lien on the enterprise, which shall have priority over any other lien.

[(i) CONFLICTS OF INTEREST AND FINANCIAL DISCLOSURE.—A conservator shall be subject to any laws and regulations relating to conflicts of interest and financial disclosure that apply to employees of the Office.]

[SEC. 1369B. LIABILITY PROTECTION FOR CONSERVATORS.]

[(a) FEDERAL AGENCIES AND EMPLOYEES.—In any case in which a conservator appointed under this subtitle is a Federal agency or an officer or employee of the Federal Government, the provisions of chapters 161 and 171 of title 28, United States Code, shall apply with respect to the liability of the conservator for acts or omissions performed pursuant to and in the course of the duties and responsibilities of the conservatorship.]

[(b) OTHER CONSERVATORS.—In any case where the conservator is not a conservator described in subsection (a), the conservator shall not be personally liable for damages in tort or otherwise for acts or omissions performed pursuant to and in the course of the duties and responsibilities of the conservatorship, unless such acts or omissions constitute gross negligence or any form of intentional tortious conduct or criminal conduct.]

[(c) INDEMNIFICATION.—The Director, with the approval of the Attorney General, may indemnify the conservator on such terms as the Director considers appropriate.]

SEC. 1369C. CAPITAL RESTORATION PLANS.

(a) CONTENTS.—Each capital restoration plan submitted under this subtitle shall set forth a feasible plan for restoring the core capital of [the enterprise] *the regulated entity* subject to the plan to an amount not less than the minimum capital level for [the enterprise] *the regulated entity* and for restoring the total capital of [the enterprise] *the regulated entity* to an amount not less than the risk-based capital level for [the enterprise] *the regulated entity*. Each capital restoration plan shall—

(1) specify the level of capital [the enterprise] *the regulated entity* will achieve and maintain;

(2) describe the actions that [the enterprise] *the regulated entity* will take to become classified as adequately capitalized;

(3) establish a schedule for completing the actions set forth in the plan;

(4) specify the types and levels of [activities (including existing and new programs)] *activities, services, undertakings, and offerings (including existing and new products (as such term is defined in section 1321(f))* in which [the enterprise] *the regulated entity* will engage during the term of the plan; and

(5) describe the actions that [the enterprise] *the regulated entity* will take to comply with any mandatory and discretionary requirements imposed under this subtitle.

(b) DEADLINES FOR SUBMISSION.—The Director shall, by regulation, establish a deadline for submission of a capital restoration plan, which may not be more than 45 days after [the enterprise] *the regulated entity* is notified in writing that a plan is required. The regulations shall provide that the Director may extend the deadline to the extent that the Director determines it necessary.

Any extension of the deadline shall be in writing and for a time certain.

(c) APPROVAL.—The Director shall review each capital restoration plan submitted under this section and, not later than 30 days after submission of the plan, approve or disapprove the plan. The Director may extend the period for approval or disapproval for any plan for a single additional 30-day period if the Director determines it necessary. The Director shall provide written notice to [any enterprise] *any regulated entity* submitting a plan of the approval or disapproval of the plan (which shall include the reasons for any disapproval of the plan) and of any extension of the period for approval or disapproval.

(d) RESUBMISSION.—If the Director disapproves the initial capital restoration plan submitted by [the enterprise] *the regulated entity*, [the enterprise] *the regulated entity* shall submit an amended plan acceptable to the Director within 30 days or such longer period that the Director determines is in the public interest.

SEC. 1369D. JUDICIAL REVIEW OF DIRECTOR ACTION.

(a) JURISDICTION.—

(1) FILING OF PETITION.—[An enterprise] *A regulated entity* that is not classified as critically undercapitalized and is the subject of a classification under section 1364 or a discretionary supervisory action taken under this subtitle by the Director (other than action to appoint a conservator under [section 1366 or 1367 or action under section 1369]) *section 1367* may obtain review of the classification or action by filing, within 10 days after receiving written notice of the Director's action, a written petition requesting that the classification or action of the Director be modified, terminated, or set aside.

* * * * *

(c) UNAVAILABILITY OF STAY.—The commencement of proceedings for judicial review pursuant to this section shall not operate as a stay of any action taken by the Director. Pending judicial review of the action, the court shall not have jurisdiction to stay, enjoin, or otherwise delay any supervisory action taken by the Director with respect to [an enterprise] *a regulated entity* that is classified as significantly or critically undercapitalized or any action of the Director that results in the classification of [an enterprise] *a regulated entity* as significantly or critically undercapitalized.

(d) LIMITATION ON JURISDICTION.—Except as provided in this section, no court shall have jurisdiction to affect, by injunction or otherwise, the issuance or effectiveness of any classification or action of the Director under this subtitle (other than appointment of a conservator under [section 1366 or 1367 or action under section 1369]) *section 1367*) or to review, modify, suspend, terminate, or set aside such classification or action.

SEC. 1369E. REVIEWS OF ENTERPRISE ASSETS AND LIABILITIES.

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

(1) the size or growth of the mortgage market;

(2) *the need for the portfolio in maintaining liquidity or stability of the secondary mortgage market (including the market for the mortgage-backed securities the enterprises issue);*

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

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

(5) *the liquidity needs of the enterprises;*

(6) *any potential risks posed by the nature of the portfolio holdings; and*

(7) *any additional factors that the Director determines to be necessary to carry out the purpose under the first sentence of this subsection to establish standards for assessing whether the portfolio holdings are consistent with the mission and safe and sound operations of the enterprises.*

(b) **TEMPORARY ADJUSTMENTS.**—*The Director may, by order, make temporary adjustments to the established standards for an enterprise or both enterprises, such as during times of economic distress or market disruption.*

(c) **AUTHORITY TO REQUIRE DISPOSITION OR ACQUISITION.**—*The Director shall monitor the portfolio of each enterprise. Pursuant to subsection (a) and notwithstanding the capital classifications of the enterprises, the Director may, by order, require an enterprise, under such terms and conditions as the Director determines to be appropriate, to dispose of or acquire any asset, if the Director determines that such action is consistent with the purposes of this Act or any of the authorizing statutes.*

Subtitle C—Enforcement Provisions

SEC. 1371. CEASE-AND-DESIST PROCEEDINGS.

[(a) **GROUNDS FOR ISSUANCE AGAINST ADEQUATELY CAPITALIZED ENTERPRISES.**—The Director may issue and serve a notice of charges under this section upon an enterprise that is classified (for purposes of subtitle B) as adequately capitalized or upon any executive officer or director of such an enterprise, if in the determination of the Director, the enterprise, executive officer, or director is engaging or has engaged, or the Director has reasonable cause to believe that the enterprise, executive officer, or director is about to engage, in—

[(1) any conduct that threatens to cause a significant depletion of the core capital of the enterprise;

[(2) any conduct or violation that may result in the issuance of an order described in subsection (d)(1); or

[(3) any conduct that violates—

[(A) any provision of this title, the Federal National Mortgage Association Charter Act, the Federal Home Loan Mortgage Corporation Act, or any order, rule, or regulation under any such title or Act, except that the Director may not enforce compliance with any housing goal established under subpart B of part 2 of subtitle A of this title, with section 1336 or 1337 of this title, or with subsection (m) or (n) of section 309 of the Federal National Mortgage Asso-

ciation Charter Act or subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act; or

[(B) any written agreement entered into by the enterprise with the Director.

[(b) GROUNDS FOR ISSUANCE AGAINST UNDERCAPITALIZED, SIGNIFICANTLY UNDERCAPITALIZED, AND CRITICALLY UNDERCAPITALIZED ENTERPRISES.—The Director may issue and serve a notice of charges under this section upon an enterprise classified (for purposes of subtitle B) as undercapitalized, significantly undercapitalized, or critically undercapitalized, or any executive officer or director of any such enterprise, if in the determination of the Director the enterprise, executive officer, or director is engaging or has engaged, or the Director has reasonable cause to believe that the enterprise, executive officer, or director is about to engage, in—

[(1) any conduct likely to result in a material depletion of the core capital of the enterprise, or

[(2) any conduct or violation described in paragraph (2) or (3) of subsection (a),

except that the Director may not enforce compliance with any housing goal established under subpart B of part 2 of subtitle A of this title, with section 1336 or 1337 of this title, or with subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act or subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act.]

(a) *ISSUANCE FOR UNSAFE OR UNSOUND PRACTICES AND VIOLATIONS OF RULES OR LAWS.—If, in the opinion of the Director, a regulated entity or any regulated entity-affiliated party is engaging or has engaged, or the Director has reasonable cause to believe that the regulated entity or any regulated entity-affiliated party is about to engage, in an unsafe or unsound practice in conducting the business of the regulated entity or is violating or has violated, or the Director has reasonable cause to believe that the regulated entity or any regulated entity-affiliated party is about to violate, a law, rule, or regulation, or any condition imposed in writing by the Director in connection with the granting of any application or other request by the regulated entity or any written agreement entered into with the Director, the Director may issue and serve upon the regulated entity or such party a notice of charges in respect thereof. The Director may not, pursuant to this section, enforce compliance with any housing goal established under subpart B of part 2 of subtitle A of this title, with section 1336 or 1337 of this title, with subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(m), (n)), with subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1456(e), (f)), or with paragraph (5) of section 10(j) of the Federal Home Loan Bank Act (12 U.S.C. 1430(j)).*

(b) *ISSUANCE FOR UNSATISFACTORY RATING.—If a regulated entity receives, in its most recent report of examination, a less-than-satisfactory rating for asset quality, management, earnings, or liquidity, the Director may (if the deficiency is not corrected) deem the regulated entity to be engaging in an unsafe or unsound practice for purposes of this subsection.*

(c) *PROCEDURE.—*

(1) * * *

(2) ISSUANCE OF ORDER.—If the Director finds on the record made at such hearing that any conduct or violation specified in the notice of charges has been established (or **the enterprise** *the regulated entity* consents pursuant to section 1373(a)(4)), the Director may issue and serve upon the **enterprise, executive officer, or director** *regulated entity or regulated entity-affiliated party* an order requiring such party to cease and desist from any such conduct or violation and to take affirmative action to correct or remedy the conditions resulting from any such conduct or violation.

(d) AFFIRMATIVE ACTION TO CORRECT CONDITIONS RESULTING FROM VIOLATIONS OR ACTIVITIES.—The authority under this section and section 1372 to issue any order requiring an **enterprise, executive officer, or director** *regulated entity or regulated entity-affiliated party* to take affirmative action to correct or remedy any condition resulting from any conduct or violation with respect to which such order is issued includes the authority—

(1) to require **an executive officer or a director** *a regulated entity affiliated party* to make restitution to, or provide reimbursement (*including reimbursement of compensation under section 1318*), indemnification, or guarantee against loss to **the enterprise** *the regulated entity* to the extent that such person—

(A) was unjustly enriched in connection with such conduct or violation; or

(B) engaged in conduct or a violation that would subject such person to a civil penalty pursuant to section 1376(b)(3);

(2) to require **an enterprise** *a regulated entity* to seek restitution, or to obtain reimbursement, indemnification, or guarantee against loss;

(3) to restrict the growth of **the enterprise** *the regulated entity*;

(4) to require **the enterprise** *the regulated entity* to dispose of any asset involved;

(5) to require **the enterprise** *the regulated entity* to rescind agreements or contracts;

(6) to require **the enterprise** *the regulated entity* to employ qualified officers or employees (who may be subject to approval by the Director at the direction of the Director); **and**

(7) *to effect an attachment on a regulated entity or regulated entity-affiliated party subject to an order under this section or section 1372; and*

[(7)] (8) to require **the enterprise** *the regulated entity* to take such other action as the Director determines appropriate.

(e) AUTHORITY TO LIMIT ACTIVITIES.—The authority to issue an order under this section or section 1372 includes the authority to place limitations on the activities or functions of **the enterprise** *the regulated entity* or any executive officer or director of **the enterprise** *the regulated entity*.

(f) EFFECTIVE DATE.—An order under this section shall become effective upon the expiration of the 30-day period beginning on the service of the order upon **the enterprise** *the regulated entity*, executive officer, or director concerned (except in the case of an order issued upon consent, which shall become effective at the time speci-

fied therein), and shall remain effective and enforceable as provided in the order, except to the extent that the order is stayed, modified, terminated, or set aside by action of the Director or otherwise, as provided in this subtitle.

SEC. 1372. TEMPORARY CEASE-AND-DESIST ORDERS.

[(a) **GROUND FOR ISSUANCE AND SCOPE.**—Whenever the Director determines that any conduct or violation, or threatened conduct or violation, specified in the notice of charges served upon the enterprise, executive officer, or director pursuant to section 1371 (a) or (b), or the continuation thereof, is likely—

[(1) to cause insolvency,

[(2) to cause a significant depletion of the core capital of the enterprise, or

[(3) otherwise to cause irreparable harm to the enterprise, prior to the completion of the proceedings conducted pursuant to section 1371(c), the Director may issue a temporary order requiring the enterprise, executive officer, or director to cease and desist from any such conduct or violation and to take affirmative action to prevent or remedy such insolvency, depletion, or harm pending completion of such proceedings. Such order may include any requirement authorized under section 1371(d).]

(a) *GROUND FOR ISSUANCE.*—*Whenever the Director determines that the violation or threatened violation or the unsafe or unsound practice or practices specified in the notice of charges served upon the regulated entity or any regulated entity-affiliated party pursuant to section 1371(a), or the continuation thereof, is likely to cause insolvency or significant dissipation of assets or earnings of the regulated entity, or is likely to weaken the condition of the regulated entity prior to the completion of the proceedings conducted pursuant to sections 1371 and 1373, the Director may issue a temporary order requiring the regulated entity or such party to cease and desist from any such violation or practice and to take affirmative action to prevent or remedy such insolvency, dissipation, condition, or prejudice pending completion of such proceedings. Such order may include any requirement authorized under section 1371(d).*

(b) **EFFECTIVE DATE.**—An order issued pursuant to subsection (a) shall become effective upon service upon the [enterprise, executive officer, or director] *regulated entity or regulated entity-affiliated party* and, unless set aside, limited, or suspended by a court in proceedings pursuant to subsection (d), shall remain in effect and enforceable pending the completion of the proceedings pursuant to such notice and shall remain effective until the Director dismisses the charges specified in the notice or until superseded by a cease-and-desist order issued pursuant to section 1371.

(c) **INCOMPLETE OR INACCURATE RECORDS.**—

(1) **TEMPORARY ORDER.**—If a notice of charges served under section 1371 (a) or (b) specifies on the basis of particular facts and circumstances that the books and records of [the enterprise] *the regulated entity* served are so incomplete or inaccurate that the Director is unable, through the normal supervisory process, to determine the financial condition of [the enterprise] *the regulated entity* or the details or the purpose of any transaction or transactions that may have a material effect on the financial condition of [that enterprise] *that regulated entity*, the Director may issue a temporary order requiring—

(A) * * *

* * * * *

(2) EFFECTIVE PERIOD.—Any temporary order issued under paragraph (1)—

(A) shall become effective upon service; and

(B) unless set aside, limited, or suspended by a court in proceedings pursuant to subsection (d), shall remain in effect and enforceable until the earlier of—

(i) the completion of the proceeding initiated under section 1371 in connection with the notice of charges; or

(ii) the date the Director determines, by examination or otherwise, that the books and records of **the enterprise** *the regulated entity* are accurate and reflect the financial condition of **the enterprise** *the regulated entity*.

(d) JUDICIAL REVIEW.—**An enterprise, executive officer, or director** *A regulated entity or regulated entity-affiliated party* that has been served with a temporary order pursuant to this section may apply to the United States District Court for the District of Columbia within 10 days after such service for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of the administrative proceedings pursuant to the notice of charges served upon **the enterprise, executive officer, or director** *the regulated entity or regulated entity-affiliated party* under section 1371 (a) or (b). Such court shall have jurisdiction to issue such injunction.

[(e) ENFORCEMENT BY ATTORNEY GENERAL.—In the case of violation or threatened violation of, or failure to obey, a temporary order issued pursuant to this section, the Director may request the Attorney General of the United States to bring an action in the United States District Court for the District of Columbia for an injunction to enforce such order or may, under the direction and control of the Attorney General, bring such an action. If the court finds any such violation, threatened violation, or failure to obey, the court shall issue such injunction.]

(e) ENFORCEMENT.—In the case of violation or threatened violation of, or failure to obey, a temporary cease-and-desist order issued pursuant to this section, the Director may apply to the United States District Court for the District of Columbia or the United States district court within the jurisdiction of which the headquarters of the regulated entity is located, for an injunction to enforce such order, and, if the court determines that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue such injunction.

* * * * *

SEC. 1375. ENFORCEMENT AND JURISDICTION.

[(a) ENFORCEMENT.—The Director may request the Attorney General of the United States to bring an action in the United States District Court for the District of Columbia for the enforcement of any effective notice or order issued under this subtitle or subtitle B or may, under the direction and control of the Attorney General, bring such an action. Such court shall have jurisdiction and power to order and require compliance herewith.]

(a) *ENFORCEMENT.*—The Director may, in the discretion of the Director, apply to the United States District Court for the District of Columbia, or the United States district court within the jurisdiction of which the headquarters of the regulated entity is located, for the enforcement of any effective and outstanding notice or order issued under this subtitle or subtitle B, or request that the Attorney General of the United States bring such an action. Such court shall have jurisdiction and power to order and require compliance with such notice or order.

(b) *LIMITATION ON JURISDICTION.*—Except as otherwise provided in this subtitle and sections 1369 and 1369D, no court shall have jurisdiction to affect, by injunction or otherwise, the issuance or enforcement of any notice or order under section 1371, 1372, [or 1376] 1376, or 1377, or subtitle B, or to review, modify, suspend, terminate, or set aside any such notice or order.

SEC. 1375A. PREJUDGMENT ATTACHMENT.

(a) *IN GENERAL.*—In any action brought pursuant to this title, or in actions brought in aid of, or to enforce an order in, any administrative or other civil action for money damages, restitution, or civil money penalties brought pursuant to this title, the court may, upon application of the Director or Attorney General, as applicable, issue a restraining order that—

(1) prohibits any person subject to the proceeding from withdrawing, transferring, removing, dissipating, or disposing of any funds, assets or other property; and

(2) appoints a person on a temporary basis to administer the restraining order.

(b) *STANDARD.*—

(1) *SHOWING.*—Rule 65 of the Federal Rules of Civil Procedure shall apply with respect to any proceeding under subsection (a) without regard to the requirement of such rule that the applicant show that the injury, loss, or damage is irreparable and immediate.

(2) *STATE PROCEEDING.*—If, in the case of any proceeding in a State court, the court determines that rules of civil procedure available under the laws of such State provide substantially similar protections to a party's right to due process as Rule 65 (as modified with respect to such proceeding by paragraph (1)), the relief sought under subsection (a) may be requested under the laws of such State.

SEC. 1376. CIVIL MONEY PENALTIES.

(a) *IN GENERAL.*—The Director may impose a civil money penalty in accordance with this section on [any enterprise, or any executive officer or director] any regulated entity, or any regulated-entity affiliated party of [any enterprise] any regulated entity, that—

(1) violates any provision of this title, [the Federal National Mortgage Association Charter Act, the Federal Home Loan Mortgage Corporation Act] any provision of any of the authorizing statutes, or any order, rule, or regulation under any such title [or Act] or statute, except that the Director may not enforce compliance with any housing goal established under subpart B of part 2 of subtitle A of this title, with section 1336 or 1337 of this title, or with subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act

【or】, subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act, or paragraph (5) or (12) of section 10(j) of the Federal Home Loan Bank Act;

(2) violates any final or temporary order issued pursuant to section 1365, 1366, 1371, or 1372;

(3) violates any written agreement between 【the enterprise】 *the regulated entity* and the Director; or

(4) engages in any conduct that causes or is likely to cause a loss to 【the enterprise】 *the regulated entity*.

【(b) AMOUNT OF PENALTY.—

【(1) FIRST TIER.—The Director may impose a penalty on an enterprise for any violation described in paragraphs (1) through (3) of subsection (a). The amount of a penalty under this paragraph shall not exceed \$5,000 for each day that a violation continues.

【(2) SECOND TIER.—The Director may impose a penalty on an executive officer or director in an amount not to exceed \$10,000, or on an enterprise in an amount not to exceed \$25,000, for each day that a violation or conduct described in subsection (a) continues, if the Director finds that the violation or conduct—

【(A) is part of a pattern of misconduct; or

【(B) involved recklessness and caused or would be likely to cause a material loss to the enterprise.

【(3) THIRD TIER.—The Director may impose a penalty on an executive officer or director in an amount not to exceed \$100,000, or on an enterprise in an amount not to exceed \$1,000,000, for each day that a violation or conduct described in subsection (a) continues, if the Director finds that the violation or conduct was knowing and caused or would be likely to cause a substantial loss to the enterprise.】

(b) AMOUNT OF PENALTY.—

(1) FIRST TIER.—Any regulated entity which, or any regulated entity-affiliated party who—

(A) violates any provision of this title, any provision of any of the authorizing statutes, or any order, condition, rule, or regulation under any such title or statute, except that the Director may not, pursuant to this section, enforce compliance with any housing goal established under subpart B of part 2 of subtitle A of this title, with section 1336 or 1337 of this title, with subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act (12 U.S.C. 1723a(m), (n)), with subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1456(e), (f)), or with paragraph (5) or (12) of section 10(j) of the Federal Home Loan Bank Act;

(B) violates any final or temporary order or notice issued pursuant to this title;

(C) violates any condition imposed in writing by the Director in connection with the grant of any application or other request by such regulated entity; or

(D) violates any written agreement between the regulated entity and the Director, shall forfeit and pay a civil money penalty of not more than \$10,000 for each day during which such violation continues.

(2) *SECOND TIER.—Notwithstanding paragraph (1)—*(A) *if a regulated entity, or a regulated entity-affiliated party—**(i) commits any violation described in any subparagraph of paragraph (1);**(ii) recklessly engages in an unsafe or unsound practice in conducting the affairs of such regulated entity; or**(iii) breaches any fiduciary duty; and*(B) *the violation, practice, or breach—**(i) is part of a pattern of misconduct;**(ii) causes or is likely to cause more than a minimal loss to such regulated entity; or**(iii) results in pecuniary gain or other benefit to such party,**the regulated entity or regulated entity-affiliated party shall forfeit and pay a civil penalty of not more than \$50,000 for each day during which such violation, practice, or breach continues.*(3) *THIRD TIER.—Notwithstanding paragraphs (1) and (2), any regulated entity which, or any regulated entity-affiliated party who—*(A) *knowingly—**(i) commits any violation or engages in any conduct described in any subparagraph of paragraph (1);**(ii) engages in any unsafe or unsound practice in conducting the affairs of such regulated entity; or**(iii) breaches any fiduciary duty; and**(B) knowingly or recklessly causes a substantial loss to such regulated entity or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach,**shall forfeit and pay a civil penalty in an amount not to exceed the applicable maximum amount determined under paragraph (4) for each day during which such violation, practice, or breach continues.*(4) *MAXIMUM AMOUNTS OF PENALTIES FOR ANY VIOLATION DESCRIBED IN PARAGRAPH (3).—The maximum daily amount of any civil penalty which may be assessed pursuant to paragraph (3) for any violation, practice, or breach described in such paragraph is—**(A) in the case of any person other than a regulated entity, an amount not to exceed \$2,000,000; and**(B) in the case of any regulated entity, \$2,000,000.*(c) *PROCEDURES.—*(1) *ESTABLISHMENT.—The Director shall establish standards and procedures governing the imposition of civil money penalties under subsections (a) and (b). Such standards and procedures—**(A) shall provide for the Director to notify [the enterprise] the regulated entity in writing of the Director's determination to impose the penalty, which shall be made on the record;**(B) shall provide for the imposition of a penalty only after the [enterprise, executive officer, or director] regulated entity or regulated entity-affiliated party has been*

given an opportunity for a hearing on the record pursuant to section 1373; and

(C) may provide for review by the Director of any determination or order, or interlocutory ruling, arising from a hearing.

(2) FACTORS IN DETERMINING AMOUNT OF PENALTY.—In determining the amount of a penalty under this section, the Director shall give consideration to such factors as the gravity of the violation, any history of prior violations, the effect of the penalty on the safety and soundness of **the enterprise** *the regulated entity*, any injury to the public, any benefits received, and deterrence of future violations, and any other factors the Director may determine by regulation to be appropriate.

(3) REVIEW OF IMPOSITION OF PENALTY.—The order of the Director imposing a penalty under this section shall not be subject to review, except as provided in section 1374.

(d) ACTION TO COLLECT PENALTY.—**If an enterprise, executive officer, or director fails to comply with an order of the Director imposing a civil money penalty under this section, after the order is no longer subject to review as provided under subsection (c)(1) and section 1374, the Director may request the Attorney General of the United States to bring an action in the United States District Court for the District of Columbia to obtain a monetary judgment against the enterprise, executive officer, or director and such other relief as may be available, or may, under the direction and control of the Attorney General, bring such an action.** *If a regulated entity or regulated entity-affiliated party fails to comply with an order of the Director imposing a civil money penalty under this section, after the order is no longer subject to review as provided under subsection (c)(1) and section 1374, the Director may, in the discretion of the Director, bring an action in the United States District Court for the District of Columbia, or the United States district court within the jurisdiction of which the headquarters of the regulated entity is located, to obtain a monetary judgment against the regulated entity or regulated entity-affiliated party and such other relief as may be available, or request that the Attorney General of the United States bring such an action.* The monetary judgment may, in the discretion of the court, include any attorneys fees and other expenses incurred by the United States in connection with the action. In an action under this subsection, the validity and appropriateness of the order of the Director imposing the penalty shall not be subject to review.

* * * * *

(g) PROHIBITION OF REIMBURSEMENT OR INDEMNIFICATION.—**An enterprise** *A regulated entity* may not reimburse or indemnify any individual for any penalty imposed under **subsection (b)(3)** *this section, unless authorized by the Director by rule, regulation, or order.*

* * * * *

SEC. 1377. REMOVAL AND PROHIBITION AUTHORITY.

(a) **AUTHORITY TO ISSUE ORDER.**—*Whenever the Director determines that—*

(1) any regulated entity-affiliated party has, directly or indirectly—

- (A) violated—
- (i) any law or regulation;
 - (ii) any cease-and-desist order which has become final;
 - (iii) any condition imposed in writing by the Director in connection with the grant of any application or other request by such regulated entity; or
 - (iv) any written agreement between such regulated entity and the Director;
- (B) engaged or participated in any unsafe or unsound practice in connection with any regulated entity; or
- (C) committed or engaged in any act, omission, or practice which constitutes a breach of such party's fiduciary duty;
- (2) by reason of the violation, practice, or breach described in any subparagraph of paragraph (1)—
- (A) such regulated entity has suffered or will probably suffer financial loss or other damage; or
 - (B) such party has received financial gain or other benefit by reason of such violation, practice, or breach; and
- (3) such violation, practice, or breach—
- (A) involves personal dishonesty on the part of such party; or
 - (B) demonstrates willful or continuing disregard by such party for the safety or soundness of such regulated entity, the Director may serve upon such party a written notice of the Director's intention to remove such party from office or to prohibit any further participation by such party, in any manner, in the conduct of the affairs of any regulated entity.
- (b) **SUSPENSION ORDER.**—
- (1) **SUSPENSION OR PROHIBITION AUTHORITY.**—If the Director serves written notice under subsection (a) to any regulated entity-affiliated party of the Director's intention to issue an order under such subsection, the Director may—
- (A) suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of the regulated entity, if the Director—
 - (i) determines that such action is necessary for the protection of the regulated entity; and
 - (ii) serves such party with written notice of the suspension order; and
 - (B) prohibit the regulated entity from releasing to or on behalf of the regulated entity-affiliated party any compensation or other payment of money or other thing of current or potential value in connection with any resignation, removal, retirement, or other termination of employment or office of the party.
- (2) **EFFECTIVE PERIOD.**—Any suspension order issued under this subsection—
- (A) shall become effective upon service; and
 - (B) unless a court issues a stay of such order under subsection (g) of this section, shall remain in effect and enforceable until—

(i) the date the Director dismisses the charges contained in the notice served under subsection (a) with respect to such party; or

(ii) the effective date of an order issued by the Director to such party under subsection (a).

(3) *COPY OF ORDER.*—If the Director issues a suspension order under this subsection to any regulated entity-affiliated party, the Director shall serve a copy of such order on any regulated entity with which such party is affiliated at the time such order is issued.

(c) *NOTICE, HEARING, AND ORDER.*—A notice of intention to remove a regulated entity-affiliated party from office or to prohibit such party from participating in the conduct of the affairs of a regulated entity shall contain a statement of the facts constituting grounds for such action, and shall fix a time and place at which a hearing will be held on such action. Such hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after the date of service of such notice, unless an earlier or a later date is set by the Director at the request of (1) such party, and for good cause shown, or (2) the Attorney General of the United States. Unless such party shall appear at the hearing in person or by a duly authorized representative, such party shall be deemed to have consented to the issuance of an order of such removal or prohibition. In the event of such consent, or if upon the record made at any such hearing the Director shall find that any of the grounds specified in such notice have been established, the Director may issue such orders of suspension or removal from office, or prohibition from participation in the conduct of the affairs of the regulated entity, as it may deem appropriate, together with an order prohibiting compensation described in subsection (b)(1)(B). Any such order shall become effective at the expiration of 30 days after service upon such regulated entity and such party (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Director or a reviewing court.

(d) *PROHIBITION OF CERTAIN SPECIFIC ACTIVITIES.*—Any person subject to an order issued under this section shall not—

(1) participate in any manner in the conduct of the affairs of any regulated entity;

(2) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights in any regulated entity;

(3) violate any voting agreement previously approved by the Director; or

(4) vote for a director, or serve or act as a regulated entity-affiliated party.

(e) *INDUSTRY-WIDE PROHIBITION.*—

(1) *IN GENERAL.*—Except as provided in paragraph (2), any person who, pursuant to an order issued under this section, has been removed or suspended from office in a regulated entity or prohibited from participating in the conduct of the affairs of a regulated entity may not, while such order is in effect, continue or commence to hold any office in, or participate in any manner in the conduct of the affairs of, any regulated entity.

(2) *EXCEPTION IF DIRECTOR PROVIDES WRITTEN CONSENT.*—If, on or after the date an order is issued under this section which removes or suspends from office any regulated entity-affiliated party or prohibits such party from participating in the conduct of the affairs of a regulated entity, such party receives the written consent of the Director, the order shall, to the extent of such consent, cease to apply to such party with respect to the regulated entity described in the written consent. If the Director grants such a written consent, it shall publicly disclose such consent.

(3) *VIOLATION OF PARAGRAPH (1) TREATED AS VIOLATION OF ORDER.*—Any violation of paragraph (1) by any person who is subject to an order described in such subsection shall be treated as a violation of the order.

(f) *APPLICABILITY.*—This section shall only apply to a person who is an individual, unless the Director specifically finds that it should apply to a corporation, firm, or other business enterprise.

(g) *STAY OF SUSPENSION AND PROHIBITION OF REGULATED ENTITY-AFFILIATED PARTY.*—Within 10 days after any regulated entity-affiliated party has been suspended from office and/or prohibited from participation in the conduct of the affairs of a regulated entity under this section, such party may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district in which the headquarters of the regulated entity is located, for a stay of such suspension and/or prohibition and any prohibition under subsection (b)(1)(B) pending the completion of the administrative proceedings pursuant to the notice served upon such party under this section, and such court shall have jurisdiction to stay such suspension and/or prohibition.

(h) *SUSPENSION OR REMOVAL OF REGULATED ENTITY-AFFILIATED PARTY CHARGED WITH FELONY.*—

(1) *SUSPENSION OR PROHIBITION.*—

(A) *IN GENERAL.*—Whenever any regulated entity-affiliated party is charged in any information, indictment, or complaint, with the commission of or participation in a crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year under State or Federal law, the Director may, if continued service or participation by such party may pose a threat to the regulated entity or impair public confidence in the regulated entity, by written notice served upon such party—

(i) suspend such party from office or prohibit such party from further participation in any manner in the conduct of the affairs of any regulated entity; and

(ii) prohibit the regulated entity from releasing to or on behalf of the regulated entity-affiliated party any compensation or other payment of money or other thing of current or potential value in connection with the period of any such suspension or with any resignation, removal, retirement, or other termination of employment or office of the party.

(B) *PROVISIONS APPLICABLE TO NOTICE.*—

(i) *COPY.*—A copy of any notice under paragraph (1)(A) shall also be served upon the regulated entity.

(ii) *EFFECTIVE PERIOD.*—A suspension or prohibition under subparagraph (A) shall remain in effect until the information, indictment, or complaint referred to in such subparagraph is finally disposed of or until terminated by the Director.

(2) *REMOVAL OR PROHIBITION.*—

(A) *IN GENERAL.*—If a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against a regulated entity-affiliated party in connection with a crime described in paragraph (1)(A), at such time as such judgment is not subject to further appellate review, the Director may, if continued service or participation by such party may pose a threat to the regulated entity or impair public confidence in the regulated entity, issue and serve upon such party an order that—

(i) removes such party from office or prohibits such party from further participation in any manner in the conduct of the affairs of the regulated entity without the prior written consent of the Director; and

(ii) prohibits the regulated entity from releasing to or on behalf of the regulated entity-affiliated party any compensation or other payment of money or other thing of current or potential value in connection with the termination of employment or office of the party.

(B) *PROVISIONS APPLICABLE TO ORDER.*—

(i) *COPY.*—A copy of any order under paragraph (2)(A) shall also be served upon the regulated entity, whereupon the regulated entity-affiliated party who is subject to the order (if a director or an officer) shall cease to be a director or officer of such regulated entity.

(ii) *EFFECT OF ACQUITTAL.*—A finding of not guilty or other disposition of the charge shall not preclude the Director from instituting proceedings after such finding or disposition to remove such party from office or to prohibit further participation in regulated entity affairs, and to prohibit compensation or other payment of money or other thing of current or potential value in connection with any resignation, removal, retirement, or other termination of employment or office of the party, pursuant to subsections (a), (d), or (e) of this section.

(iii) *EFFECTIVE PERIOD.*—Any notice of suspension or order of removal issued under this subsection shall remain effective and outstanding until the completion of any hearing or appeal authorized under paragraph (4) unless terminated by the Director.

(3) *AUTHORITY OF REMAINING BOARD MEMBERS.*—If at any time, because of the suspension of one or more directors pursuant to this section, there shall be on the board of directors of a regulated entity less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors. In the event all of the directors of a regulated entity are suspended pursuant

to this section, the Director shall appoint persons to serve temporarily as directors in their place and stead pending the termination of such suspensions, or until such time as those who have been suspended cease to be directors of the regulated entity and their respective successors take office.

(4) HEARING REGARDING CONTINUED PARTICIPATION.—Within 30 days from service of any notice of suspension or order of removal issued pursuant to paragraph (1) or (2) of this subsection, the regulated entity-affiliated party concerned may request in writing an opportunity to appear before the Director to show that the continued service to or participation in the conduct of the affairs of the regulated entity by such party does not, or is not likely to, pose a threat to the interests of the regulated entity or threaten to impair public confidence in the regulated entity. Upon receipt of any such request, the Director shall fix a time (not more than 30 days after receipt of such request, unless extended at the request of such party) and place at which such party may appear, personally or through counsel, before one or more members of the Director or designated employees of the Director to submit written materials (or, at the discretion of the Director, oral testimony) and oral argument. Within 60 days of such hearing, the Director shall notify such party whether the suspension or prohibition from participation in any manner in the conduct of the affairs of the regulated entity will be continued, terminated, or otherwise modified, or whether the order removing such party from office or prohibiting such party from further participation in any manner in the conduct of the affairs of the regulated entity, and prohibiting compensation in connection with termination will be rescinded or otherwise modified. Such notification shall contain a statement of the basis for the Director's decision, if adverse to such party. The Director is authorized to prescribe such rules as may be necessary to effectuate the purposes of this subsection.

(i) HEARINGS AND JUDICIAL REVIEW.—

(1) VENUE AND PROCEDURE.—Any hearing provided for in this section shall be held in the District of Columbia or in the Federal judicial district in which the headquarters of the regulated entity is located, unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5, United States Code. After such hearing, and within 90 days after the Director has notified the parties that the case has been submitted to it for final decision, it shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection. Unless a petition for review is timely filed in a court of appeals of the United States, as provided in paragraph (2), and thereafter until the record in the proceeding has been filed as so provided, the Director may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the Director may modify, terminate, or set aside any such order with permission of the court.

(2) *REVIEW OF ORDER.*—Any party to any proceeding under paragraph (1) may obtain a review of any order served pursuant to paragraph (1) (other than an order issued with the consent of the regulated entity or the regulated entity-affiliated party concerned, or an order issued under subsection (h) of this section) by the filing in the United States Court of Appeals for the District of Columbia Circuit or court of appeals of the United States for the circuit in which the headquarters of the regulated entity is located, within 30 days after the date of service of such order, a written petition praying that the order of the Director be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Director, and thereupon the Director shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall (except as provided in the last sentence of paragraph (1)) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Director. Review of such proceedings shall be had as provided in chapter 7 of title 5, United States Code. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28, United States Code.

(3) *PROCEEDINGS NOT TREATED AS STAY.*—The commencement of proceedings for judicial review under paragraph (2) shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Director.

SEC. 1378. CRIMINAL PENALTY.

Whoever, being subject to an order in effect under section 1377, without the prior written approval of the Director, knowingly participates, directly or indirectly, in any manner (including by engaging in an activity specifically prohibited in such an order) in the conduct of the affairs of any regulated entity shall, notwithstanding section 3571 of title 18, be fined not more than \$1,000,000, imprisoned for not more than 5 years, or both.

SEC. [1377] 1379. NOTICE AFTER SEPARATION FROM SERVICE.

The resignation, termination of employment or participation, or separation of a director or executive officer of [an enterprise] a regulated entity, or of a regulated entity-affiliated party, shall not affect the jurisdiction and authority of the Director to issue any notice and proceed under this subtitle against any [such director or executive officer] such director, executive officer, or regulated entity-affiliated party, if such notice is served before the end of the 2-year period beginning on the date [such director or executive officer] such director, executive officer, or regulated entity-affiliated party ceases to be associated with [the enterprise] the regulated entity.

SEC. [1378] 1379A. PRIVATE RIGHTS OF ACTION.

This title and the amendments made by this title shall not create any private right of action on behalf of any person against [an enterprise] a regulated entity, or any director or executive officer of [an enterprise,] a regulated entity, or against a regulated entity-affiliated party, or impair any existing private right of action under other applicable law.

SEC. [1379] 1379B. PUBLIC DISCLOSURE OF FINAL ORDERS AND AGREEMENTS.

(a) * * *

* * * * *

(c) DELAY OF PUBLIC DISCLOSURE UNDER EXCEPTIONAL CIRCUMSTANCES.—If the Director makes a determination in writing that the public disclosure of any final order pursuant to subsection (a) would seriously threaten the financial health or security of [the enterprise] *the regulated entity*, the Director may delay the public disclosure of such order for a reasonable time.

* * * * *

SEC. [1379A] 1379C. NOTICE OF SERVICE.

Any service required or authorized to be made by the Director under this subtitle may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Director may by regulation or otherwise provide.

SEC. [1379B] 1379D. SUBPOENA AUTHORITY.

(a) * * *

* * * * *

(c) ENFORCEMENT.—The Director may [request the Attorney General of the United States to], *in the discretion of the Director*, bring an action in the United States district court for the judicial district in which such proceeding is being conducted, or where the witness resides or conducts business, or the United States District Court for the District of Columbia, *or request that the Attorney General of the United States bring such an action*, for enforcement of any subpoena or subpoena duces tecum issued pursuant to this section [or may, under the direction and control of the Attorney General, bring such an action]. Such courts shall have jurisdiction and power to order and require compliance therewith.

(d) FEES AND EXPENSES.—Witnesses subpoenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any court having jurisdiction of any proceeding instituted under this section by [an enterprise] *a regulated entity* may allow to any such party such reasonable expenses and attorneys fees as the court deems just and proper. Such expenses and fees shall be paid by [the enterprise] *the regulated entity* or from its assets.

Subtitle D—Amendments to Charter Acts of Enterprises

* * * * *

[SEC. 1383. IMPLEMENTATION.

[(a) IN GENERAL.—The Secretary of Housing and Urban Development and the Director, as appropriate, shall issue any final regulations necessary to implement the amendments made by this subtitle not later than the expiration of the 18-month period beginning on the date of the enactment of this Act.

[(b) NOTICE AND COMMENT.—The regulations under this section shall be issued after notice and opportunity for public comment

pursuant to the provisions of section 553 of title 5, United States Code.]

* * * * *

ACT OF OCTOBER 28, 1974

(Public Law 93-495)

AN ACT To increase deposit insurance from \$20,000 to \$40,000, to provide full insurance for public unit deposits of \$100,000 per account, to establish a National Commission on Electronic Fund Transfers, and for other purposes.

TITLE I—AMENDMENTS TO AND EXTENSIONS OF PROVISIONS OF LAW RELATING TO FEDERAL REGULATION OF DEPOSITORY INSTITUTIONS

* * * * *

INDEPENDENCE OF FINANCIAL REGULATORY AGENCIES

SEC. 111. No officer or agency of the United States shall have any authority to require the Securities and Exchange Commission, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, [the Federal Housing Finance Board] *the Director of the Federal Housing Finance Agency*, or the National Credit Union Administration to submit legislative recommendations, or testimony, or comments on legislation, to any officer or agency of the United States for approval, comments, or review, prior to the submission of such recommendations, testimony, or comments to the Congress if such recommendations, testimony, or comments to the Congress include a statement indicating that the views expressed therein are those of the agency submitting them and do not necessarily represent the views of the President.

* * * * *

FEDERAL HOME LOAN BANK ACT

DEFINITIONS

SEC. 2. As used in this Act—

[(1) BOARD.—The terms “Finance Board” and “Board” mean the Federal Housing Finance Board established under section 2A.]

[(2) (1)(A) BANK.—The term “Federal Home Loan Bank” or “Bank” means a bank established under the authority of the Federal Home Loan Bank Act.

(B) BANK SYSTEM.—The term “Federal Home Loan Bank System” means the Federal Home Loan Banks under the supervision of [the Board] *the Director*.

[(3) (2) STATE.—The term “State”, in addition to the States of the United States, includes the District of Columbia, Guam, Puerto Rico, the United States Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands.

[(4)] (3) The term “member” means any institution which has subscribed for the stock of a Federal Home Loan Bank.

[(5)] (4) The term “home mortgage loan” means a loan made by a member upon the security of a home mortgage.

[(6)] (5) The term “home mortgage” means a mortgage upon real estate, in fee simple, or on a leasehold (1) under a lease for not less than ninety-nine years which is renewable or (2) under a lease having a period of not less than fifty years to run from the date the mortgage was executed, upon which is located, or which comprises or includes, one or more homes or other dwelling units, all of which may be defined by [the Board] *the Director*, and shall include, in addition to first mortgages, such classes of first liens as are commonly given to secure advances on real estate by institutions authorized under this Act to become members, under the laws of the State in which the real estate is located, together with the credit instruments, if any, secured thereby.

[(7)] (6) The term “unpaid principal,” when used in respect of a loan secured by a home mortgage means the principal thereof less the sum of (1) payments made on such principal, and (2) in cases where shares or stock are pledged as security for the loan, the payments made on such shares or stock plus earnings or dividends apportioned or credited thereon.

[(8)] (7) An “amortized” or “installment” home mortgage loan shall, for the purposes of this Act, be a home mortgage loan to be repaid or liquidated in not less than eight years by means of regular weekly, monthly, or quarterly payments made directly in reduction of the debt or upon stock or shares pledged as collateral for the repayment of such loan.

[(9)] (8) SAVINGS ASSOCIATION.—The term “savings association” has the meaning given to such term in section 3 of the Federal Deposit Insurance Act.

[(10)] CHAIRPERSON.—The term “Chairperson” means the Chairperson of the Board.

[(11)] SECRETARY.—The term “Secretary” means the Secretary of Housing and Urban Development.]

[(12)] (9) INSURED DEPOSITORY INSTITUTION.—The term “insured depository institution” means—

(A) an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act), and

(B) except as used in sections 21A and 21B, an insured credit union (as defined in section 101 of the Federal Credit Union Act).

[(13)] (10) COMMUNITY FINANCIAL INSTITUTION.—

(A) IN GENERAL.—The term “community financial institution” means a member—

(i) the deposits of which are insured under the Federal Deposit Insurance Act; and

(ii) that has, as of the date of the transaction at issue, less than [\$500,000,000] \$1,000,000,000 in average total assets, based on an average of total assets over the 3 years preceding that date.

(B) ADJUSTMENTS.—The [\$500,000,000] \$1,000,000,000 limit referred to in subparagraph (A)(ii) shall be adjusted annually by [the Finance Board] *the Director*, based on the annual percentage increase, if any, in the Consumer

Price Index for all urban consumers, as published by the Department of Labor.

(11) *DIRECTOR.*—The term “Director” means the Director of the Federal Housing Finance Agency.

(12) *AGENCY.*—The term “Agency” means the Federal Housing Finance Agency.

[SEC. 2A. FEDERAL HOUSING FINANCE BOARD.

[(a) ESTABLISHMENT.—

[(1) IN GENERAL.—There is established the Federal Housing Finance Board, which shall succeed to the authority of the Federal Home Loan Bank Board with respect to the Federal Home Loan Banks.

[(2) STATUS.—The Board shall be an independent agency in the executive branch of the Government.

[(3) DUTIES.—

[(A) SAFETY AND SOUNDNESS.—The primary duty of the Board shall be to ensure that the Federal Home Loan Banks operate in a financially safe and sound manner.

[(B) OTHER DUTIES.—To the extent consistent with subparagraph (A), the duties of the Board shall also be—

[(i) to supervise the Federal Home Loan Banks;

[(ii) to ensure that the Federal Home Loan Banks carry out their housing finance mission; and

[(iii) to ensure that the Federal Home Loan Banks remain adequately capitalized and able to raise funds in the capital markets.

[(b) MANAGEMENT.—

[(1) IN GENERAL.—The management of the Board shall be vested in a Board of Directors consisting of 5 directors as follows:

[(A) The Secretary who shall serve without additional compensation.

[(B) Four citizens of the United States, appointed by the President, by and with the advice and consent of the Senate, each of whom shall hold office for a term of 7 years.

[(2) PROVISIONS RELATING TO APPOINTED DIRECTORS.—

[(A) IN GENERAL.—The directors appointed pursuant to paragraph (1)(B) shall be from among persons with extensive experience or training in housing finance or with a commitment to providing specialized housing credit. An appointed director shall not hold any other appointed office during his or her term as director. Not more than 3 directors shall be members of the same political party. Not more than 1 appointed director shall be from any single district of the Federal Home Loan Bank System. Nominations pursuant to this subparagraph shall be referred in the Senate to the Committee on Banking, Housing, and Urban Affairs.

[(B) CONSUMER REPRESENTATIVE.—At least 1 director shall be chosen from an organization with more than a 2-year history of representing consumer or community interests on banking services, credit needs, housing, or financial consumer protections.

[(C) LIMITATIONS ON CONFLICTS OF INTEREST.—No director may—

[(i) serve as a director or officer of any Federal Home Loan Bank or any member of any Bank; or

[(ii) hold shares of, or any other financial interest in, any member of any such Bank.

[(D) CLARIFICATION OF STATUS.—

[(i) IN GENERAL.—The directors appointed pursuant to paragraph (1)(B) shall serve on a full-time basis after December 31, 1993.

[(ii) RULE OF CONSTRUCTION.—Clause (i) shall not be construed as implying that any other position may be filled or held on a less than full-time basis.

[(3) INITIAL TERMS.—Notwithstanding paragraph (2), of the directors first appointed—

[(A) one shall be appointed for a term of 1 year;

[(B) one shall be appointed for a term of 3 years; and

[(C) one shall be appointed for a term of 5 years.

[(c) CHAIRPERSON; TRANSITIONAL PROVISIONS.—

[(1) IN GENERAL.—The President shall designate 1 of the appointed directors to be the Chairperson of the Board. The Chairperson shall designate another director to serve as Acting Chairperson during the absence or disability of the Chairperson.

[(2) TRANSITIONAL PROVISION.—Beginning on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, until such time that at least 2 directors are appointed and confirmed pursuant to subsection (b), the Secretary shall act for all purposes and with the full powers of the Board of Directors. The Secretary may utilize the services of employees from the Department of Housing and Urban Development to perform services for the Board of Directors during such transition period.

[(d) VACANCIES.—

[(1) IN GENERAL.—Any vacancy on the Board of Directors shall be filled in the manner in which the original appointment was made. Any director appointed to fill a vacancy occurring before the expiration of the term for which such director's predecessor was appointed shall be appointed only for the remainder of such term. Each director may continue to serve until a successor has been appointed and qualified.

[(2) THE SECRETARY.—In the event of a vacancy in the office of Secretary or during the absence or disability of the Secretary, the Acting Secretary shall act as a director in place of the Secretary.

[(SEC. 2B. POWERS AND DUTIES.

[(a) GENERAL POWERS.—The Board shall have the following powers:

[(1) To supervise the Federal Home Loan Banks and to promulgate and enforce such regulations and orders as are necessary from time to time to carry out the provisions of this Act.

[(2) To suspend or remove for cause a director, officer, employee, or agent of any Federal Home Loan Bank or joint office. The cause of such suspension or removal shall be communicated in writing to such director, officer, employee, or agent and to such Bank or joint office. Notwithstanding any other provision of this Act, no officer, employee, or agent of a Bank

or joint office shall be a Federal officer or employee under any definition of either term in title 5, United States Code.

[(3) To determine necessary expenditures of the Board under this Act and the manner in which such expenditures shall be incurred, allowed, and paid.

[(4) To use the United States mails in the same manner and under the same conditions as a department or agency of the United States.

[(5) To issue and serve a notice of charges upon a Federal home loan bank or upon any executive officer or director of a Federal home loan bank if, in the determination of the Finance Board, the Bank, executive officer, or director is engaging or has engaged in, or the Finance Board has reasonable cause to believe that the Bank, executive officer, or director is about to engage in an unsafe or unsound practice in conducting the business of the bank, or any conduct that violates any provision of this Act or any law, order, rule, or regulation or any condition imposed in writing by the Finance Board in connection with the granting of any application or other request by the Bank, or any written agreement entered into by the Bank with the agency, in accordance with the procedures provided in subsection (c) or (f) of section 1371 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992. Such authority includes the same authority to issue an order requiring a party to take affirmative action to correct conditions resulting from violations or practices or to limit activities of a Bank or any executive officer or director of a Bank as appropriate Federal banking agencies have to take with respect to insured depository institutions under paragraphs (6) and (7) of section 8(b) of the Federal Deposit Insurance Act, and to have all other powers, rights, and duties to enforce this Act with respect to the Federal home loan banks and their executive officers and directors as the Office of Federal Housing Enterprise Oversight has to enforce the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, the Federal National Mortgage Association Charter Act, or the Federal Home Loan Mortgage Corporation Act with respect to the Federal housing enterprises under subtitle C (other than section 1371) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

[(6) To address any insufficiencies in capital levels resulting from the application of section 5(f) of the Home Owners' Loan Act.

[(7) To act in its own name and through its own attorneys—

[(A) in enforcing any provision of this Act or any regulation promulgated under this Act; or

[(B) in any action, suit, or proceeding to which the Finance Board is a party that involves the Board's regulation or supervision of any Federal home loan bank.

[(b) STAFF.—

[(1) BOARD STAFF.—Subject to title IV of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Board may employ, direct, and fix the compensation and number of employees, attorneys, and agents of the Federal Housing Finance Board, except that in no event shall the Board dele-

gate any function to any employee, administrative unit of any Bank, or joint office of the Federal Home Loan Bank System. The prohibition contained in the preceding sentence shall not apply to the delegation of ministerial functions including issuing consolidated obligations pursuant to section 11(b). In directing and fixing such compensation, the Board shall consult with and maintain comparability with the compensation at the Federal bank regulatory agencies. Such compensation shall be paid without regard to the provisions of other laws applicable to officers or employees of the United States, except the Chairperson and other Directors shall be compensated as prescribed in sections 5314 and 5315 of title 5, United States Code, respectively.

[(2) ABOLITION OF JOINT OFFICES.—The joint or collective offices of the Federal Home Loan Bank System, except for the Office of Finance, are hereby abolished.]

[(c) RECEIPTS OF THE BOARD.—Receipts of the Board derived from assessments levied upon the Federal Home Loan Banks and from other sources (other than receipts from the sale of consolidated Federal Home Loan Bank bonds and debentures issued under section 11 of this Act) shall be deposited in the Treasury of the United States. Salaries of the directors and other employees of the Board and all other expenses thereof may be paid from such assessments or other sources and shall not be construed to be Government Funds or appropriated monies, or subject to apportionment for the purposes of chapter 15 of title 31, United States Code, or any other authority.]

[(d) ANNUAL REPORT.—The Board shall make an annual report to the Congress.]

FEDERAL HOME LOAN BANKS

SEC. 3. As soon as practicable [the Board] *the Director* shall divide the continental United States, Puerto Rico, the Virgin Islands, Guam, and the Territories of Alaska and Hawaii into not less than eight nor more than twelve districts. Such districts shall be apportioned with due regard to the convenience and customary course of business of the institutions eligible to and likely to subscribe for stock of a Federal Home Loan Bank to be formed under this Act, but no such district shall contain a fractional part of any State. The districts thus created may be readjusted and new districts may from time to time be created by [the Board] *the Director*, not to exceed twelve in all. Such districts shall be known as Federal Home Loan Bank districts and may be designated by number. As soon as practicable [the Board] *the Director* shall establish, in each district, a Federal Home Loan Bank at such city as may be designated by [the Board] *the Director*. Its title shall include the name of the city at which it is established.

ELIGIBILITY OF MEMBERS AND NONMEMBER BORROWERS

SEC. 4. (a) CRITERIA FOR ELIGIBILITY.—

(1) IN GENERAL.—Any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, or any insured depository institution (as defined in section 2 of this Act), shall be eligible

to become a member of a Federal Home Loan Bank if such institution—

(A) is duly organized under the laws of any State or of the United States;

(B) is subject to inspection and regulation under the banking laws, or under similar laws, of the State or of the United States; and

(C) makes such home mortgage loans as, in the judgment of [the Board] *the Director*, are long-term loans (except that in the case of a savings bank, this subparagraph applies only if, in the judgment of [the Board] *the Director*, its time deposits, as defined in section 19 of the Federal Reserve Act, warrant its making such loans).

* * * * *

(3) CERTAIN INSTITUTIONS.—An insured depository institution commencing its initial business operations after January 1, 1989, may become a member of a Federal Home Loan Bank if it complies with regulations and orders prescribed by [the Board] *the Director* for the 10 percent asset requirement (described in the paragraph (2)) within one year after the commencement of its operations.

* * * * *

(b) An institution eligible to become a member under this section may become a member only of, or secure advances from, the Federal Home Loan Bank of the district in which is located the institution's principal place of business, or of the bank of a district adjoining such district, if demanded by convenience and then only with the approval of [the Board] *the Director*.

(c) Notwithstanding the provisions of clause (2) of subsection (a) of this section requiring inspection and regulation under law as a condition with respect to eligibility for membership, any building and loan association which would be eligible to become a member of a Federal Home Loan Bank except for the fact that it is not subject to inspection and regulation under the banking laws or similar laws of the State in which such association is organized shall, upon subjecting itself to such inspection and regulation as [the Board] *the Director* shall prescribe, be eligible to become a member.

* * * * *

SEC. 6. CAPITAL STRUCTURE OF FEDERAL HOME LOAN BANKS.

(a) REGULATIONS.—

(1) CAPITAL STANDARDS.—Not later than 18 months after the date of the enactment of the Federal Home Loan Bank System Modernization Act of 1999, [the Finance Board] *the Director* shall issue regulations prescribing uniform capital standards applicable to each Federal home loan bank, which shall require each such bank to meet—

(A) * * *

* * * * *

(3) RISK-BASED CAPITAL STANDARDS.—

[(A) IN GENERAL.—Each Federal home loan bank shall maintain permanent capital in an amount that is sufficient, as determined in accordance with the regulations of the Finance Board, to meet—

[(i) the credit risk to which the Federal home loan bank is subject; and

[(ii) the market risk, including interest rate risk, to which the Federal home loan bank is subject, based on a stress test established by the Finance Board that rigorously tests for changes in market variables, including changes in interest rates, rate volatility, and changes in the shape of the yield curve.]

(A) RISK-BASED CAPITAL STANDARDS.—*The Director shall, by regulation, establish risk-based capital standards for the Federal home loan banks to ensure that the Federal home loan banks operate in a safe and sound manner, with sufficient permanent capital and reserves to support the risks that arise in the operations and management of the Federal home loans banks.*

(B) CONSIDERATION OF OTHER RISK-BASED STANDARDS.—In establishing the risk-based standard under subparagraph (A)[(ii)], [the Finance Board] *the Director* shall take due consideration of any risk-based capital test established pursuant to section 1361 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4611) for the enterprises (as defined in that Act), with such modifications as [the Finance Board] *the Director* determines to be appropriate to reflect differences in operations between the Federal home loan banks and those enterprises.

(4) OTHER REGULATORY REQUIREMENTS.—The regulations issued by [the Finance Board] *the Director* under paragraph (1) shall—

(A) * * *

* * * * *

(5) DEFINITIONS OF CAPITAL.—For purposes of determining compliance with the capital standards established under this subsection—

(A) permanent capital of a Federal home loan bank shall include—

- (i) the amounts paid for the Class B stock; and
- (ii) the retained earnings of the bank (as determined in accordance with generally accepted accounting principles); and

(B) total capital of a Federal home loan bank shall include—

- (i) permanent capital;
- (ii) the amounts paid for the Class A stock;
- (iii) consistent with generally accepted accounting principles, and subject to the regulation of [the Finance Board] *the Director*, a general allowance for losses, which may not include any reserves or allowances made or held against specific assets; and
- (iv) any other amounts from sources available to absorb losses incurred by the bank that [the Finance Board] *the Director* determines by regulation to be appropriate to include in determining total capital.

(6) TRANSITION PERIOD.—Notwithstanding any other provision of this Act, the requirements relating to purchase and re-

tention of capital stock of a Federal home loan bank by any member thereof in effect on the day before the date of the enactment of the Federal Home Loan Bank System Modernization Act of 1999, shall continue in effect with respect to each Federal home loan bank until the regulations required by this subsection have taken effect and the capital structure plan required by subsection (b) has been approved by **the Finance Board** *the Director* and implemented by such bank.

(b) CAPITAL STRUCTURE PLAN.—

(1) APPROVAL OF PLANS.—Not later than 270 days after the date of publication by **the Finance Board** *the Director* of final regulations in accordance with subsection (a), the board of directors of each Federal home loan bank shall submit for **Finance Board approval** *approval by the Director* a plan establishing and implementing a capital structure for such bank that—

(A) the board of directors determines is best suited for the condition and operation of the bank and the interests of the members of the bank;

(B) meets the requirements of subsection (c); and

(C) meets the minimum capital standards and requirements established under subsection (a) and other regulations prescribed by **the Finance Board** *the Director*.

(2) APPROVAL OF MODIFICATIONS.—The board of directors of a Federal home loan bank shall submit to **the Finance Board** *the Director* for approval any modifications that the bank proposes to make to an approved capital structure plan.

(c) CONTENTS OF PLAN.—The capital structure plan of each Federal home loan bank shall contain provisions addressing each of the following:

(1) * * *

(B) INVESTMENT ALTERNATIVES.—

(i) IN GENERAL.—In establishing the minimum investment required for each member under subparagraph (A), a Federal home loan bank may, in its discretion, include any 1 or more of the requirements referred to in clause (ii), or any other provisions approved by **the Finance Board** *the Director*.

(ii) AUTHORIZED REQUIREMENTS.—A requirement is referred to in this clause if it is a requirement for—

(I) a stock purchase based on a percentage of the total assets of a member; or

(II) a stock purchase based on a percentage of the outstanding advances from the bank to the member.

(C) MINIMUM AMOUNT.—Each capital structure plan of a Federal home loan bank shall require that the minimum stock investment established for members shall be set at a level that is sufficient for the bank to meet the minimum capital requirements established by **the Finance Board** *the Director* under subsection (a).

(D) ADJUSTMENTS TO MINIMUM REQUIRED INVESTMENT.—The capital structure plan of each Federal home loan bank shall impose a continuing obligation on the board of directors of the bank to review and adjust the minimum invest-

ment required of each member of that bank, as necessary to ensure that the bank remains in compliance with applicable minimum capital levels established by **the Finance Board** *the Director*, and shall require each member to comply promptly with any adjustments to the required minimum investment.

* * * * *

(4) CLASSES OF STOCK.—

(A) IN GENERAL.—The capital structure plan of a Federal home loan bank shall afford each member of that bank the option of maintaining its required investment in the bank through the purchase of any combination of classes of stock authorized by the board of directors of the bank and approved by **the Finance Board** *the Director* in accordance with its regulations.

(B) RIGHTS REQUIREMENT.—A Federal home loan bank shall include in its capital structure plan provisions establishing terms, rights, and preferences, including minimum investment, dividends, voting, and liquidation preferences of each class of stock issued by the bank, consistent with **Finance Board regulations** *regulations of the Director* and market requirements.

(C) REDUCED MINIMUM INVESTMENT.—The capital structure plan of a Federal home loan bank may provide for a reduced minimum stock investment for any member of that bank that elects to purchase Class B in a manner that is consistent with meeting the minimum capital requirements of the bank, as established by **the Finance Board** *the Director*.

* * * * *

(6) BANK REVIEW OF PLAN.—Before filing a capital structure plan with **the Finance Board** *the Director*, each Federal home loan bank shall conduct a review of the plan by—

(A) an independent certified public accountant, to ensure, to the extent possible, that implementation of the plan would not result in any write-down of the redeemable bank stock investment of its members; and

(B) at least one major credit rating agency, to determine, to the extent possible, whether implementation of the plan would have any material effect on the credit ratings of the bank.

(d) TERMINATION OF MEMBERSHIP.—

(1) VOLUNTARY WITHDRAWAL.—Any member may withdraw from a Federal home loan bank if the member provides written notice to the bank of its intent to do so and if, on the date of withdrawal, there is in effect a certification by **the Finance Board** *the Director* that the withdrawal will not cause the Federal Home Loan Bank System to fail to meet its obligation under section 21B(f)(2)(C) to contribute to the debt service for the obligations issued by the Resolution Funding Corporation. The applicable stock redemption notice periods shall commence upon receipt of the notice by the bank. Upon the expiration of the applicable notice period for each class of redeemable stock, the member may surrender such stock to the bank, and shall

be entitled to receive in cash the par value of the stock. During the applicable notice periods, the member shall be entitled to dividends and other membership rights commensurate with continuing stock ownership.

(2) INVOLUNTARY WITHDRAWAL.—

(A) IN GENERAL.—The board of directors of a Federal home loan bank may terminate the membership of any institution if, subject to [Finance Board regulations] *regulations of the Director*, it determines that—

(i) * * *

* * * * *

(f) IMPAIRMENT OF CAPITAL.—If [the Finance Board] *the Director* or the board of directors of a Federal home loan bank determines that the bank has incurred or is likely to incur losses that result in or are expected to result in charges against the capital of the bank, the bank shall not redeem or repurchase any stock of the bank without the prior approval of [the Finance Board] *the Director* while such charges are continuing or are expected to continue. In no case may a bank redeem or repurchase any applicable capital stock if, following the redemption, the bank would fail to satisfy any minimum capital requirement.

(g) REJOINING AFTER DIVESTITURE OF ALL SHARES.—

(1) * * *

(2) EXCEPTION FOR WITHDRAWALS FROM MEMBERSHIP BEFORE 1998.—Any institution that withdrew from membership in any Federal home loan bank before December 31, 1997, may acquire shares of a Federal home loan bank at any time after that date, subject to the approval of [the Finance Board] *the Director* and the requirements of this Act.

* * * * *

MANAGEMENT OF BANKS

SEC. 7. [(a) The management of each Federal Home Loan Bank shall be vested in a board of fourteen directors, eight of whom shall be elected by the members as hereinafter provided in this section and six of whom shall be appointed by the Board referred to in section 2A, all of whom shall be citizens of the United States, and each of whom shall be either a bona fide resident of the district in which such bank is located or an officer or director of a member of such bank located in that district: *Provided*, That in any district which includes five or more States the Board may by regulation increase the elective directors to a number not exceeding thirteen and may increase the appointive directors to a number not exceeding three-fourths the number of elective directors: *Provided further*, That, if at any time the number of elective directors in the case of any district is not at least equal to the number of States in such district the Board shall exercise the authority conferred by the next preceding proviso so as to increase such elective directors to a number at least equal to the number of States in such district. At least 2 of the Federal Home Loan Bank directors who are appointed by the Board shall be representatives chosen from organizations with more than a 2-year history of representing consumer or community interests on banking services, credit needs, housing, or financial consumer protections. No Federal Home Loan Bank director who is

appointed pursuant to this subsection may, during such Bank director's term of office, serve as an officer of any Federal Home Loan Bank or a director or officer of any member of a Bank, or hold shares, or any other financial interest in, any member of a Bank.】

(a) NUMBER; ELECTION; QUALIFICATIONS; CONFLICTS OF INTEREST.—

(1) *IN GENERAL.*—The management of each Federal Home Loan Bank shall be vested in a board of 13 directors, or such other number as the Director determines appropriate, each of whom shall be a citizen of the United States. All directors of a Bank who are not independent directors pursuant to paragraph (3) shall be elected by the members.

(2) *MEMBER DIRECTORS.*—A majority of the directors of each Bank shall be officers or directors of a member of such Bank that is located in the district in which such Bank is located.

(3) *INDEPENDENT DIRECTORS.*—At least two-fifths of the directors of each Bank shall be independent directors, who shall be appointed by the Director of the Federal Housing Finance Agency from a list of individuals recommended by the Federal Housing Enterprise Board, and shall meet the following criteria:

(A) *IN GENERAL.*—Each independent director shall be a bona fide resident of the district in which such Bank is located.

(B) *PUBLIC INTEREST DIRECTORS.*—At least 2 of the independent directors under this paragraph of each Bank shall be representatives chosen from organizations with more than a 2-year history of representing consumer or community interests on banking services, credit needs, housing, community development, economic development, or financial consumer protections.

(C) *OTHER DIRECTORS.*—

(i) *QUALIFICATIONS.*—Each independent director that is not a public interest director under subparagraph (B) shall have demonstrated knowledge of, or experience in, financial management, auditing and accounting, risk management practices, derivatives, project development, or organizational management, or such other knowledge or expertise as the Director may provide by regulation.

(ii) *CONSULTATION WITH BANKS.*—In appointing other directors to serve on the board of a Federal home loan bank, the Director of the Federal Housing Finance Agency may consult with each Federal home loan bank about the knowledge, skills, and expertise needed to assist the board in better fulfilling its responsibilities.

(D) *CONFLICTS OF INTEREST.*—Notwithstanding subsection (f)(2), an independent director under this paragraph of a Bank may not, during such director's term of office, serve as an officer of any Federal Home Loan Bank or as a director or officer of any member of a Bank.

(E) *COMMUNITY DEMOGRAPHICS.*—In appointing independent directors of a Bank pursuant to this paragraph, the Director shall take into consideration the demographic makeup of the community most served by the Affordable Housing Program of the Bank pursuant to section 10(j).

(b) Each [elective directorship] *member directorship established pursuant to subsection (a)(2)* shall be designated by [the Board] *the Director* as representing the members located in a particular State, and shall be filled by a person who is an officer or director of a member located in that State, each of which members shall be entitled to nominate an eligible person for such directorship, and such office shall be filled from such nominees by a plurality of the votes which such members may cast in an election held for the purpose of filling such office, in which election each such member may cast for such office a number of votes equal to the number of shares of stock in such bank required by this Act to be held by such member at the end of the calendar year next preceding the election, as determined pursuant to regulation of [the Board] *the Director*, but not in excess of the average number of shares of stock in such bank required by this Act to be held at the end of such calendar year by the respective members of such bank located in such State, as so determined. No person who is an officer or director of a member that fails to meet any applicable capital requirement is eligible to hold the office of Federal Home Loan Bank director. As used in this subsection and in subsection (c) of this section, the term "member" means a member of a Federal home loan bank which was a member of such bank at the end of such calendar year.

(c) The number of elective directorships designated as representing the members located in each separate State in a bank district shall be determined by [the Board] *the Director* in the approximate ratio of the percentage of the required stock, as determined pursuant to regulation of [the Board] *the Director*, of the members located in that State at the end of the calendar year next preceding the date of the election to the total required stock, as so determined, of all members of such bank at the end of such year, except that in the case of each State such number shall not be less than one and shall not be more than six. Notwithstanding any other provision of this section, (A) *except as provided in clause (B) of this sentence*, if at any time the number of [elective] *member* directorships so designated as representing the members located in any State would not be at least equal to the total number of elective directorships which, on December 31, 1960, were filled by officers or directors of members whose principal places of business were located in such State, [the Board] *the Director* shall add to the board of directors of the bank of the district in which such State is located such number of [elective] *member* directorships, and shall so designate the directorship or directorships thus added, that the number of [elective] *member* directorships designated as representing the members located in such State will equal said total number. Any [elective] *member* directorship so added shall exist only until the expiration of its first term. [The Board] *The Director* shall, with respect to each member of a Federal home loan bank, designate the State in the district of such bank in which such member shall, for the purposes of this subsection and subsection (b) of this section, be deemed to be located, and may from time to time change any such designation, but if the principal place of business of any such member is located in a State of such district it shall be the duty of [the Board] *the Director* to designate such State as the State in which such member shall, for said purposes, be deemed to be located. As used in the second sentence of

this subsection, the term “total number of elective directorships” means the total number of elective directorships on the board of directors of the bank of the district in which such State was located on December 31, 1960, and the term “members” where used for the second time in such sentence means members of such bank, *and (B) clause (A) of this sentence shall not apply to the directorships of any Federal home loan bank resulting from the merger of any two or more such banks.*

(d) The term of each director, whether elected or appointed, shall be **[3 years]** *4 years*. The board of directors of each Federal home loan bank and **[the Finance Board]** *the Director* shall adjust the terms of members first elected or appointed after the date of the enactment of the **[Federal Home Loan Bank System Modernization Act of 1999]** *Federal Housing Finance Reform Act of 2007* to ensure that the terms of the members of the board of directors are staggered with approximately **[$\frac{1}{3}$]** *$\frac{1}{4}$* of the terms expiring each year. If any person, before or after, or partly before and partly after, the date of the enactment of this sentence, has been elected to each of three consecutive full terms as an **[elective]** director of a Federal home loan bank in any **[elective]** directorship or **[elective]** directorships and has served for all or part of each of said terms, such person shall not be eligible for election to an **[elective]** directorship of such bank for a term which begins earlier than two years after the expiration of the last expiring of said three terms. **[The Board]** *The Director* is hereby authorized to prescribe such rules and regulations as it may deem necessary or appropriate for the nomination and election of directors of Federal home loan banks, including, without limitation on the generality of the foregoing, rules and regulations with respect to the breaking of ties and with respect to the inclusion of more than one directorship on a single ballot and the methods of voting and of determining the results of voting in such cases.

(e) Each term, outstanding on the effective date of the amendment to this section abolishing the division of elective directors into classes, of an elective or appointive directorship then existing shall continue until its original date of expiration, and any elective or appointive directorship in existence on said date shall continue to exist to the same extent as if it had been established by or under this section on or after said date. The Board in its discretion may shorten the next succeeding term of any such elective directorship to one year, and may fill such term by appointment. The term “States” or “State” as used in this section shall mean the States of the Union, the District of Columbia, and the Commonwealth of Puerto Rico. The Board, by regulation or otherwise, may add an additional elective directorship to the board of directors of the bank of any district in which the Commonwealth of Puerto Rico is included at the time such directorship is added and which does not then include five or more States, may fix the commencement and the duration, which shall not exceed two years, of the initial term of any directorship so added, and may fill any such initial term by appointment: *Provided*, That (1) any directorship added pursuant to the foregoing provisions of this sentence shall be designated by **[the Board]** *the Director*, pursuant to subsection (b) of this section, as representing the members located in the Commonwealth of Puerto Rico, (2) such designation of such directorship shall not be

changed, and (3) such directorship shall automatically cease to exist if and when the Commonwealth of Puerto Rico ceases to be included in such district.

(f) VACANCIES.—

(1) IN GENERAL.—A Bank director appointed or elected to fill a vacancy shall be appointed or elected for the unexpired term of his or her predecessor in office.

(2) [APPOINTED] INDEPENDENT BANK DIRECTORS.—In the event of a vacancy in any [appointive] independent Bank directorship, such vacancy shall be filled through appointment by [the Board] the Director for the unexpired term. If any [appointive] independent Bank director shall cease to have the qualifications set forth in subsection (a), the office held by such person shall immediately become vacant, but such person may continue to act as a Bank director until his or her successor assumes the vacated office [or the term of such office expires, whichever occurs first]. An independent Bank director may continue to serve as a director after the expiration of the term of such director until a successor is appointed.

(3) [ELECTED] MEMBER BANK DIRECTORS.—In the event of a vacancy in any [elective] member Bank directorship, such vacancy shall be filled by an affirmative vote of a majority of the remaining Bank directors, regardless of whether such remaining Bank directors constitute a quorum of the Bank's board of directors. A Bank director so elected shall satisfy the requirements for eligibility which were applicable to his predecessor. If any [elective] member Bank director shall cease to have any qualification set forth in this section, the office held by such person shall immediately become vacant, and such person shall not continue to act as a Bank director.

* * * * *

(h) If at any time when nominations are required members shall hold less than \$1,000,000 of the capital stock of the Federal home loan bank, [the Board] the Director shall appoint a director or directors to fill the place or places for which such nominations are required, and [the Board] the Director may, prior to the filing of the certificate mentioned in section 12, appoint directors who shall be respectively designated by it as appointive directors and as [elective] directors, in accordance with the provisions of this section.

(i) DIRECTORS' COMPENSATION.—

(1) IN GENERAL.—Subject to paragraph (2), each bank may pay its directors reasonable compensation for the time required of them, and their necessary expenses, in the performance of their duties, in accordance with the resolutions adopted by the such directors, subject to the approval of the board.

(2) LIMITATION.—

(A) IN GENERAL.—The annual salary of each of the following members of the board of directors of a Federal home loan bank may not exceed the amount specified:

In the case of the—	[The annual compensation may not exceed—
Chairperson	\$25,000
Vice Chairperson	\$20,000
All other members	\$15,000.

[(B) ADJUSTMENT.—Beginning January 1, 2001, each dollar amount referred to in the table in subparagraph (A) shall be adjusted annually by the Finance Board, based on the annual percentage increase, if any, in the Consumer Price Index for all urban consumers, as published by the Department of Labor.

[(C) EXPENSES.—Subparagraph (A) shall not be construed as prohibiting the reimbursement of expenses incurred by members of the board of directors of any Federal home loan bank in connection with service on the board of directors.]

(i) DIRECTORS' COMPENSATION.—

(1) IN GENERAL.—*Each Federal home loan bank may pay the directors on the board of directors for the bank reasonable and appropriate compensation for the time required of such directors, and reasonable and appropriate expenses incurred by such directors, in connection with service on the board of directors, in accordance with resolutions adopted by the board of directors and subject to the approval of the Director.*

(2) ANNUAL REPORT BY THE BOARD.—*The Director shall include, in the annual report submitted to the Congress pursuant to section 1319B of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, information regarding the compensation and expenses paid by the Federal home loan banks to the directors on the boards of directors of the banks.*

* * * * *

(l) WITHHOLDING OF COMPENSATION.—*Notwithstanding any other provision of this section, a Federal home loan bank shall not transfer, disburse, or pay compensation to any executive officer, or enter into an agreement with such executive officer, without the approval of the Director, for matters being reviewed under section 1318 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4518).*

EXAMINATIONS AND STUDIES [BY THE BOARD]

SEC. 8. [The Board] *The Director* shall cause to be made from time to time examinations of the laws of the various States of the United States and the regulations and procedure thereunder governing conditions under which institutions of the kinds which may become members or nonmember borrowers under this Act are permitted to be formed or to do business, or relating to the conveying or recording of land titles, or to homestead and other rights, or to the enforcement of the rights of holders of mortgages on lands securing loans, or otherwise. If any such examination shall indicate, in the opinion of [the Board] *the Director*, that under the laws of any such State or the regulations or procedure thereunder there would be inadequate protection to a Federal Home Loan Bank in making or collecting advances under this Act, [the Board] *the Director* may withhold or limit the operation of any Federal Home Loan Bank in such State until satisfactory conditions of law, regulation, or procedure shall be established. In any State where State examination of members or nonmember borrowers is deemed inadequate for the purposes of the Federal Home Loan Banks, [the Board] *the Director* shall establish such examination, all or part of

the cost of which may be considered as part of the cost of making advances in such State. The banks and/or [the Board] *the Director* may make studies of trends of home and other property values, methods of appraisals, and other subjects such as they may deem useful for the general guidance of their policies and operations and those of institutions authorized to secure advances.

* * * * *

SEC. 10. ADVANCES TO MEMBERS.

(a) IN GENERAL.—

(1) * * *

(2) PURPOSES OF ADVANCES.—A long-term advance may only be made for the purposes of—

(A) * * *

(B) providing funds to any community financial institution for small businesses, small farms, [and] small agribusinesses, *and community development activities*.

(3) COLLATERAL.—A Bank, at the time of origination or renewal of a loan or advance, shall obtain and maintain a security interest in collateral eligible pursuant to one or more of the following categories:

(A) * * *

* * * * *

(E) Secured loans for small business, agriculture, *or community development activities* or securities representing a whole interest in such secured loans, in the case of any community financial institution.

* * * * *

(5) REVIEW OF CERTAIN COLLATERAL STANDARDS.—[The Board] *The Director* may review the collateral standards applicable to each Federal home loan bank for the classes of collateral described in subparagraphs (D) and (E) of paragraph (3), and may, if necessary for safety and soundness purposes, require an increase in the collateral standards for any or all of those classes of collateral.

(6) DEFINITIONS.—For purposes of this subsection, the terms “small business”, “agriculture”, “small farm”, [and] “small agribusiness”, *and “community development activities”* shall have the meanings given those terms by regulation of [the Finance Board] *the Director*.

(b) For the purposes of this section, each Federal Home Loan Bank shall have power to make, or to cause or require to be made, such appraisals and other investigations as it may deem necessary. No home mortgage otherwise eligible to be accepted as collateral security for an advance by a Federal Home Loan Bank shall be accepted if any director, officer, employee, attorney, or agent of the Federal Home Loan Bank or of the borrowing institution is personally liable thereon, unless [the Board] *the Director* has specifically approved [by formal resolution] such acceptance.

* * * * *

(g) COMMUNITY SUPPORT REQUIREMENTS.—

(1) IN GENERAL.—Before the end of the 2-year period beginning on the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, [the Board] *the*

Director shall adopt regulations establishing standards of community investment or service for members of Banks to maintain continued access to long-term advances.

* * * * *

(j) AFFORDABLE HOUSING PROGRAM.—

(1) IN GENERAL.—Pursuant to regulations promulgated by **the Board** *the Director*, each Bank shall establish an Affordable Housing Program to subsidize the interest rate on advances to members engaged in lending for long term, low- and moderate-income, owner-occupied and affordable rental housing at subsidized interest rates.

(2) STANDARDS.—**The Board's** *The Director's* regulations shall permit Bank members to use subsidized advances received from the Banks to—

(A) * * *

* * * * *

(6) GROUNDS FOR SUSPENDING CONTRIBUTIONS.—

(A) IN GENERAL.—If a Bank finds that the payments required under this paragraph are contributing to the financial instability of such Bank, it may apply to the **Federal Housing Finance Board** *Director* for a temporary suspension of such payments.

(B) FINANCIAL INSTABILITY.—In determining the financial instability of a Bank, the **Federal Housing Finance Board** *Director* shall consider such factors as (i) whether the Bank's earnings are severely depressed, (ii) whether there has been a substantial decline in membership capital, and (iii) whether there has been a substantial reduction in advances outstanding.

(C) REVIEW.—**The Board** *The Director* shall review the application and any supporting financial data and issue a written decision approving or disapproving such application. **The Board's** *The Director's* decision shall be accompanied by specific findings and reasons for its action.

(D) MONITORING SUSPENSION.—If **the Board** *the Director* grants a suspension, it shall specify the period of time such suspension shall remain in effect and shall continue to monitor the Bank's financial condition during such suspension.

(E) LIMITATIONS ON GROUNDS FOR SUSPENSION.—**The Board** *The Director* shall not suspend payments to the Affordable Housing Program if the Bank's reduction in earnings is a result of (i) a change in the terms for advances to members which is not justified by market conditions, (ii) inordinate operating and administrative expenses, or (iii) mismanagement.

(F) The **Federal Housing Finance Board** *Director* shall notify the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate not less than 60 days before such suspension takes effect. Such suspension shall become effective unless a joint resolution is enacted disapproving such suspension.

(7) FAILURE TO USE AMOUNTS FOR AFFORDABLE HOUSING.—If any Bank fails to utilize or commit the full amount provided in this subsection in any year, 90 percent of the amount that has not been utilized or committed in that year shall be deposited by the Bank in an Affordable Housing Reserve Fund administered by **[the Board]** *the Director*. The 10 percent of the unutilized and uncommitted amount retained by a Bank should be fully utilized or committed by that Bank during the following year and any remaining portion must be deposited in the Affordable Housing Reserve Fund. Under regulations established by **[the Board]** *the Director*, funds from the Affordable Housing Reserve Fund may be made available to any Bank to meet additional affordable housing needs in such Bank's district pursuant to this section.

* * * * *

(9) REGULATIONS.—The **[Federal Housing Finance Board]** *Director* shall promulgate regulations to implement this subsection. Such regulations shall, at a minimum—

(A) * * *

* * * * *

(11) ADVISORY COUNCIL.—Each Bank shall appoint an Advisory Council of 7 to 15 persons drawn from community and nonprofit organizations actively involved in providing or promoting low- and moderate-income housing in its district. The Advisory Council shall meet with representatives of the board of directors of the Bank quarterly to advise the Bank on low- and moderate-income housing programs and needs in the district and on the utilization of the advances for these purposes. Each Advisory Council established under this paragraph shall submit to **[the Board]** *the Director* at least annually its analysis of the low-income housing activity of the Bank by which it is appointed.

(12) REPORTS TO CONGRESS.—

(A) **[The Board]** *The Director* shall monitor and report annually to the Congress and the Advisory Council for each Bank the support of low-income housing and community development by the Banks and the utilization of advances for these purposes.

(B) The analyses submitted by the Advisory Councils to **[the Board]** *the Director* under paragraph (11) shall be included as part of the report required by this paragraph.

* * * * *

(k) *MONITORING AND ENFORCING COMPLIANCE WITH AFFORDABLE HOUSING AND COMMUNITY INVESTMENT PROGRAM REQUIREMENTS.—The requirements under subsection (i) and (j) that the Banks establish Community Investment and Affordable Housing Programs, respectively, and contribute to the Affordable Housing Program, shall be enforceable by the Director with respect to the Banks in the same manner and to the same extent as the housing goals under subpart B of part 2 of subtitle A of title XIII of the Housing and Community Development Act of 1992 (12 U.S.C. 4561 et seq.) are enforceable under section 1336 of such Act with respect*

to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

* * * * *

SEC. 10b. (a) IN GENERAL.—Each Federal Home Loan Bank is authorized to make advances to nonmember mortgagees approved under title II of the National Housing Act. Such mortgagees must be chartered institutions having succession and subject to the inspection and supervision of some governmental agency, and whose principal activity in the mortgage field must consist of lending their own funds. Such advances shall not be subject to the other provisions and restrictions of this Act, but shall be made upon the security of insured mortgages, insured under title II of the National Housing Act. Advances made under the terms of this section shall be at such rates of interest and upon such terms and conditions as shall be determined by **the Board** *the Director*, but no advance may be for an amount in excess of 90 per centum of the unpaid principal of the mortgage loan given as security.

* * * * *

GENERAL POWERS AND DUTIES OF BANKS

SEC. 11. (a) Each Federal Home Loan Bank shall have power, subject to rules and regulations prescribed by **the Board** *the Director* to borrow and give security therefor and to pay interest thereon, to issue debentures, bonds, or other obligations upon such terms and conditions as **the Board** *the Director* may approve, and to do all things necessary for carrying out the provisions of this Act and all things incident thereto.

(b) **The Board** *The Office of Finance, as agent for the Banks*, may issue consolidated Federal Home Loan Bank debentures which shall be the joint and several obligations of all Federal Home Loan Banks organized and existing under this Act, in order to provide funds for any such bank or banks, and such debentures shall be issued upon such terms and conditions as **the Board** *such Office* may prescribe. No such debentures shall be issued at any time if any of the assets of any Federal Home Loan Bank are pledged to secure any debts or subject to any lien, and neither **the Board** *the Office of Finance* nor any Federal Home Loan Bank shall have power to pledge any of the assets of any Federal Home Loan Bank, or voluntarily to permit any lien to attach to the same while any of such debentures so issued are outstanding. The debentures issued under this section and outstanding shall at no time exceed five times the total paid-in capital of all the Federal Home Loan Banks as of the time of the issue of such debentures. It shall be the duty of **the Board** *the Office of Finance* not to issue debentures under this section in excess of the notes or obligations of member institutions held and secured under section 10(a) of this Act by all the Federal Home Loan Banks.

(c) At any time that no debentures are outstanding under this Act, or in order to refund all outstanding consolidated debentures issued under this section, **the Board** *the Office of Finance, as agent for the Banks*, may issue consolidated Federal Home Loan Bank bonds which shall be the joint and several obligations of all the Federal Home Loan Banks, and shall be secured and be issued

upon such terms and conditions as **[the Board]** *such Office* may prescribe.

(d) **[The Board]** *The Director* shall have full power to require any Federal Home Loan Bank to deposit additional collateral or to make substitutions of collateral or to adjust equities between the Federal Home Loan Banks.

(e)(1) Each Federal Home Loan Bank shall have power to accept deposits made by members of such bank or by any other Federal Home Loan Bank or other instrumentality of the United States, upon such terms and conditions as **[the Board]** *the Director* may prescribe, but no Federal Home Loan Bank shall transact any banking or other business not incidental to activities authorized by this Act.

(2)(A) **[The Board]** *The Director* may, subject to such rules and regulations, including definitions of terms used in this paragraph, as **[the Board]** *the Director* shall from time to time prescribe, authorize Federal Home Loan Banks to be drawees of, and to engage in, or be agents or intermediaries for, or otherwise participate or assist in, the collection and settlement of (including presentment, clearing, and payment of, and remitting for), checks, drafts, or any other negotiable or nonnegotiable items or instruments of payment drawn on or issued by members of any Federal Home Loan Bank or by institutions which are eligible to make application to become members pursuant to section 4, and to have such incidental powers as **[the Board]** *the Director* shall find necessary for the exercise of any such authorization.

(B) A Federal Home Loan Bank shall make charges, to be determined and regulated by **[the Board]** *the Director* consistent with the principles set forth in section 11A(c) of the Federal Reserve Act, or utilize the services of, or act as agent for, or be a member of, a Federal Reserve bank, clearinghouse, or any other public or private financial institution or other agency, in the exercise of any powers or functions pursuant to this paragraph.

(C) **[The Board]** *The Director* is authorized, with respect to participation in the collection and settlement of any items by Federal Home Loan Banks, and with respect to the collection and settlement (including payment by the payor institution) of items payable by Federal savings and loan associations and Federal mutual savings banks, to prescribe rules and regulations regarding the rights, powers, responsibilities, duties, and liabilities, including standards relating thereto, of such Federal Home Loan Banks, associations, or banks and other parties to any such items or their collection and settlement. In prescribing such rules and regulations, **[the Board]** *the Director* may adopt or apply, in whole or in part, general banking usage and practices, and, in instances or respects in which they would otherwise not be applicable, Federal Reserve regulations and operating letters, the Uniform Commercial Code, and clearinghouse rules.

(f) **[The Board]** *The Director* is authorized and empowered to permit~~[,]~~ or to require~~[,]~~ Federal Home Loan Banks, upon such terms and conditions as **[the Board]** *the Director* may prescribe, to rediscount the discounted notes of members held by other Federal Home Loan Banks, or to make loans to, or make deposits with, such other Federal Home Loan Banks, or to purchase any bonds or debentures issued under this section.

(g) Each Federal Home Loan Bank shall at all times have at least an amount equal to the current deposits received from its members invested in (1) obligations of the United States, (2) deposits in banks or trust companies, (3) advances with a maturity of not to exceed five years which are made to members, upon such terms and conditions as [the Board] *the Director* may prescribe, and (4) advances with a maturity of not to exceed five years which are made to members whose creditor liabilities (not including advances from the Federal Home Loan Bank) do not exceed 5 per centum of their net assets, and which may be made without the security of home mortgages or other security, upon such terms and conditions as [the Board] *the Director* may prescribe.

(h) Such part of the assets of each Federal Home Loan Bank (except reserves and amounts provided for in subsection (g)) as are not required for advances to members, may be invested, to such extent as the bank may deem desirable and subject to such regulations, restrictions, and limitations as may be prescribed by [the Board] *the Director*, in obligations of the United States, in obligations, participations, or other instruments of or issued by the Federal National Mortgage Association, or the Government National Mortgage Association, in mortgages, obligations, or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation Act, in the stock of the Federal National Mortgage Association in stock, obligations, or other securities of any small business investment company formed pursuant to section 301 of the Small Business Investment Act of 1958, for the purpose of aiding members of the Federal Home Loan Bank System, and in such securities as fiduciary and trust funds may be invested in under the laws of the State in which the Federal Home Loan Bank is located.

(i) The Secretary of the Treasury is authorized in his discretion to purchase any obligations issued pursuant to this section, as heretofore, now, or hereafter in force and for such purpose the Secretary of the Treasury is authorized to use as a public-debt transaction the proceeds of the sale of any securities hereafter issued under the Second Liberty Bond Act, as now or hereafter in force, and the purposes for which securities may be issued under the Second Liberty Bond Act, as now or hereafter in force, are extended to include such purchases. The Secretary of the Treasury may, at any time, sell, upon such terms and conditions and at such price or prices as he shall determine, any of the obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such obligations under this subsection shall be treated as public-debt transactions of the United States. The Secretary of the Treasury shall not at any time purchase any obligations under this paragraph if such purchase would increase the aggregate principal amount of his then outstanding holdings of such obligations under this paragraph to an amount greater than \$4,000,000,000. Each purchase of obligations by the Secretary of the Treasury under this subsection shall be upon terms and conditions as shall be determined by the Secretary of the Treasury and shall bear such rate of interest as may be determined by the Secretary of the Treasury taking into consideration the current average market yield for the month preceding the month of

such purchase on outstanding marketable obligations of the United States.

In addition to obligations authorized to be purchased by the preceding paragraph, the Secretary of the Treasury is authorized to purchase any obligations issued pursuant to this section in amounts not to exceed \$2,000,000,000. The authority provided in this paragraph shall expire August 10, 1975.

Notwithstanding the foregoing, the authority provided in this subsection may be exercised during any calendar quarter beginning after the date of enactment of the Depository Institutions Amendments of 1974 only if the Secretary of the Treasury and [the Chairperson of the Board] *the Director* certify to the Congress that (1) alternative means cannot be effectively employed to permit members of the Federal Home Loan Bank System to continue to supply reasonable amounts of funds to the mortgage market, and (2) the ability to supply such funds is substantially impaired because of monetary stringency and a high level of interest rates. Any funds borrowed under this subsection shall be repaid by the Home Loan Banks at the earliest practicable date.

* * * * *

(1) *JOINT ACTIVITIES.*—Subject to the regulation of the Director, any two or more Federal Home Loan Banks may establish a joint office for the purpose of performing functions for, or providing services to, the Banks on a common or collective basis, or may require that the Office of Finance perform such functions or services, but only if the Banks are otherwise authorized to perform such functions or services individually.

INCORPORATION OF BANKS, AND CORPORATE POWERS

SEC. 12. (a) The directors of each Federal Home Loan Bank shall, in accordance with such rules and regulations as [the Board] *the Director* may prescribe, make and file with [the Board] *the Director* at the earliest practicable date after the establishment of such bank, an organization certificate which shall contain such information as [the Board] *the Director* may require. Upon the making and filing of such organization certificate with [the Board] *the Director*, such bank shall become, as of the date of the execution of its organization certificate, a body corporate, and as such and in its name as designated by [the Board] *the Director* it shall have power to adopt, alter, and use a corporate seal; to make contracts; to purchase or lease and hold or dispose of such real estate as may be necessary or convenient for the transaction of its business; to sue and be sued, to complain, and to defend, in any court of competent jurisdiction, State or Federal; to select, employ, and fix the compensation of such officers, employees, attorneys, and agents as shall be necessary for the transaction of its business; to define their duties, require bonds of them and fix the penalties thereof, and to dismiss at pleasure such officers, employees, attorneys, and agents; and, by the board of directors of the bank, to prescribe, amend, and repeal by-laws governing the manner in which its affairs may be administered, consistent with applicable laws and regulations, as administered by [the Finance Board] *the Director*. No officer, employee, attorney, or agent of a Federal home loan bank who receives compensation, may be a member of the board of directors.

Each such bank shall have all such incidental powers, not inconsistent with the provisions of this Act, as are customary and usual in corporations generally.

(b) Subject to such regulations as may be prescribed by [the Board] *the Director*, one or more Federal home loan banks may acquire, hold, or dispose of, in whole or in part, or facilitate such acquisition, holding, or disposition by members of any such bank of, housing project loans, or interests therein, having the benefit of any guaranty under section 221 of the Foreign Assistance Act of 1961, as now or hereafter in effect, or loans, or interests therein, having the benefit of any guaranty under section 224 of such Act, or any commitment or agreement with respect to such loans, or interests therein, made pursuant to either of such sections. This authority extends to the acquisition, holding, and disposition of loans, or interests therein, having the benefit of any guaranty under section 221 or 222 of the Foreign Assistance Act of 1961, as amended by section 105 of the Foreign Assistance Act of 1969 or as hereafter amended or extended, or of any commitment or agreement for any such guaranty.

* * * * *

SEC. 15. Obligations of the Federal Home Loan Banks issued with the approval of the Board *or the Director* under this Act shall be lawful investments, and may be accepted as security, for all fiduciary, trust, and public funds the investment or deposit of which shall be under the authority or control of the United States or any officer or officers thereof. The Federal reserve banks are authorized to act as depositories, custodians, and/or fiscal agents for Federal Home Loan Banks in the general performance of their powers under this Act. All obligations of Federal Home Loan Banks shall plainly state that such obligations are not obligations of the United States and are not guaranteed by the United States.

RESERVES AND DIVIDENDS

SEC. 16. (a) Each Federal Home Loan Bank may carry to a reserve account from time-to-time such portion of its net earnings as may be determined by its board of directors. Each Federal Home Loan Bank shall establish such additional reserves and/or make such charge-offs on account of depreciation or impairment of its assets as [the Board] *the Director* shall require from time to time. No dividends shall be paid except out of previously retained earnings or current net earnings remaining after reductions for all reserves, chargeoffs, purchases of capital certificates of the Financing Corporation, and payments relating to the Funding Corporation required under this Act have been provided for, other than chargeoffs or expenses incurred by a Bank in connection with the purchase of capital stock of the Financing Corporation under section 21 or payments relating to the Funding Corporation Principal Fund under section 21B(e). The reserves of each Federal Home Loan Bank shall be invested, subject to such regulations, restrictions, and limitations as may be prescribed by [the Board] *the Director*, in direct obligations of the United States, in obligations, participations, or other instruments of or issued by the Federal National Mortgage Association or the Government National Mortgage Association, in mortgages, obligations, or other securities which are or ever have

been sold by the Federal Home Loan Mortgage Corporation pursuant to section 305 or section 306 of the Federal Home Loan Mortgage Corporation Act, and in such securities as fiduciary and trust funds may be invested in under the laws of the State in which the Federal Home Loan Bank is located.

(b) Notwithstanding subsection (a) or any other provision of this Act, if **the Board** *the Director* determines that severe financial conditions exist threatening the stability of member institutions, **the Board** *the Director* may suspend temporarily the requirements of subsection (a) that a portion of net earnings be set aside semiannually by each Federal Home Loan Bank to a reserve account and permit each Federal Home Loan Bank to declare and pay dividends out of undivided profits.

(c) EXCEPTION IN CASE OF LOSSES IN CONNECTION WITH FINANCING CORPORATION STOCK.—

(1) IN GENERAL.—Notwithstanding subsection (a) of this section, if—

(A) a Federal Home Loan Bank incurs a chargeoff or an expense in connection with such bank's investment in the stock of the Financing Corporation under section 21;

(B) **the Board** *the Director* determines there is an extraordinary need for the member institutions of the bank to receive dividends; and

(C) the bank has reduced all reserves (other than the reserve account required by the first 2 sentences of subsection (a)) to zero,

the Board *the Director* may authorize such bank to declare and pay dividends out of undivided profits (as such term is defined in section 21(d)(7)) or the reserve account required by the first 2 sentences of subsection (a).

(2) REQUIREMENTS OF SECTION 21 NOT AFFECTED.—Notwithstanding any payment of dividends by any Federal Home Loan Bank pursuant to an authorization by **the Board** *the Director* under paragraph (1), the applicable provisions of section 21 shall continue to apply with respect to such bank, and to such bank's investment in the Financing Corporation, in the same manner and to the same extent as if such payment had not been made.

* * * * *

ADMINISTRATIVE EXPENSES

SEC. 18.

(b) ASSESSMENTS FOR ADMINISTRATIVE EXPENSES.—

(1) IN GENERAL.—The Board may impose a semiannual assessment on the Federal Home Loan Banks, the aggregate amount of which is sufficient to provide for the payment of the Board's estimated expenses for the period for which such assessment is made.

(2) DEFICIENCIES.—If, at any time, amounts available from any assessment for any semiannual period are insufficient to cover the expenses of the Board incurred in carrying out the provisions of this Act during such period, the Board may make an immediate assessment against the Banks to cover the amount of the deficiency for such semiannual period.

[(3) SURPLUSES.—If, at the end of any semiannual period for which an assessment is made, any amount remains from such assessment, such amount will be deducted from the assessment on the Banks by the Board for the following semiannual period.]

* * * * *

[EXAMINATIONS AND REPORTS] EXAMINATIONS AND GAO AUDITS

SEC. 20. [The Board shall from time to time, at least annually, require examinations and reports of condition of all Federal Home Loan Banks in such form as the Board shall prescribe and shall furnish periodically statements based upon the reports of the banks to the Board. For the purposes of this Act, examiners appointed by the Board shall be subject to the same requirements, responsibilities, and penalties as are applicable to examiners under the National Bank Act and the Federal Reserve Act, and shall have, in the exercise of functions under this Act, the same powers and privileges as are vested in such examiners by law.] *The Federal home loan banks shall be subject to examinations by the Director to the extent provided in section 1317 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4517).* In addition to such examinations, the Comptroller General may audit or examine [the Board and] the Banks, to determine the extent to which [the Board and] the Banks are fairly and effectively fulfilling the purposes of this Act.

SEC. 20A. SHARING OF INFORMATION BETWEEN FEDERAL HOME LOAN BANKS.

(a) *REGULATORY AUTHORITY.—The Director shall prescribe such regulations as may be necessary to ensure that each Federal Home Loan Bank has access to information that the Bank needs to determine the nature and extent of its joint and several liability.*

(b) *NO WAIVER OF PRIVILEGE.—The Director shall not be deemed to have waived any privilege applicable to any information concerning a Federal Home Loan Bank by transferring, or permitting the transfer of, that information to any other Federal Home Loan Bank for the purpose of enabling the recipient to evaluate the nature and extent of its joint and several liability.*

SEC. 21. FINANCING CORPORATION.

(a) **ESTABLISHMENT.**—Notwithstanding any other provision of law, the [Federal Housing Finance Board] *Director* shall charter a corporation to be known as the Financing Corporation.

(b) **MANAGEMENT OF FINANCING CORPORATION.**—

(1) **DIRECTORATE.**—The Financing Corporation shall be under the management of a directorate composed of 3 members as follows:

(A) The Director of the Office of Finance of the Federal Home Loan Banks (or the head of any successor to such office).

(B) 2 members selected by the [Federal Housing Finance Board] *Director* from among the presidents of the Federal Home Loan Banks.

(2) TERMS.—Each member appointed under paragraph (1)(B) shall be appointed for a term of 1 year.

* * * * *

(5) CHAIRPERSON.—The **Chairperson of the Federal Housing Finance Board** *Director* shall select the chairperson of the Directorate from among the 3 members of the Directorate.

(6) STAFF.—

(A) NO PAID EMPLOYEES.—The Financing Corporation shall have no paid employees.

(B) POWERS.—The Directorate may, with the approval of the **Federal Housing Finance Board** *Director*, authorize the officers, employees, or agents of the Federal Home Loan Banks to act for and on behalf of the Financing Corporation in such manner as may be necessary to carry out the functions of the Financing Corporation.

(7) ADMINISTRATIVE EXPENSES.—

(A) IN GENERAL.—All administrative expenses of the Financing Corporation shall be paid by the Federal Home Loan Banks.

(B) PRO RATA DISTRIBUTION.—The amount each Federal Home Loan Bank shall pay shall be determined by the **Federal Housing Finance Board** *Director* by multiplying the total administrative expenses for any period by the percentage arrived at by dividing—

(i) the aggregate amount the **Federal Housing Finance Board** *Director* required such bank to invest in the Financing Corporation (as of the time of such determination) under paragraphs (4) and (5) of subsection (d) (as computed without regard to paragraph (3) or (6) of such subsection); by

(ii) the aggregate amount the **Federal Housing Finance Board** *Director* required all Federal Home Loan Banks to invest (as of the time of such determination) under such paragraphs.

* * * * *

(8) REGULATION BY **FEDERAL HOUSING FINANCE BOARD** *DIRECTOR*.—The Directorate shall be subject to such regulations, orders, and directions as the **Federal Housing Finance Board** *Director* may prescribe.

(9) NO COMPENSATION FROM FINANCING CORPORATION.—Members of the Directorate shall receive no pay, allowances, or benefits from the Financing Corporation by reason of their service on the Directorate.

(c) POWERS OF FINANCING CORPORATION.—The Financing Corporation shall have only the following powers, subject to the other provisions of this section and such regulations, orders, and directions as the **Federal Housing Finance Board** *Director* may prescribe:

(1) * * *

* * * * *

(d) CAPITALIZATION OF FINANCING CORPORATION.—

(1) PURCHASE OF CAPITAL STOCK BY FEDERAL HOME LOAN BANKS.—

(A) IN GENERAL.—Each Federal Home Loan Bank shall invest in nonvoting capital stock of the Financing Corporation at such times and in such amounts as the [Federal Housing Finance Board] *Director* may prescribe under this subsection.

(B) PAR VALUE; TRANSFERABILITY.—Each share of stock issued by the Financing Corporation to a Federal Home Loan Bank shall have par value in an amount determined by the [Federal Housing Finance Board] *Director* and shall be transferable only among the Federal Home Loan Banks in the manner and to the extent prescribed by the [Federal Housing Finance Board] *Director* at not less than par value.

* * * * *

(4) PRO RATA DISTRIBUTION OF 1ST \$1,000,000,000 INVESTED IN FINANCING CORPORATION BY HOME LOAN BANKS.—Of the first \$1,000,000,000 in the aggregate which the Thrift Depositor Protection Oversight Board pursuant to section 21B or the [Federal Housing Finance Board] *Director* under this section (as the case may be) may require the Federal Home Loan Banks collectively to invest in the stock of the Funding Corporation or invest in the capital stock of the Financing Corporation, respectively, the amount which each Federal Home Loan Bank (or any successor to such Bank) shall invest shall be determined by the Thrift Depositor Protection Oversight Board or the [Federal Housing Finance Board] *Director* (as the case may be) by multiplying the aggregate amount of such payment or investment by all Banks by the percentage appearing in the following table for each such Bank:

Bank	Percentage
Federal Home Loan Bank of Boston	1.8629
Federal Home Loan Bank of New York	9.1006
Federal Home Loan Bank of Pittsburgh	4.2702
Federal Home Loan Bank of Atlanta	14.4007
Federal Home Loan Bank of Cincinnati	8.2653
Federal Home Loan Bank of Indianapolis	5.2863
Federal Home Loan Bank of Chicago	9.6886
Federal Home Loan Bank of Des Moines	6.9301
Federal Home Loan Bank of Dallas	8.8181
Federal Home Loan Bank of Topeka	5.2706
Federal Home Loan Bank of San Francisco	19.9644
Federal Home Loan Bank of Seattle	6.1422

(5) PRO RATA DISTRIBUTION OF AMOUNTS REQUIRED TO BE INVESTED IN EXCESS OF \$1,000,000,000.—With respect to any amount in excess of the \$1,000,000,000 amount referred to in paragraph (4) which the [Federal Housing Finance Board] *Director* may require the Federal Home Loan Banks to invest in capital stock of the Financing Corporation under this subsection, the amount which each Federal Home Loan Bank (or any successor to such bank) shall invest shall be determined by the [Federal Housing Finance Board] *Director* by multiplying such excess amount by the percentage arrived at by dividing—

(A) the sum of the total assets (as of the most recent December 31) held by all insured institutions which are members of such bank; by

(B) the sum of the total assets (as of such date) held by all insured institutions which are members of any Federal Home Loan Bank.

(6) SPECIAL PROVISIONS RELATING TO MAXIMUM AMOUNT LIMITATIONS.—

(A) IN GENERAL.—If the amount any Federal Home Loan Bank is required to invest in capital stock of the Financing Corporation pursuant to a determination by the **【Federal Housing Finance Board】** *Director* under paragraph (5) (or under subparagraph (B) of this paragraph) exceeds the maximum investment amount applicable with respect to such bank under paragraph (3) at the time of such determination (hereinafter in this paragraph referred to as the “excess amount”)—

(i) the **【Federal Housing Finance Board】** *Director* shall require each remaining Federal Home Loan Bank to invest (in addition to the amount determined under paragraph (5) for such remaining bank and subject to the maximum investment amount applicable with respect to such remaining bank under paragraph (3) at the time of such determination) in such capital stock on behalf of the bank in the amount determined under subparagraph (B);

(ii) the **【Federal Housing Finance Board】** *Director* shall require the bank to subsequently purchase the excess amount of capital stock from the remaining banks in the manner described in subparagraph (C); and

(iii) the requirements contained in subparagraphs (D) and (E) relating to the use of net earnings shall apply to such bank until the bank has purchased all of the excess amount of capital stock.

(B) ALLOCATION OF EXCESS AMOUNT AMONG REMAINING HOME LOAN BANKS.—The amount each remaining Federal Home Loan Bank shall be required to invest under subparagraph (A)(i) is the amount determined by the **【Federal Housing Finance Board】** *Director* by multiplying the excess amount by the percentage arrived at by dividing—

(i) the amount of capital stock of the Financing Corporation held by such remaining bank at the time of such determination; by

(ii) the aggregate amount of such stock held by all remaining banks at such time.

(C) PURCHASE PROCEDURE.—The bank on whose behalf an investment in capital stock is made under subparagraph (A)(i) shall purchase, annually and at the issuance price, from each remaining bank an amount of such stock determined by the **【Federal Housing Finance Board】** *Director* by multiplying the amount available for such purchases (at the time of such determination) by the percentage determined under subparagraph (B) with respect to such remaining bank until the aggregate amount of such capital stock has been purchased by the bank.

(D) LIMITATION ON DIVIDENDS.—The amount of dividends which may be paid for any year by a bank on whose behalf

an investment is made under subparagraph (A)(i) shall not exceed an amount equal to ½ of the net earnings of the bank for the year.

(E) TRANSFER TO ACCOUNT FOR PURCHASE OF STOCK REQUIRED.—Of the net earnings for any year of a bank on whose behalf an investment is made under subparagraph (A)(i), such amount as is necessary to make the purchases of stock required under subparagraph (A)(ii) shall be placed in a reserve account (established in such manner as the [Federal Housing Finance Board] *Director* shall prescribe by regulations) the balance in which shall be available only for such purchases.

(7) UNDIVIDED PROFITS DEFINED.—For purposes of paragraph (3), the term “undivided profits” means retained earnings minus the sum of—

(A) * * *

* * * * *

(e) OBLIGATIONS OF THE FINANCING CORPORATION.—

(1) LIMITATION ON AMOUNT OF OUTSTANDING OBLIGATIONS.—

The aggregate amount of obligations of the Financing Corporation which may be outstanding at any time (as determined by the [Federal Housing Finance Board] *Director*) shall not exceed the lesser of—

(A) * * *

* * * * *

(4) INVESTMENT OF UNITED STATES FUNDS IN OBLIGATIONS.—

Obligations issued under this section by the Financing Corporation with the approval of the [Federal Housing Finance Board] *Director* shall be lawful investments, and may be accepted as security, for all fiduciary, trust, and public funds the investment or deposit of which shall be under the authority or control of the United States or any officer of the United States.

* * * * *

(9) MINORITY PARTICIPATION IN PUBLIC OFFERINGS.—The

[Chairperson of the Federal Housing Finance Board] *Director* and the Directorate shall ensure that minority owned or controlled commercial banks, investment banking firms, underwriters, and bond counsels throughout the United States have an opportunity to participate to a significant degree in any public offering of obligations issued under this section.

* * * * *

(g) USE AND DISPOSITION OF ASSETS OF THE FINANCING CORPORATION NOT INVESTED IN FSLIC.—

(1) IN GENERAL.—Subject to such regulations, restrictions, and limitations as may be prescribed by the [Federal Housing Finance Board] *Director*, assets of the Financing Corporation, which are not invested in capital certificates or capital stock issued by the Federal Savings and Loan Insurance Corporation under section 402(b)(1)(A) of the National Housing Act before the date of enactment of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and after such date in capital certificates issued by the FSLIC Resolution Fund, shall be invested in—

(A) * * *

* * * * *

(i) TERMINATION OF THE FINANCING CORPORATION.—

(1) IN GENERAL.—The Financing Corporation shall be dissolved, as soon as practicable, after the earlier of—

(A) the maturity and full payment of all obligations issued by the Financing Corporation pursuant to this section; or

(B) December 31, 2026.

(2) **【FEDERAL HOUSING FINANCE BOARD】** *DIRECTOR* AUTHORITY TO CONCLUDE THE AFFAIRS OF FINANCING CORPORATION.—Effective on the date of the dissolution of the Financing Corporation under paragraph (1), the **【Federal Housing Finance Board】** *Director* may exercise, on behalf of the Financing Corporation, any power of the Financing Corporation which the **【Federal Housing Finance Board】** *Director* determines to be necessary to settle and conclude the affairs of the Financing Corporation.(j) REGULATIONS.—The **【Federal Housing Finance Board】** *Director* may prescribe such regulations as may be necessary to carry out the provisions of this section, including regulations defining terms used in this section.

* * * * *

SEC. 21A. THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD AND RESOLUTION TRUST CORPORATION.

(a) * * *

* * * * *

(c) DISPOSITION OF ELIGIBLE RESIDENTIAL PROPERTIES.—

(1) * * *

* * * * *

(9) DEFINITIONS.—For purposes of this subsection—

(A) * * *

(B) CLEARINGHOUSES.—The term “clearinghouses” means—

(i) the State housing finance agency for the State in which an eligible residential property is located,

(ii) the Office of Community Investment (or other comparable division) within the **【Federal Housing Finance Board】** *Director*, and

* * * * *

(h) GUARANTEES OF FSLIC.—

(1) ASSUMPTION BY CORPORATION.—On the date of the enactment of this section, the Corporation shall, by operation of law (and without further action by the Corporation, the Thrift Depositor Protection Oversight Board, the **【Federal Housing Finance Board】** *Director*, the Federal Savings and Loan Insurance Corporation, or any court), assume all rights and obligations of the Federal Savings and Loan Insurance Corporation with respect to any guarantee issued by the Federal Savings and Loan Insurance Corporation during the period beginning on January 1, 1989, and ending on such date of enactment, in connection with any loan to any savings association by any

Federal Reserve bank or Federal Home Loan Bank (hereinafter in this subsection referred to as a "lender").

* * * * *

SEC. 21B. RESOLUTION FUNDING CORPORATION ESTABLISHED.

(a) * * *

* * * * *

(c) MANAGEMENT OF FUNDING CORPORATION.—

(1) * * *

* * * * *

(6) STAFF.—

(A) NO PAID EMPLOYEES.—The Funding Corporation shall have no paid employees.

(B) POWERS.—The Directorate may, with the approval of the [Federal Housing Finance Board] *Director* authorize the officers, employees, or agents of the Federal Home Loan Banks to act for and on behalf of the Funding Corporation in such manner as may be necessary to carry out the functions of the Funding Corporation.

* * * * *

(e) CAPITALIZATION OF FUNDING CORPORATION, ETC.—

(1) * * *

* * * * *

(4) PRO RATA DISTRIBUTION OF FIRST \$1,000,000,000 INVESTED IN FUNDING CORPORATION BY FEDERAL HOME LOAN BANKS.—Of the first \$1,000,000,000 of the aggregate that the [Federal Housing Finance Board] *Director* (pursuant to section 21) or the Thrift Depositor Protection Oversight Board (under this section) may require the Federal Home Loan Banks collectively to invest in the capital stock of the Financing Corporation or invest in the capital stock of the Funding Corporation, respectively, the amount which each Federal Home Loan Bank (or any successor to the Bank) shall invest shall be determined by the [Federal Housing Finance Board] *Director* or the Thrift Depositor Protection Oversight Board (as the case may be) by multiplying the aggregate amount of such investment by all Banks by the percentage appearing in the following table for each such Bank:

Bank	Percentage
Federal Home Loan Bank of Boston	1.8629
Federal Home Loan Bank of New York	9.1006
Federal Home Loan Bank of Pittsburgh	4.2702
Federal Home Loan Bank of Atlanta	14.4007
Federal Home Loan Bank of Cincinnati	8.2653
Federal Home Loan Bank of Indianapolis	5.2863
Federal Home Loan Bank of Chicago	9.6886
Federal Home Loan Bank of Des Moines	6.9301
Federal Home Loan Bank of Dallas	8.8181
Federal Home Loan Bank of Topeka	5.2706
Federal Home Loan Bank of San Francisco	19.9644
Federal Home Loan Bank of Seattle	6.1422

* * * * *

(f) OBLIGATIONS OF FUNDING CORPORATION.—

(1) * * *

(2) INTEREST PAYMENTS.—The Funding Corporation shall pay the interest due on such obligations from funds obtained for such interest payments from the following sources:

(A) * * *

* * * * *

(C) PAYMENTS BY FEDERAL HOME LOAN BANKS.—

(i) IN GENERAL.—To the extent that the amounts available pursuant to subparagraphs (A) and (B) are insufficient to cover the amount of interest payments, each Federal home loan bank shall pay to the Funding Corporation in each calendar year, 20.0 percent of the net earnings of that Bank (after deducting expenses relating to section 10(j) and operating expenses).

(ii) ANNUAL DETERMINATION.—~~【The Board】~~ *The Director* annually shall determine the extent to which the value of the aggregate amounts paid by the Federal home loan banks exceeds or falls short of the value of an annuity of \$300,000,000 per year that commences on the issuance date and ends on the final scheduled maturity date of the obligations, and shall select appropriate present value factors for making such determinations, in consultation with the Secretary of the Treasury.

(iii) PAYMENT TERM ALTERATIONS.—~~【The Board】~~ *The Director* shall extend or shorten the term of the payment obligations of a Federal home loan bank under this subparagraph as necessary to ensure that the value of all payments made by the Banks is equivalent to the value of an annuity referred to in clause (ii).

(iv) TERM BEYOND MATURITY.—If the Board extends the term of payment obligations beyond the final scheduled maturity date for the obligations, each Federal home loan bank shall continue to pay 20.0 percent of its net earnings (after deducting expenses relating to section 10(j) and operating expenses) to the Treasury of the United States until the value of all such payments by the Federal home loan banks is equivalent to the value of an annuity referred to in clause (ii). In the final year in which the Federal home loan banks are required to make any payment to the Treasury under this subparagraph, if the dollar amount represented by 20.0 percent of the net earnings of the Federal home loan banks exceeds the remaining obligation of the Banks to the Treasury, ~~【the Finance Board】~~ *the Director* shall reduce the percentage pro rata to a level sufficient to pay the remaining obligation.

* * * * *

(E) PAYMENTS BY FANNIE MAE AND FREDDIE MAC.—*To the extent that the amounts available pursuant to subparagraphs (A), (B), (C), and (D) are insufficient to cover the amount of interest payments, each enterprise (as such term is defined in section 1303 of the Housing and Community Development Act of 1992 (42 U.S.C. 4502)) shall transfer to*

the Funding Corporation in each calendar year the amounts allocated for use under this subparagraph pursuant to section 1337(i)(1) of such Act.

[(E)] (F) TREASURY BACKUP.—

(i) IN GENERAL.—To the extent the amounts available pursuant to subparagraphs (A), (B), (C), [and (D)] (D), and (E) are insufficient to cover the amount of interest payments, the Secretary of the Treasury shall pay to the Funding Corporation the additional amount due, which shall be used by the Funding Corporation to pay such interest.

* * * * *

SEC. 22. MEMBER FINANCIAL INFORMATION.

(a) IN GENERAL.—In order to enable the Federal Home Loan Banks to carry out the provisions of this Act, the Secretary of the Treasury, the Comptroller of the Currency, the Chairman of the Board of Governors of the Federal Reserve System, the Chairperson of the Federal Deposit Insurance Corporation, the Chairperson of the National Credit Union Administration, and the Director of the Office of Thrift Supervision, upon request by any Federal Home Loan Bank—

(1) shall make available in confidence to any Federal Home Loan Bank, such reports, records, or other information as may be available, relating to the condition of any member of any Federal Home Loan Bank or any institution with respect to which any such Bank has had or contemplates having transactions under this Act; and

(2) may perform through their examiners or other employees or agents, for the confidential use of the Federal Home Loan Bank, examinations of institutions for which such agency is the appropriate Federal banking regulatory agency.

In addition, the Comptroller of the Currency, the Chairman of the Board of Governors of the Federal Reserve System, the Chairperson of the National Credit Union Administration, and the Director of the Office of Thrift Supervision shall make available to [(the Board)] *the Director* or any Federal Home Loan Bank the financial reports filed by members of any Bank to enable [(the Board)] *the Director* or a Bank to compile and publish cost of funds indices or other financial or statistical reports.

(b) CONSENT BY MEMBERS.—Every member of a Federal Home Loan Bank shall, as a condition precedent thereto, be deemed—

(1) to consent to such examinations as the Bank or [(the Board)] *the Director* may require for the purposes of this Act;

(2) to agree that reports of examinations by local, State, or Federal agencies or institutions may be furnished by such authorities to the Bank or [(the Board)] *the Director* upon request; and

(3) to agree to give the Bank or the Federal agency, upon request, such information as they may need to compile and publish cost of funds indices and to publish other reports or statistical summaries pertaining to the activities of Bank members.

SEC. 23. FORMS OF BANK STOCK AND OBLIGATIONS.

Any stock, debentures, bonds, notes, or other obligations issued under the authority of this Act may be issued in uncertificated

form, utilizing a book entry method, or in certificated form under such rules, regulations, or guidelines as the [Board of Directors of the Federal Housing Finance Board] *Director* may provide.

SEC. 24. (a) * * *

(b) In all respects, but subject to such additional rules and regulations as [the Board] *the Director* may provide, any such organization shall be a member for the purposes of this Act.

[SEC. 25. Each Federal Home Loan Bank shall have succession until dissolved by the Board under this Act or by further Act of Congress.]

SEC. 25. SUCCESSION OF FEDERAL HOME LOAN BANKS.

Each Federal Home Loan Bank shall have succession until it is voluntarily merged with another Bank under this Act, or until it is merged, reorganized, rehabilitated, liquidated, or otherwise wound up by the Director in accordance with the provisions of section 1367 of the Housing and Community Development Act of 1992, or by further Act of Congress.

SEC. 26. (a) *REORGANIZATION.*—Whenever [the Board] *the Director* finds that the efficient and economical accomplishment of the purposes of this Act will be aided by such action, and in accordance with such rules, regulations, and orders as [the Board] *the Director* may prescribe, any Federal Home Loan Bank may be [liquidated or] reorganized, and its stock paid off and retired in whole or in part in connection therewith after paying or making provision for the payment of its liabilities. In the case of any such [liquidation or] reorganization, any other Federal Home Loan Bank may, with the approval of [the Board] *the Director*, acquire assets of any such [liquidated or] reorganized bank and assume liabilities thereof, in whole or in part.

(b) *VOLUNTARY MERGERS.*—*Any two or more Banks may, with the approval of the Director, and the approval of the boards of directors of the Banks involved, merge. The Director shall promulgate regulations establishing the conditions and procedures for the consideration and approval of any such voluntary merger, including the procedures for Bank member approval.*

* * * * *

**FEDERAL NATIONAL MORTGAGE ASSOCIATION
CHARTER ACT**

* * * * *

TITLE III—NATIONAL MORTGAGE ASSOCIATIONS

* * * * *

CREATION OF ASSOCIATION

SEC. 302. (a) * * *

(b)(1) * * *

(2) For the purposes set forth in section 301(a), the corporation is authorized, pursuant to commitments or otherwise, to purchase, service, sell, lend on the security of, or otherwise deal in mortgages which are not insured or guaranteed as provided in paragraph (1) (such mortgages referred to hereinafter as “conventional mort-

gages”). No such purchase of a conventional mortgage secured by a property comprising one- to four-family dwelling units shall be made if the outstanding principal balance of the mortgage at the time of purchase exceeds 80 per centum of the value of the property securing the mortgage, unless (A) the seller retains a participation of not less than 10 per centum in the mortgage; (B) for such period and under such circumstances as the corporation may require, the seller agrees to repurchase or replace the mortgage upon demand of the corporation in the event that the mortgage is in default; or (C) that portion of the unpaid principal balance of the mortgage which is in excess of such 80 per centum is guaranteed or insured by a qualified insurer as determined by the corporation. The corporation shall not issue a commitment to purchase a conventional mortgage prior to the date the mortgage is originated, if such mortgage is eligible for purchase under the preceding sentence only by reason of compliance with the requirements of clause (A) of such sentence. The corporation may purchase a conventional mortgage which was originated more than one year prior to the purchase date only if the seller is the Federal Deposit Insurance Corporation, [the Resolution Trust Corporation,] the National Credit Union Administration, or any other seller currently engaged in mortgage lending or investing activities. For the purpose of this section, the term “conventional mortgages” shall include a mortgage, lien, or other security interest on the stock or membership certificate issued to a tenant-stockholder or resident-member of a cooperative housing corporation, as defined in section 216 of the Internal Revenue Code of 1954, and on the proprietary lease, occupancy agreement, or right of tenancy in the dwelling unit of the tenant-stockholder or resident-member in such cooperative housing corporation. The corporation shall establish limitations governing the maximum original principal obligation of conventional mortgages that are purchased by it; in any case in which the corporation purchases a participation interest in such a mortgage, the limitation shall be calculated with respect to the total original principal obligation of the mortgage and not merely with respect to the interest purchased by the corporation. [Such limitations shall not exceed \$93,750 for a mortgage secured by a single-family residence, \$120,000 for a mortgage secured by a two-family residence, \$145,000 for a mortgage secured by a three-family residence, and \$180,000 for a mortgage secured by a four-family residence, except that such maximum limitations shall be adjusted effective January 1 of each year beginning with 1981. Each such adjustment shall be made by adding to each such amount (as it may have been previously adjusted) a percentage thereof equal to the percentage increase during the twelve-month period ending with the previous October in the national average one-family house price in the monthly survey of all major lenders conducted by the Federal Housing Finance Board.] *For 2007, such limitations shall not exceed \$417,000 for a mortgage secured by a single-family residence, \$533,850 for a mortgage secured by a 2-family residence, \$645,300 for a mortgage secured by a 3-family residence, and \$801,950 for a mortgage secured by a 4-family residence, except that such maximum limitations shall be adjusted effective January 1 of each year beginning with 2008, subject to the limitations in this paragraph. Each adjustment shall be made by adding to or subtracting from*

each such amount (as it may have been previously adjusted) a percentage thereof equal to the percentage increase or decrease, during the most recent 12-month or four-quarter period ending before the time of determining such annual adjustment, in the housing price index maintained by the Director of the Federal Housing Finance Agency (pursuant to section 1322 of the Housing and Community Development Act of 1992 (12 U.S.C. 4541)). The foregoing limitations may be increased by not to exceed 50 per centum with respect to properties located in Alaska, Guam, Hawaii, and the Virgin Islands. Such foregoing limitations shall also be increased with respect to properties of a particular size located in any area for which the median price for such size residence exceeds the foregoing limitation for such size residence, to the lesser of 150 percent of such foregoing limitation for such size residence or the amount that is equal to the median price in such area for such size residence, except that, subject to the order, if any, issued by the Director of the Federal Housing Finance Agency pursuant to section 133(d)(3) of the Federal Housing Finance Reform Act of 2007, such increase shall apply only with respect to mortgages on which are based securities issued and sold by the corporation.

* * * * *

(6) The corporation may not **implement any new program** *initially offer any product* (as such term is defined in **section 1303** *section 1321(f)* of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992) **before obtaining the approval of the Secretary under section 1322** *except in accordance with section 1321* of such Act.

* * * * *

CAPITALIZATION—FEDERAL NATIONAL MORTGAGE ASSOCIATION

SEC. 303. (a) * * *

* * * * *

(c)(1) * * *

(2) The corporation may not make any capital distribution that would decrease the total capital of the corporation (as such term is defined in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992) to an amount less than the risk-based capital level for the corporation established under section 1361 of such Act or that would decrease the core capital of the corporation (as such term is defined in section 1303 of such Act) to an amount less than the minimum capital level for the corporation established under section 1362 of such Act, without prior written approval of the distribution by the **Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development** *Director of the Federal Housing Finance Agency*.

* * * * *

MANAGEMENT

SEC. 308. (a) * * *

(b) The Federal National Mortgage Association shall have a board of directors, which shall consist of **eighteen persons**, five of

whom shall be appointed annually by the President of the United States, and the remainder of whom] *13 persons, or such other number that the Director determines appropriate, who shall be elected annually by the common stockholders.* [The] *Except to the extent that action under section 1377 of the Housing and Community Development Act of 1992 temporarily results in a lesser number, the board shall at all times have as members* [appointed by the President] at least one person from the homebuilding industry, at least one person from the mortgage lending industry, at least one person from the real estate industry, and at least one person from an organization that has represented consumer or community interests for not less than 2 years or one person who has demonstrated a career commitment to the provision of housing for low-income households. Each member of the board of directors shall be [appointed or] elected for a term ending on the date of the next annual meeting of the stockholders[, except that any such appointed member may be removed from office by the President for good cause]. Any [elective] seat on the board which becomes vacant after the annual election of the directors shall be filled by the board, but only for the unexpired portion of the term. [Any appointive seat which becomes vacant shall be filled by appointment of the President, but only for the unexpired portion of the term.] Within the limitations of law and regulation, the board shall determine the general policies which shall govern the operations of the corporation, and shall have power to adopt, amend, and repeal by laws governing the performance of the powers and duties granted to or imposed upon it by law. The board of directors shall select and effect the appointment of qualified persons to fill the offices of president and vice president, and such other offices as may be provided for in the by-laws. Any member of the board who is a full-time officer or employee of the Federal Government shall not, as such member, receive compensation for his services.

GENERAL POWERS

SEC. 309. (a) * * *

* * * * *

(d)(1) * * *

* * * * *

(3)(A) Not later than June 30, 1993, and annually thereafter, the corporation shall submit a report to the Committee on [Banking, Finance and Urban Affairs] *Financial Services* of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on (i) the comparability of the compensation policies of the corporation with the compensation policies of other similar businesses, (ii) in the aggregate, the percentage of total cash compensation and payments under employee benefit plans (which shall be defined in a manner consistent with the corporation's proxy statement for the annual meeting of shareholders for the preceding year) earned by executive officers of the corporation during the preceding year that was based on the corporation's performance, and (iii) the comparability of the corporation's financial performance with the performance of other similar businesses. The report shall include a copy of the corporation's proxy statement for the annual meeting of shareholders for the preceding year.

(B) Notwithstanding the first sentence of paragraph (2), after the date of the enactment of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 , the corporation may not enter into any agreement or contract to provide any payment of money or other thing of current or potential value in connection with the termination of employment of any executive officer of the corporation, unless such agreement or contract is approved in advance by the [Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development] *Director of the Federal Housing Finance Agency*. The Director may not approve any such agreement or contract unless the Director determines that the benefits provided under the agreement or contract are comparable to benefits under such agreements for officers of other public and private entities involved in financial services and housing interests who have comparable duties and responsibilities. For purposes of this subparagraph, any renegotiation, amendment, or change after such date of enactment to any such agreement or contract entered into on or before such date of enactment shall be considered entering into an agreement or contract.

(C) For purposes of this paragraph, the term “executive officer” has the meaning given the term in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

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

* * * * *

(k)(1) The corporation shall submit to the [Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development] *Director of the Federal Housing Finance Agency* annual and quarterly reports of the financial condition and operations of the corporation which shall be in such form, contain such information, and be submitted on such dates as the Director shall require.

* * * * *

(m)(1) The corporation shall collect, maintain, and provide to the [Secretary] *Director of the Federal Housing Finance Agency*, in a form determined by the [Secretary] *Director*, data relating to its mortgages on housing consisting of 1 to 4 dwelling units. Such data shall include—

(A) * * *

* * * * *

(E) any other characteristics that the [Secretary] *Director of the Federal Housing Finance Agency* considers appropriate, to the extent practicable.

(2) The corporation shall collect, maintain, and provide to the [Secretary] *Director of the Federal Housing Finance Agency*, in a form determined by the [Secretary] *Director*, data relating to its mortgages on housing consisting of more than 4 dwelling units. Such data shall include—

(A) * * *

* * * * *

(H) any other information that the [Secretary] *Director of the Federal Housing Finance Agency* considers appropriate, to the extent practicable.

* * * * *

(n)(1) The corporation shall submit to the Committee on [Banking, Finance and Urban Affairs] *Financial Services* of the House of Representatives , the Committee on Banking, Housing, and Urban Affairs of the Senate, and the [Secretary] *Director of the Federal Housing Finance Agency* a report on its activities under subpart B of part 2 of subtitle A of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

(2) The report under this subsection shall—

(A) * * *

* * * * *

(E) include, in aggregate form and by appropriate category, the data provided to the [Secretary] *Director of the Federal Housing Finance Agency* under subsection (m)(1)(B);

* * * * *

(L) include any other information that the [Secretary] *Director of the Federal Housing Finance Agency* considers appropriate.

(3)(A) The corporation shall make each report under this subsection available to the public at the principal and regional offices of the corporation.

(B) Before making a report under this subsection available to the public, the corporation may exclude from the report information that the [Secretary] *Director of the Federal Housing Finance Agency* has determined is proprietary information under section 1326 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

* * * * *

FEDERAL HOME LOAN MORTGAGE CORPORATION ACT

TITLE III—FEDERAL HOME LOAN MORTGAGE CORPORATION

* * * * *

ESTABLISHMENT OF THE CORPORATION

SEC. 303. (a)(1) * * *

(2)(A) The Board of Directors of the Corporation shall consist of [18 persons, 5 of whom shall be appointed annually by the President of the United States and the remainder of whom] *13 persons, or such other number as the Director determines appropriate, who shall be elected annually by the voting common stockholders. [The] Except to the extent that action under section 1377 of the Housing and Community Development Act of 1992 temporarily results in a lesser number, the Board of Directors shall at all times have as members [appointed by the President of the United*

States] at least 1 person from the homebuilding industry, at least 1 person from the mortgage lending industry, at least 1 person from the real estate industry, and at least 1 person from an organization that has represented consumer or community interests for not less than 2 years or 1 person who has demonstrated a career commitment to the provision of housing for low-income households.

(B) Each member of the Board of Directors shall be [such or] elected for a term ending on the date of the next annual meeting of the voting common stockholders[, except that any appointed member may be removed from office by the President for good cause].

(C) [Any appointive seat on the Board of Directors that becomes vacant shall be filled by appointment by the President of the United States, but only for the unexpired portion of the term.] Any [elective] seat on the Board of Directors that becomes vacant after the annual election of the directors shall be filled by the Board of Directors, but only for the unexpired portion of the term.

* * * * *

(b)(1) * * *

(2) The Corporation may not make any capital distribution that would decrease the total capital of the Corporation (as such term is defined in section 1303 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992) to an amount less than the risk-based capital level for the Corporation established under section 1361 of such Act or that would decrease the core capital of the Corporation (as such term is defined in section 1303 of such Act) to an amount less than the minimum capital level for the Corporation established under section 1362 of such Act, without prior written approval of the distribution by the [Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development] *Director of the Federal Housing Finance Agency*.

* * * * *

(h)(1) Not later than June 30, 1993, and annually thereafter, the Corporation shall submit a report to the Committee on [Banking, Finance and Urban Affairs] *Financial Services* of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on (A) the comparability of the compensation policies of the Corporation with the compensation policies of other similar businesses, (B) in the aggregate, the percentage of total cash compensation and payments under employee benefit plans (which shall be defined in a manner consistent with the Corporation's proxy statement for the annual meeting of shareholders for the preceding year) earned by executive officers of the Corporation during the preceding year that was based on the Corporation's performance, and (C) the comparability of the Corporation's financial performance with the performance of other similar businesses. The report shall include a copy of the Corporation's proxy statement for the annual meeting of shareholders for the preceding year.

(2) Notwithstanding the first sentence of subsection (c), after the date of the enactment of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, the Corporation may not enter into any agreement or contract to provide any payment of money

or other thing of current or potential value in connection with the termination of employment of any executive officer of the Corporation, unless such agreement or contract is approved in advance by the [Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development] *Director of the Federal Housing Finance Agency*. The Director may not approve any such agreement or contract unless the Director determines that the benefits provided under the agreement or contract are comparable to benefits under such agreements for officers of other public and private entities involved in financial services and housing interests who have comparable duties and responsibilities. For purposes of this paragraph, any renegotiation, amendment, or change after such date of enactment to any such agreement or contract entered into on or before such date of enactment shall be considered entering into an agreement or contract.

* * * * *

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

* * * * *

MORTGAGE OPERATIONS

SEC. 305. (a)(1) * * *

(2) No conventional mortgages secured by a property comprising one- to four-family dwelling units shall be purchased under this section if the outstanding principal balance of the mortgage at the time of purchase exceeds 80 per centum of the value of the property securing the mortgage, unless (A) the seller retains a participation of not less than 10 per centum in the mortgage; (B) for such period and under such circumstances as the Corporation may require, the seller agrees to repurchase or replace the mortgage upon demand of the Corporation in the event that the mortgage is in default; or (C) that portion of the unpaid principal balance of the mortgage which is in excess of such 80 per centum is guaranteed or insured by a qualified insurer as determined by the Corporation. The Corporation shall not issue a commitment to purchase a conventional mortgage prior to the date the mortgage is originated, if such mortgage is eligible for purchase under the preceding sentence only by reason of compliance with the requirements of clause (A) of such sentence. The Corporation may purchase a conventional mortgage which was originated more than one year prior to the purchase date only if the seller is the Federal Deposit Insurance Corporation, [the Resolution Trust Corporation,] the National Credit Union Administration, or any other seller currently engaged in mortgage lending or investing activities. With respect to any transaction in which a seller contemporaneously sells mortgages originated more than one year old prior to the date of sale to the Corporation and receives in payment for such mortgages securities representing undivided interests only in those mortgages, the Corporation shall not impose any fee or charge upon an eligible seller which is not a member of a Federal Home Loan Bank which differs

from that imposed upon an eligible seller which is such a member. The Corporation shall establish limitations governing the maximum original principal obligation of conventional mortgages that are purchased by it; in any case in which the Corporation purchases a participation interest in such a mortgage, the limitation shall be calculated with respect to the total original principal obligation of the mortgage and not merely with respect to the interest purchased by the Corporation. **【Such limitations shall not exceed \$93,750 for a mortgage secured by a single-family residence, \$120,000 for a mortgage secured by a two-family residence, and \$145,000 for a mortgage secured by a three-family residence, and \$180,000 for a mortgage secured by a four-family residence, except that such maximum limitations shall be adjusted effective January 1 of each year beginning with 1981. Each such adjustment shall be made by adding to each such amount (as it may have been previously adjusted) a percentage thereof equal to the percentage increase during the twelve-month period ending with the previous October in the national average one-family house price in the monthly survey of all major lenders conducted by the Federal Housing Finance Board.】** *For 2007, such limitations shall not exceed \$417,000 for a mortgage secured by a single-family residence, \$533,850 for a mortgage secured by a 2-family residence, \$645,300 for a mortgage secured by a 3-family residence, and \$801,950 for a mortgage secured by a 4-family residence, except that such maximum limitations shall be adjusted effective January 1 of each year beginning with 2008, subject to the limitations in this paragraph. Each adjustment shall be made by adding to or subtracting from each such amount (as it may have been previously adjusted) a percentage thereof equal to the percentage increase or decrease, during the most recent 12-month or four-quarter period ending before the time of determining such annual adjustment, in the housing price index maintained by the Director of the Federal Housing Finance Agency (pursuant to section 1322 of the Housing and Community Development Act of 1992 (12 U.S.C. 4541)).* The foregoing limitations may be increased by not to exceed 50 per centum with respect to properties located in Alaska, Guam, Hawaii, and the Virgin Islands. *Such foregoing limitations shall also be increased with respect to properties of a particular size located in any area for which the median price for such size residence exceeds the foregoing limitation for such size residence, to the lesser of 150 percent of such foregoing limitation for such size residence or the amount that is equal to the median price in such area for such size residence, except that, subject to the order, if any, issued by the Director of the Federal Housing Finance Agency pursuant to section 133(d)(3) of the Federal Housing Finance Reform Act of 2007, such increase shall apply only with respect to mortgages on which are based securities issued and sold by the Corporation.*

* * * * *

(c) The Corporation may not **【implement any new program】** *initially offer any product* (as such term is defined in **【section 1303】** *section 1321(f)* of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992) **【before obtaining the approval of the Secretary under section 1322】** *except in accordance with section 1321 of such Act.*

OBLIGATIONS AND SECURITIES

SEC. 306. (a) * * *

* * * * *

(i) Except for fees paid pursuant to sections 303(c) and [1316(c)] 306(c) of this Act and assessments pursuant to [section 106] section 1316 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, no fee or charge may be assessed or collected by the United States (including any executive department, agency, or independent establishment of the United States) on or with regard to the purchase, acquisition, sale, pledge, issuance, guarantee, or redemption of any mortgage, asset, obligation, or other security by the Corporation. No provision of this subsection shall affect the purchase of any obligation by any Federal home loan bank pursuant to section 303(a).

* * * * *

MISCELLANEOUS PROVISIONS

SEC. 307. (a) * * *

* * * * *

(c)(1) The Corporation shall submit to the [Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development] *Director of the Federal Housing Finance Agency* annual and quarterly reports of the financial condition and operations of the Corporation which shall be in such form, contain such information, and be submitted on such dates as the Director shall require.

* * * * *

(e)(1) The Corporation shall collect, maintain, and provide to the [Secretary] *Director of the Federal Housing Finance Agency*, in a form determined by the [Secretary] *Director*, data relating to its mortgages on housing consisting of 1 to 4 dwelling units. Such data shall include—

(A) * * *

* * * * *

(E) any other characteristics that the [Secretary] *Director of the Federal Housing Finance Agency* considers appropriate, to the extent practicable.

(2) The Corporation shall collect, maintain, and provide to the [Secretary] *Director of the Federal Housing Finance Agency*, in a form determined by the [Secretary] *Director*, data relating to its mortgages on housing consisting of more than 4 dwelling units. Such data shall include—

(A) * * *

* * * * *

(H) any other information that the [Secretary] *Director of the Federal Housing Finance Agency* considers appropriate, to the extent practicable.

* * * * *

(f)(1) The Corporation shall submit to the Committee on [Banking, Finance and Urban Affairs] *Financial Services* of the House of

Representatives, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the **Secretary** *Director of the Federal Housing Finance Agency* a report on its activities under subpart B of part 2 of subtitle A of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

(2) The report under this subsection shall—

(A) * * *

* * * * *
 (E) include, in aggregate form and by appropriate category, the data provided to the **Secretary** *Director of the Federal Housing Finance Agency* under subsection (e)(1)(B);

* * * * *
 (L) include any other information that the **Secretary** *Director of the Federal Housing Finance Agency* considers appropriate.

* * * * *
 (3)(A) * * *

(B) Before making a report under this subsection available to the public, the Corporation may exclude from the report information that the **Secretary** *Director of the Federal Housing Finance Agency* has determined is proprietary information under section 1326 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

* * * * *

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL ACT OF 1978

TITLE X—FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

* * * * *

STATE AND FEDERAL HOUSING FINANCE AGENCY LIAISON

SEC. 1007. To encourage the application of uniform examination principles and standards by State and Federal supervisory agencies, the Council shall establish a liaison committee composed of five representatives of State agencies which supervise financial institutions, *and one representative of the Federal Housing Finance Agency*, which shall meet at least twice a year with the Council. Members of the liaison committee shall receive a reasonable allowance for necessary expenses incurred in attending meetings. Members of the Liaison Committee shall elect a chairperson from among the members serving on the committee.

* * * * *

TITLE 18, UNITED STATES CODE

* * * * *

PART I—CRIMES

* * * * *

CHAPTER 11—BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

* * * * *

§ 212. Offer of loan or gratuity to financial institution examiner

(a) * * *

* * * * *

(c) DEFINITIONS.—In this section:

(1) * * *

(2) FEDERAL FINANCIAL INSTITUTION REGULATORY AGENCY.—
The term “Federal financial institution regulatory agency” means—

(A) * * *

* * * * *

(E) the [Federal Housing Finance Board] *Federal Housing Finance Agency*;

* * * * *

CHAPTER 31—EMBEZZLEMENT AND THEFT

* * * * *

§ 657. Lending, credit and insurance institutions

Whoever, being an officer, agent or employee of or connected in any capacity with the Federal Deposit Insurance Corporation, National Credit Union Administration, Office of Thrift Supervision, the Resolution Trust Corporation, any Federal home loan bank, the [Federal Housing Finance Board] *Federal Housing Finance Agency*, Farm Credit Administration, Department of Housing and Urban Development, Federal Crop Insurance Corporation, the Secretary of Agriculture acting through the Farmers Home Administration or successor agency, the Rural Development Administration or successor agency, or the Farm Credit System Insurance Corporation, a Farm Credit Bank, a bank for cooperatives or any lending, mortgage, insurance, credit or savings and loan corporation or association authorized or acting under the laws of the United States or any institution, other than an insured bank (as defined in section 656), the accounts of which are insured by the Federal Deposit Insurance Corporation, or by the National Credit Union Administration Board or any small business investment company, or any community development financial institution receiving financial assistance under the Riegle Community Development and Regulatory Improvement Act of 1994, and whoever, being a receiver of any such institution, or agent or employee of the receiver, embezzles, abstracts, purloins or willfully misapplies any moneys, funds, credits, securities or other things of value belonging to such institution, or pledged or otherwise intrusted to its care, shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both; but if the amount or value embezzled, abstracted, purloined

or misapplied does not exceed \$1,000, he shall be fined under this title or imprisoned not more than one year, or both.

* * * * *

CHAPTER 47—FRAUD AND FALSE STATEMENTS

* * * * *

§ 1006. Federal credit institution entries, reports and transactions

Whoever, being an officer, agent or employee of or connected in any capacity with the Federal Deposit Insurance Corporation, National Credit Union Administration, Office of Thrift Supervision, any Federal home loan bank, the [Federal Housing Finance Board] *Federal Housing Finance Agency*, the Resolution Trust Corporation, Farm Credit Administration, Department of Housing and Urban Development, Federal Crop Insurance Corporation, the Secretary of Agriculture acting through the Farmers Home Administration or successor agency, the Rural Development Administration or successor agency, the Farm Credit System Insurance Corporation, a Farm Credit Bank, a bank for cooperatives or any lending, mortgage, insurance, credit or savings and loan corporation or association authorized or acting under the laws of the United States or any institution, other than an insured bank (as defined in section 656), the accounts of which are insured by the Federal Deposit Insurance Corporation, or by the National Credit Union Administration Board or any small business investment company, with intent to defraud any such institution or any other company, body politic or corporate, or any individual, or to deceive any officer, auditor, examiner or agent of any such institution or of department or agency of the United States, makes any false entry in any book, report or statement of or to any such institution, or without being duly authorized, draws any order or bill of exchange, makes any acceptance, or issues, puts forth or assigns any note, debenture, bond or other obligation, or draft, bill of exchange, mortgage, judgment, or decree, or, with intent to defraud the United States or any agency thereof, or any corporation, institution, or association referred to in this section, participates or shares in or receives directly or indirectly any money, profit, property, or benefits through any transaction, loan, commission, contract, or any other act of any such corporation, institution, or association, shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

* * * * *

§ 1014. Loan and credit applications generally; renewals and discounts; crop insurance

Whoever knowingly makes any false statement or report, or willfully overvalues any land, property or security, for the purpose of influencing in any way the action of the Farm Credit Administration, Federal Crop Insurance Corporation or a company the Corporation reinsures, the Secretary of Agriculture acting through the Farmers Home Administration or successor agency, the Rural Development Administration or successor agency, any Farm Credit Bank, production credit association, agricultural credit association, bank for cooperatives, or any division, officer, or employee thereof,

or of any regional agricultural credit corporation established pursuant to law, or a Federal land bank, a Federal land bank association, a Federal Reserve bank, a small business investment company, as defined in section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662), or the Small Business Administration in connection with any provision of that Act, a Federal credit union, an insured State-chartered credit union, any institution the accounts of which are insured by the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, any Federal home loan bank, the **[Federal Housing Finance Board]** *Federal Housing Finance Agency*, the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the Farm Credit System Insurance Corporation, or the National Credit Union Administration Board, a branch or agency of a foreign bank (as such terms are defined in paragraphs (1) and (3) of section 1(b) of the International Banking Act of 1978), or an organization operating under section 25 or section 25(a) of the Federal Reserve Act, upon any application, advance, discount, purchase, purchase agreement, repurchase agreement, commitment, or loan, or any change or extension of any of the same, by renewal, deferment of action or otherwise, or the acceptance, release, or substitution of security therefor, shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both. The term "State-chartered credit union" includes a credit union chartered under the laws of a State of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States.

* * * * *

CHAPTER 93—PUBLIC OFFICERS AND EMPLOYEES

* * * * *

§ 1905. Disclosure of confidential information generally

Whoever, being an officer or employee of the United States or of any department or agency thereof, any person acting on behalf of the **[Office of Federal Housing Enterprise Oversight]** *Federal Housing Finance Agency*, or agent of the Department of Justice as defined in the Antitrust Civil Process Act (15 U.S.C. 1311–1314), or being an employee of a private sector organization who is or was assigned to an agency under chapter 37 of title 5, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law;

shall be fined under this title, or imprisoned not more than one year, or both; and shall be removed from office or employment.

* * * * *

FLOOD DISASTER PROTECTION ACT OF 1973

* * * * *

TITLE I—EXPANSION OF NATIONAL FLOOD INSURANCE PROGRAM

* * * * *

FLOOD INSURANCE PURCHASE AND COMPLIANCE REQUIREMENTS AND ESCROW ACCOUNTS

SEC. 102. (a) * * *

* * * * *

(f) CIVIL MONETARY PENALTIES FOR FAILURE TO REQUIRE FLOOD INSURANCE OR NOTIFY.—

(1) * * *

* * * * *

(3) CIVIL MONETARY PENALTIES AGAINST GSE'S.—

(A) IN GENERAL.— If the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation is found by the [Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development] *Director of the Federal Housing Finance Agency* to have a pattern or practice of purchasing loans in violation of the procedures established pursuant to subsection (b)(3), the Director of such Office shall assess a civil penalty against such enterprise in the amount provided under paragraph (5) of this subsection.

* * * * *

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ACT

* * * * *

TRANSFERS TO DEPARTMENT

SEC. 5. (a) * * *

* * * * *

[(d) Notwithstanding any other provision of this Act, the Secretary may not merge or consolidate the Office of Federal Housing Enterprise Oversight of the Department, or any of the functions or responsibilities of such Office, with any function or program administered by the Secretary.]

* * * * *

TITLE 5, UNITED STATES CODE

* * * * *

PART III—EMPLOYEES

* * * * *

SUBPART B—Employment and Retention

* * * * *

CHAPTER 31—AUTHORITY FOR EMPLOYMENT

* * * * *

SUBCHAPTER II—THE SENIOR EXECUTIVE SERVICE

* * * * *

§ 3132. Definitions and exclusions

(a) For the purpose of this subchapter—

(1) “agency” means an Executive agency, except a Government corporation and the Government Accountability Office, but does not include—

(A) * * *

* * * * *

(D) the Office of the Comptroller of the Currency, the Office of Thrift Supervision, [the Federal Housing Finance Board,] the Resolution Trust Corporation, the Farm Credit Administration, [the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development] the Federal Housing Finance Agency, and the National Credit Union Administration; or

* * * * *

SUBPART D—Pay and Allowances

* * * * *

CHAPTER 53—PAY RATES AND SYSTEMS

* * * * *

SUBCHAPTER II—EXECUTIVE SCHEDULE PAY RATES

* * * * *

§ 5313. Positions at level II

Level II of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Deputy Secretary of Defense.

* * * * *

[Director of the Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development.]

Director of the Federal Housing Finance Agency.

* * * * *

INSPECTOR GENERAL ACT OF 1978

* * * * *

REQUIREMENTS FOR FEDERAL ENTITIES AND DESIGNATED FEDERAL ENTITIES

SEC. 8G. (a) Notwithstanding section 11 of this Act, as used in this section—

(1) * * *

(2) the term “designated Federal entity” means Amtrak, the Appalachian Regional Commission, the Board of Governors of the Federal Reserve System, the Board for International Broadcasting, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Corporation for Public Broadcasting, the Equal Employment Opportunity Commission, the Farm Credit Administration, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Election Commission, the Election Assistance Commission, the [Federal Housing Finance Board] *Federal Housing Finance Agency*, the Federal Labor Relations Authority, the Federal Maritime Commission, the Federal Trade Commission, the Legal Services Corporation, the National Archives and Records Administration, the National Credit Union Administration, the National Endowment for the Arts, the National Endowment for the Humanities, the National Labor Relations Board, the National Science Foundation, the Panama Canal Commission, the Peace Corps, the Pension Benefit Guaranty Corporation, the Securities and Exchange Commission, the Smithsonian Institution, the United States International Trade Commission, the Postal Regulatory Commission, and the United States Postal Service;

* * * * *

SECTION 11 OF THE FEDERAL DEPOSIT INSURANCE ACT

SEC. 11. (a) * * *

* * * * *

(t) AGENCIES MAY SHARE INFORMATION WITHOUT WAIVING PRIVILEGE.—

(1) * * *

(2) DEFINITIONS.—For purposes of this subsection:

(A) COVERED AGENCY.—The term “covered agency” means any of the following:

(i) * * *

* * * * *

(vii) *The Federal Housing Finance Agency.*

* * * * *

SECTION 10001 OF THE 1997 EMERGENCY SUPPLEMENTAL APPROPRIATIONS ACT FOR RECOVERY FROM NATURAL DISASTERS, AND FOR OVERSEAS PEACEKEEPING EFFORTS, INCLUDING THOSE IN BOSNIA

SEC. 10001. The Secretary shall submit semi-annually to the Committees on Appropriations a list of all contracts and task orders issued under such contracts in excess of \$250,000 which were entered into during the prior 6-month period by the Secretary, [the Government National Mortgage Association, and the Office of Federal Housing Enterprise Oversight] *and the Government National Mortgage Association* (or by any officer of the Department of Housing and Urban Development[, the Government National Mortgage Association, or the Office of Federal Housing Enterprise Oversight] *or the Government National Mortgage Association* acting in his or her capacity to represent the Secretary or these entities). Each listing shall identify the parties to the contract, the term and amount of the contract, and the subject matter and responsibilities of the parties to the contract.

SECTION 302 OF THE CRANSTON-GONZALEZ NATIONAL AFFORDABLE HOUSING ACT

SEC. 302. NATIONAL HOMEOWNERSHIP TRUST.

(a) * * *

(b) BOARD OF DIRECTORS.—The Trust shall be governed by a Board of Directors, which shall be composed of—

(1) * * *

* * * * *

(4) [the chairperson of the Federal Housing Finance Board] *the Director of the Federal Housing Finance Agency;*

* * * * *

RIGHT TO FINANCIAL PRIVACY ACT OF 1978

TITLE XI—RIGHT TO FINANCIAL PRIVACY

* * * * *

EXCEPTIONS

SEC. 1113. (a) * * *

* * * * *

(o) This title shall not apply to the examination by or disclosure to the [Federal Housing Finance Board] *Federal Housing Finance Agency* or any of the Federal home loan banks of financial records or information in the exercise of the [Federal Housing Finance Board's] *Federal Housing Finance Agency's* authority to extend credit (either directly or through a Federal home loan bank) to financial institutions or others.

* * * * *

SECTION 117 OF THE RIEGLE COMMUNITY DEVELOPMENT AND REGULATORY IMPROVEMENT ACT OF 1994

SEC. 117. STUDIES AND REPORTS; EXAMINATION AND AUDIT.

(a) * * *

* * * * *

(e) CONSULTATION.— In the conduct of the studies required under this section, the Fund shall consult, as appropriate, with the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the [Federal Housing Finance Board] *Federal Housing Finance Agency*, the Farm Credit Administration, the Director of the Office of Thrift Supervision, the National Credit Union Administration Board, Indian tribal governments, community reinvestment organizations, civil rights organizations, consumer organizations, financial organizations, and such representatives of agencies or other persons, at the discretion of the Fund.

* * * * *

MULTIFAMILY ASSISTED HOUSING REFORM AND AFFORDABILITY ACT OF 1997

TITLE V—HUD MULTIFAMILY HOUSING REFORM

* * * * *

Subtitle A—FHA-Insured Multifamily Housing Mortgage and Housing Assistance Restructuring

* * * * *

SEC. 517. RESTRUCTURING TOOLS.

(a) * * *

(b) RESTRUCTURING TOOLS.— In addition to the requirements of subsection (a) and to the extent these actions are consistent with this section and with the control of the Secretary of applicable accounts in the Treasury of the United States, an approved mortgage restructuring and rental assistance sufficiency plan under this subtitle may include one or more of the following actions:

(1) * * *

* * * * *

(4) CREDIT ENHANCEMENT.— Providing any additional State or local mortgage credit enhancements and risk-sharing arrangements that may be established with State or local housing finance agencies, the [Federal Housing Finance Board] *Federal Housing Finance Agency*, the Federal National Mort-

gage Association, and the Federal Home Loan Mortgage Corporation, to a modified or refinanced first mortgage.

* * * * *

SECTION 3502 OF TITLE 44, UNITED STATES CODE

§ 3502. Definitions

As used in this subchapter—

(1) * * *

* * * * *

(5) the term “independent regulatory agency” means the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the Consumer Product Safety Commission, the Federal Communications Commission, the Federal Deposit Insurance Corporation, the Federal Energy Regulatory Commission, the **[Federal Housing Finance Board]** *Federal Housing Finance Agency*, the Federal Maritime Commission, the Federal Trade Commission, the Interstate Commerce Commission, the Mine Enforcement Safety and Health Review Commission, the National Labor Relations Board, the Nuclear Regulatory Commission, the Occupational Safety and Health Review Commission, the Postal Regulatory Commission, the Securities and Exchange Commission, and any other similar agency designated by statute as a Federal independent regulatory agency or commission;

* * * * *

LAUNCHING OUR COMMUNITIES’ ACCESS TO LOCAL TELEVISION ACT OF 2000

TITLE X—LOCAL TV ACT

* * * * *

SEC. 1004. APPROVAL OF LOAN GUARANTEES.

(a) * * *

* * * * *

(d) REQUIREMENTS AND CRITERIA APPLICABLE TO APPROVAL.—

(1) * * *

(2) PREREQUISITES.— In addition to meeting the underwriting criteria under paragraph (1), a loan may not be guaranteed under this Act unless—

(A) * * *

* * * * *

(D)(i) * * *

* * * * *

(iii) no loan may be made for purposes of this Act by a governmental entity or affiliate thereof, or by the Federal

Agricultural Mortgage Corporation, or any institution supervised by the [Office of Federal Housing Enterprise Oversight, the Federal Housing Finance Board] *Federal Housing Finance Agency*, or any affiliate of such entities;

* * * * *

SARBANES-OXLEY ACT OF 2002

* * * * *

TITLE I—PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

* * * * *

SEC. 105. INVESTIGATIONS AND DISCIPLINARY PROCEEDINGS.

(a) * * *

(b) INVESTIGATIONS.—

(1) * * *

* * * * *

(5) USE OF DOCUMENTS.—

(A) * * *

(B) AVAILABILITY TO GOVERNMENT AGENCIES.— Without the loss of its status as confidential and privileged in the hands of the Board, all information referred to in subparagraph (A) may—

(i) * * *

(ii) in the discretion of the Board, when determined by the Board to be necessary to accomplish the purposes of this Act or to protect investors, be made available to—

(I) * * *

(II) the appropriate Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act (15 U.S.C. 6809)), other than the Commission, and the Director of the Federal Housing Finance Agency with respect to an audit report for an institution subject to the jurisdiction of such regulator;

* * * * *

ADDITIONAL AND DISSENTING VIEWS

ADDITIONAL VIEWS OF REPRESENTATIVE GERLACH

I voted for H.R. 1427, the Federal Housing Finance Reform Act of 2007 that makes important improvements to the regulatory structure governing our government sponsored enterprises—Fannie Mae, Freddie Mac and the Federal Home Loan Banks. The work of the Treasury Department in reaching agreement with Chairman Frank on the central issues in this debate has struck the right balance and I am confident that additional fine tuning will occur as the process moves forward.

Section 210 of H.R. 1427 includes a provision I authored in the last Congress directing the GAO to study the work that Federal Home Loan Banks are doing to assist long-term care facilities and to advise the new regulator how these lessons might be applied to Fannie Mae and Freddie Mac. With a growing need for taking care of our elderly population, every conceivable response must be explored.

One area of great interest to me is the role of Federal Home Loan Banks in partnering with member institutions and local governments to support economic and community development. This is in addition to their great work with affordable housing and providing liquidity and capital market access to member banks.

I can point to many examples in my own district of how the Federal Home Loan Bank of Pittsburgh is already making a tremendous difference in economic development. A senior living facility for dementia and Alzheimer's patients was helped by the Bank's letter of credit. A local elementary school benefited from the Bank's low-interest community development financing and a small high tech business, Custom Processing Services received small business funding through their Banking on Business program.

The Bank is also a catalyst for important partnerships. In Reading, Pennsylvania, Al Boscov, who built Boscov's department stores to become the largest privately held department store chain in the country, has used his energy and commitment to public service to found a non-profit, Our City Reading, that has partnered with two local institutions, Sovereign Bank and Leesport Bank, to access over \$1 million of FHLBank grants. These funds are being used in Mr. Boscov's inspirational quest to revitalize Reading.

I want the FHLBank of Pittsburgh be able to do more to help Reading, and challenged communities throughout its three-state district. As federal and state budgets grow tighter, the FHLBank System could become an increasingly important partner in economic and community development. While they must operate programs that enable their members to realize a return on their eq-

uity, Federal Home Loan Banks can make important contributions in meeting these challenges.

H.R. 1427 adds “housing finance and community and economic development” to the mission of Federal Home Loan Banks. This is an important step and builds off the statutory recognition of this role found in FIRREA and the Gramm Leach Bliley Act.

This statutory change should enable Federal Home Loan Banks to do even more as they partner with member institutions, local governments, health care providers and other key leaders in local communities. This language sends a clear signal of congressional intent to the new regulator that the mission of the Federal home Loan Banks includes supporting economic and community development through advance programs, new business activities, letters of credit, investment powers, and the acquired member asset programs.

I think that the letter from the National League of Cities that was inserted into the hearing record by Chairman Kanjorski says it very well. The letter states, “The NLC supports efforts at the legislative and regulatory level allowing FHL Banks and their members to build on these successful partnerships with local governments and expand their impact. We are not advocating mandatory program impositions on FHL Banks. Rather we want to see a statutory and regulatory environment that will support and encourage further development of new ways to support public finance and infrastructure in a partnership with Federal Home Loan Banks, their members, and local governments.”

I wholeheartedly support the sentiment expressed by the League and am glad that this legislation will help support that goal.

JIM GERLACH.

DISSENTING VIEWS

H.R. 1427 includes a number of important reforms which, if enacted, would significantly enhance the safety and soundness regulation of the housing Government Sponsored Enterprises (GSEs). The legislation also provides for the creation of an Affordable Housing Fund to be financed by Fannie Mae and Freddie Mac and distributed largely by state housing agencies. During the Committee's consideration of H.R. 1427, Republicans offered a number of amendments to address deficiencies in the current construction of the affordable Housing Fund. These amendments were designed to ensure that the funds were delivered more efficiently and effectively to their intended beneficiaries—extremely low-income Americans in desperate need of decent affordable housing options. By failing to adopt these amendments, the Committee missed an opportunity to build a broader bipartisan consensus for GSE reform as this legislation heads to the House floor and an uncertain future in the Senate.

There is general consensus on the Committee that serious affordable housing needs in our nation are going unmet. The disagreement arises over whether legislation designed to enhance regulatory oversight of the housing GSEs is a proper vehicle for a massive new government program that is extraneous to the bill's underlying purpose. Of equal concern is what effect assessing Fannie Mae and Freddie Mac over \$500 million annually for the next five years will have on those Americans seeking to purchase a home or refinance an existing mortgage. As publicly traded companies accountable to their shareholders, Fannie Mae and Freddie Mac will inevitably seek to pass along these new assessments to their customers, resulting in what amounts to a middle-class mortgage tax on homeowners across America.

We are also concerned that, as presently constituted, the Affordable Housing Fund contains insufficient safeguards to ensure that grants will be distributed through a process that is objective, cost effective, competitive and fully transparent. Although the bill prohibits the use of funds for political purposes, political considerations could enter into the grant process administered by the States, with the potential to turn the program into a "slush fund" for influential politicians and advocacy groups. To address these concerns, we offered two amendments at the Committee markup of H.R. 1427.

The Bachus amendment would have redirected the proceeds from the Fund to the Affordable Housing Program administered by the Federal Home Loan Bank System. The amendment provided for the affordable housing funds to be allocated by the newly created GSE regulator among the twelve Federal Home Loan Banks, with all of the funds in the first year going to areas affected by Hurricane Katrina, as in the underlying legislation.

Established by statute in 1989, the Affordable Housing Program requires the Federal Home Loan Banks to direct 10 percent of their profits to affordable housing projects. Universally considered a success, the program features a locally-based, competitively-awarded—and most importantly, proven—delivery system. Indeed, in her testimony at the March 15 Full Committee hearing on GSE reform, Sheila Crowley of the National Low Income Housing Coalition praised the Affordable Housing Program as “highly successful” and a “conceptual cousin” of what the fund in H.R. 1427 hopes to accomplish.

In the Home Loan Bank program, member financial institutions propose projects to be supported by the fund as part of their own community outreach programs, in cooperation with nonprofit partners of their choice. The twelve individual Home Loan Banks fund and administer these grant projects in their respective regions.

This regionally based delivery system allows the funds to be tailored to localized housing and community development needs. In fact, local input is often cited as one of the most important reasons for the success of the Affordable Housing Program. There is just enough centralization in the program to maintain an organized structure, with rigorous checks and balances. Indeed, in its 16-year history, the Affordable Housing Program has distributed \$2.3 billion in housing assistance grants with not one question raised as to the effectiveness and the integrity of the grant process. Moreover, the local public-private partnerships represent a common-sense way to utilize funding in a way that delivery directly to the states never could.

The Home Loan Banks already have the personnel, systems, and regulatory oversight in place to effectively implement a program that the Congressional Budget Office estimates will result in the distribution of \$3 billion over the period 2008–2011. The Banks’ Affordable Housing Program has a time-tested track record and enjoys the confidence of the affordable housing sector and financial services industry alike. This is truly an instance in which there is no need to “reinvent the wheel.”

Like the Bachus amendment, the Biggert amendment sought to establish a more effective delivery mechanism for the new affordable housing funds, by redirecting the GSEs’ contributions to a competitive grant program administered by the Department of Housing and Urban Development (HUD) and modeled after the Federal Home Loan Bank Affordable Housing Program. To ensure timely disbursement of the funds, the amendment directed HUD to structure the grant program based on HUD’s HOME program formula and criteria. In addition, the amendment capped the Fund at the lesser of 1.2 basis points of the GSEs’ average total mortgage portfolios or \$520 million per year, and set a cap on administrative fees of no more than 10 percent of Affordable Housing Fund dollars. Finally, the amendment created a level playing field for both non-profits and for-profits to apply for grants, and added a sixth criterion for selection of applications that included the ability to leverage the grants through use of other funding sources.

Like the Federal Home Loan Bank System, HUD has long experience in administering grant programs of the kind envisioned by H.R. 1427. HUD administers over one hundred housing programs

aimed at increasing homeownership, supporting community development, and increasing access to affordable housing. Among HUD's many housing programs is the HOME program, which Congress created in 1990 and today is the largest Federal block grant to State and local governments designed exclusively to create affordable housing for low-income households, allocating approximately \$2 billion annually among the States and hundreds of localities nationwide.

Unlike the new GSE regulator, which will have only one national office, HUD has a national headquarters, 10 regional offices, and 81 field offices. HUD's regional and field offices are primarily responsible for administering HUD's programs and act as the primary HUD point of contact for States, local public housing authorities, communities, organizations, and individuals. More importantly, HUD's regional and field offices have a firsthand understanding of the needs of local communities across the country and provide regional and local oversight of federally operated and funded housing programs.

In sum, adoption of either of the alternatives we offered in Committee would have significantly improved the underlying legislation, by establishing a more reliable, objective, and competitive system for funding affordable housing priorities. While we continue to oppose inclusion of an Affordable Housing Fund in H.R. 1427, if the provisions are to remain in the bill, we intend to work to ensure that this new \$3 billion program is used not to subsidize the activities of political advocacy groups, but rather to address the very affordable housing needs that exist in our country.

SPENCER BACHUS.
JUDY BIGGERT.

DISSENTING VIEWS OF REPRESENTATIVE PAUL

H.R. 1427 fails to address the core problems with the Government Sponsored Enterprises (GSEs). Furthermore, since this legislation creates new government programs that will further artificially increase the demand for housing, H.R. 1427 increases the economic damage that will occur from the bursting of the housing bubble. The main problem with the GSEs is the special privileges the federal government gives the GSEs. According to the Congressional Budget Office, the housing related GSEs received almost 20 billion dollars worth of indirect federal subsidies in fiscal year 2004 alone, while Wayne Passmore of the Federal Reserve estimates the value of the GSE's federal subsidies to be between \$122 and \$182 billion.

One of the major privileges the federal government grants to the GSEs is a line of credit from the United States Treasury. According to some estimates, the line of credit may be worth over two billion dollars. GSEs also benefit from an explicit grant of legal authority given to the Federal Reserve to purchase the debt of the GSEs. GSEs are the only institutions besides the United States Treasury granted explicit statutory authority to monetize their debt through the Federal Reserve. This provision gives the GSEs a source of liquidity unavailable to their competitors.

This implicit promise by the government to bail out the GSEs in times of economic difficulty helps the GSEs attract investors who are willing to settle for lower yields than they would demand in the absence of the subsidy. Thus, the line of credit distorts the allocation of capital. More importantly, the line of credit is a promise on behalf of the government to engage in a massive unconstitutional and immoral income transfer from working Americans to holders of GSE debt. This is why I offered an amendment to cut off this line of credit.

The connection between the GSEs and the government helps isolate the GSEs' managements from market discipline. This isolation from market discipline is the root cause of the mismanagement occurring at Fannie and Freddie. After all, if investors did not believe that the federal government would bail out Fannie and Freddie if the GSEs faced financial crises, then investors would have forced the GSEs to provide assurances that the GSEs are following accepted management and accounting practices before investors would consider Fannie and Freddie to be good investments.

Former Federal Reserve Chairman Alan Greenspan has expressed concern that the government subsidies provided to the GSEs makes investors underestimate the risk of investing in Fannie Mae and Freddie Mac. Although he has endorsed many of the regulatory "solutions" being considered here today, Chairman Greenspan has implicitly admitted the subsidies are the true source of the problems with Fannie and Freddie.

H.R. 1427 compounds these problems by further insulating the GSEs from market discipline. By creating a “world-class” regulator, Congress would send a signal to investors that investors need not concern themselves with investigating the financial health and stability of Fannie and Freddie since a “world-class” regulator is performing that function.

However, one of the forgotten lessons of the financial scandals of a few years ago is that the market is superior at discovering and punishing fraud and other misbehavior than are government regulators. After all, the market discovered, and began to punish, the accounting irregularities of Enron before the government regulators did.

Concerns have been raised about the new regulator’s independence from the Treasury Department. Although the Treasury now supports the creation of a new regulator, the compromise between Treasury and the drafters of H.R. 1427 does not address concerns that isolating the regulator from Treasury oversight may lead to regulatory capture. Regulatory capture occurs when regulators serve the interests of the businesses they are supposed to be regulating instead of the public interest. While H.R. 1427 does have some provisions that claim to minimize the risk of regulatory capture, regulatory capture is always a threat where regulators have significant control over the operations of an industry. After all, the industry obviously has a greater incentive than any other stakeholder to influence the behavior of the regulator.

The flip side of regulatory capture is that managers and owners of highly subsidized and regulated industries are more concerned with pleasing the regulators than with pleasing consumers or investors, since the industries know that investors will believe all is well if the regulator is happy. Thus, the regulator and the regulated industry may form a symbiosis where each looks out for the other’s interests while ignoring the concerns of investors.

Furthermore, my colleagues should consider the constitutionality of an “independent regulator.” The Founders provided for three branches of government—an executive, a judiciary, and a legislature. Each branch was created as sovereign in its sphere and there were to be clear lines of accountability for each branch. However, independent regulators do not fit comfortably within the three branches; nor are they totally accountable to any branch. Regulators at these independent agencies often make judicial-like decisions, but they are not part of the judiciary. They often make rules, similar to the ones regarding capital requirements, that have the force of law, but independent regulators are not legislative. And, of course, independent regulators enforce the laws in the same way, as do other parts of the executive branch; yet independent regulators lack the day-to-day accountability to the executive that provides a check on other regulators.

Thus, these independent regulators have a concentration of powers of all three branches and lack direct accountability to any of the democratically chosen branches of government. This flies in the face of the Founders’ opposition to concentrations of power and government bureaucracies that lack accountability. These concerns are especially relevant considering the remarkable degree of power and autonomy this bill gives to the regulator. For example, in the

scheme established by H.R. 1427 the regulator's budget is not subject to appropriations. This removes a powerful mechanism for holding the regulator accountable to Congress. While the regulator is accountable to a board of directors, this board may conduct all deliberations in private because it is not subject to the sunshine act.

Ironically, by transferring the risk of widespread mortgage defaults to the taxpayers through government subsidies and convincing investors that all is well because a "world-class" regulator is ensuring the GSEs' soundness, the government increases the likelihood of a painful crash in the housing market. This is because the special privileges of Fannie and Freddie have distorted the housing market by allowing Fannie and Freddie to attract capital they could not attract under pure market conditions. As a result, capital is diverted from its most productive uses into housing. This reduces the efficacy of the entire market and thus reduces the standard of living of all Americans.

Despite the long-term damage to the economy inflicted by the government's interference in the housing market, the government's policy of diverting capital into housing creates a short-term boom in housing. Like all artificially created bubbles, the boom in housing prices cannot last forever. When housing prices fall, homeowners will experience difficulty as their equity is wiped out. Furthermore, the holders of the mortgage debt will also have a loss. These losses will be greater than they would have been had government policy not actively encouraged over-investment housing.

H.R. 1427 further distorts the housing market by artificially inflating the demand for housing through the creation of a national housing trust fund. This fund further diverts capital to housing that, absent government intervention, would be put to use more closely matching the demands of consumers. Thus, this new housing program will reduce efficiency and create yet another unconstitutional redistribution program.

Perhaps the Federal Reserve can stave off the day of reckoning by purchasing the GSEs' debt and pumping liquidity into the housing market, but this cannot hold off the inevitable drop in the housing market forever. In fact, postponing the necessary and painful market corrections will only deepen the inevitable fall. The more people are invested in the market, the greater the effects across the economy when the bubble bursts.

Instead of addressing government policies encouraging the misallocation of resources to the housing market, H.R. 1427 further introduces distortion into the housing market by expanding the authority of federal regulators to approve the introduction of new products by the GSEs. Such regulation inevitably delays the introduction of new innovations to the market, or even prevents some potentially valuable products from making it to the market. Of course, these new regulations are justified in part by the GSEs' government subsidies. We once again see how one bad intervention in the market (the GSEs' government subsidies) leads to another (the new regulations).

In conclusion, H.R. 1427 compounds the problems with the GSEs and may increase the damage that will be inflicted by a bursting of the housing bubble. This is because this bill creates a new unac-

countable regulator and introduces further distortions into the housing market via increased regulatory power. H.R. 1427 also violates the Constitution by creating yet another unaccountable regulator with quasi-executive, judicial, and legislative powers. Instead of expanding unconstitutional and market distorting government bureaucracies, Congress should act to remove taxpayer support from the housing GSEs before the bubble bursts and taxpayers are once again forced to bail out investors who were misled by foolish government interference in the market.

RON PAUL.

