§ 4422. Multilateral clearing organizations

(a) In general

Except with respect to clearing organizations described in subsection (b) of this section, no person may operate a multilateral clearing organization for over-the-counter derivative instruments, or otherwise engage in activities that constitute such a multilateral clearing organization unless the person is a national bank, a State member bank, an insured State nonmember bank, an affiliate of a national bank, a State member bank, or an insured State nonmember bank, or a corporation chartered under section 25A of the Federal Reserve Act [12 U.S.C. 611 et seq.].

(b) Clearing organizations

Subsection (a) of this section shall not apply to any clearing organization that—

(1) is registered as a clearing agency under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.];

(2) is registered as a derivatives clearing organization under the Commodity Exchange Act [7 U.S.C. 1 et seq.]; or

(3) is supervised by a foreign financial regulator that the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as applicable, has determined satisfies appropriate standards.

(Pub. L. 102–242, title IV, § 409, as added Pub. L. 106–554, § 1(a)(5) [title I, § 112(a)(3)], Dec. 21, 2000, 114 Stat. 2763, 2763A–392.)

REFERENCES IN TEXT

Section 25A of the Federal Reserve Act, referred to in subsec. (a), popularly known as the Edge Act, is classified to subchapter II (§ 611 et seq.) of chapter 6 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 611 of this title and Tables.

The Securities Exchange Act of 1934, referred to in subsec. (b)(1), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Commodity Exchange Act, referred to in subsec. (b)(2), is act Sept. 21, 1922, ch. 369, 42 Stat. 998, as amended, which is classified generally to chapter 1 (§ 1 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 1 of Title 7 and Tables.

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§ 4501. Congressional findings

The Congress finds that—

(1) the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (referred to in this section collectively as the ''enterprises''), and the Federal Home Loan Banks (referred to in this section as the ''Banks''), have important public missions that are reflected in the statutes and charter Acts establishing the Banks and the enterprises;

(2) because the continued ability of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation to accomplish their public missions is important to providing housing in the United States and the health of the Nation's economy, more effective Federal regulation is needed to reduce the risk of failure of the enterprises;

(3) considering the current operating procedures of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and the Federal Home Loan Banks, the enterprises and the Banks currently pose low financial risk of insolvency;

(4) neither the enterprises nor the Banks, nor any securities or obligations issued by the enterprises or the Banks, are backed by the full faith and credit of the United States;

(5) an entity regulating the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation should have sufficient autonomy from the enterprises and special interest groups;

(6) an entity regulating such enterprises should have the authority to establish capital standards, require financial disclosure, prescribe adequate standards for books and records and other internal controls, conduct examinations when necessary, and enforce compliance with the standards and rules that it establishes;

(7) the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation have an affirmative obligation to facilitate the financing of affordable housing for low- and moderate-income families in a manner consistent with their overall public purposes, while maintaining a strong financial condition and a reasonable economic return; and

(8) the Federal Home Loan Bank Act [12 U.S.C. 1421 et seq.] should be amended to emphasize that providing for financial safety and soundness of the Federal Home Loan Banks is the primary mission of the Federal Housing Finance Board.

(Pub. L. 102–550, title XIII, § 1302, Oct. 28, 1992, 106 Stat. 3941.)

REFERENCES IN TEXT

The Federal Home Loan Bank Act, referred to in par. (8), is act July 22, 1932, ch. 522, 47 Stat. 725, as amended, which is classified generally to chapter 11 (§ 1421 et seq.) of this title. For complete classification of this Act to the Code, see section 1421 of this title and Tables.

SHORT TITLE

Section 1301 of title XIII of Pub. L. 102–550 provided that: ''This title [enacting this chapter, amending sections 1422a, 1430, 1430b, 1451 to 1456, 1716 to 1719, 1723, 1723a, and 1723c of this title, sections 3132 and 5313 of Title 5, Government Organization and Employees, section 1905 of Title 18, Crimes and Criminal Procedure, and section 3534 of Title 42, The Public Health and Welfare, enacting provisions set out as notes under sections 1451, 1452, 1723, and 4562 of this title, and amending provisions set out as a note under section 1451 of this title] may be cited as the 'Federal Housing Enterprises Financial Safety and Soundness Act of 1992'.''

§ 4502. Definitions

For purposes of this chapter:

(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) 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;

(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 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 under an employee stock ownership plan that is qualified under section 401 of title 26 or any substantially equivalent plan, as determined by the Director, shall not be considered a capital distribution.

(3) 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.

(4) 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) The par or stated value of outstanding common stock.

(B) The par or stated value of outstanding perpetual, noncumulative preferred stock.

(C) Paid-in capital.
(D) Retained earnings.

The core capital of an enterprise shall not include any amounts that the enterprise could be required to pay, at the option of investors, to retire capital instruments.

(5) Director

The term ''Director'' means the Director of the Office of Federal Housing Enterprise Oversight of the Department of Housing and Urban Development.

(6) 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) Executive officer

The term ''executive officer'' means, with respect to an enterprise, 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.

(8) 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.

(9) 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.

(10) 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.

(11) Mortgage purchases

The term ''mortgage purchases'' includes mortgages purchased for portfolio or securitization.

(12) 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 October 28, 1992; 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.

(16) Single family housing

The term ''single family housing'' means a residence consisting of 1 to 4 dwelling units.

(17) 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) Total capital

The term ''total capital'' means, with respect to an enterprise, the sum of the following:
(A) The core capital of the enterprise;[1]
(B) A general allowance for foreclosure losses, which—
(i) shall include an allowance for portfolio mortgage losses, an allowance for nonreimbursable foreclosure costs on government claims, and an allowance for liabilities reflected on the balance sheet for the enterprise for estimated foreclosure losses on mortgage-backed securities; and
(ii) shall not include any reserves of the enterprise made or held against specific assets.
(C) Any other amounts from sources of funds available to absorb losses incurred by the enterprise, that the Director by regulation determines are appropriate to include in determining total capital.

(19) Very low-income

The term ''very low-income'' means—
(A) in the case of owner-occupied units, income not in excess of 60 percent of area median income; and
(B) in the case of rental units, income not in excess of 60 percent of area median income, with adjustments for smaller and larger families, as determined by the Secretary.

(Pub. L. 102–550, title XIII, § 1303, Oct. 28, 1992, 106 Stat. 3942.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this title'', meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

[1] So in original. The semicolon probably should be a period.

This Act, referred to in par. (13)(A), is Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3672, known as the Housing and Community Development Act of 1992. For complete classification of this Act to the Code, see Short Title of 1992 Amendment note set out under section 5301 of Title 42, The Public Health and Welfare, and Tables.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 4503. Protection of taxpayers against liability

This chapter may not be construed as obligating the Federal Government, either directly or indirectly, to provide any funds to the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the Federal Home Loan Banks, or to honor, reimburse, or otherwise guarantee any obligation or liability of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the Federal Home Loan Banks. This chapter may not be construed as implying that any such enterprise or Bank, or any obligations or securities of such an enterprise or Bank, are backed by the full faith and credit of the United States.

(Pub. L. 102–550, title XIII, § 1304, Oct. 28, 1992, 106 Stat. 3944.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''This title and the amendments made by this title'', meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

SUBCHAPTER I—SUPERVISION AND REGULATION OF ENTERPRISES

PART A—FINANCIAL SAFETY AND SOUNDNESS REGULATOR

§ 4511. 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.

(Pub. L. 102–550, title XIII, § 1311, Oct. 28, 1992, 106 Stat. 3944.)

§ 4512. 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) of this section.

(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) of this section.

(Pub. L. 102–550, title XIII, § 1312, Oct. 28, 1992, 106 Stat. 3945.)

§ 4513. 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 chapter.

(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, subchapter II of this chapter, and subchapter III of this chapter (including the establishment of capital standards pursuant to subchapter II of this chapter);

(2) examinations of the enterprises under section 4517 of this title;

(3) determining the capital levels of the enterprises and classification of the enterprises within capital classifications established under subchapter II of this chapter;

(4) decisions to appoint conservators for the enterprises;

(5) administrative and enforcement actions under subchapter II of this chapter, actions

taken under subchapter III of this chapter with respect to enforcement of subchapter II of this chapter, and other matters relating to safety and soundness;

(6) approval of payments of capital distributions by the enterprises under section 1718(c)(2) of this title and section 1452(b)(2) of this title;

(7) requiring the enterprises to submit reports under section 4514 of this title, section 1723a(k) of this title, and section 1456(c) of this title;

(8) prohibiting the payment of excessive compensation by the enterprises to any executive officer of the enterprises under section 4518 of this title;

(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 chapter.

(c) Authority subject to approval of Secretary

Any determinations, actions, and functions of the Director not referred to in subsection (b) of this section 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.

(Pub. L. 102–550, title XIII, § 1313, Oct. 28, 1992, 106 Stat. 3945; Pub. L. 105–276, title II, § 202(b), Oct. 21, 1998, 112 Stat. 2483; Pub. L. 105–277, div. A, § 122, Oct. 21, 1998, 112 Stat. 2681–546.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b)(11), was in the original ''this title'', meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

AMENDMENTS

1998—Subsec. (b)(9) to (12). Pub. L. 105–276, which directed the amendment of subsec. (b) by redesignating pars. (9) to (11) as (10) to (12), respectively, and adding a new par. (9) which read ''default loss protection levels under section 1454(a)(2)(D) of this title;'' was repealed by Pub. L. 105–277, effective upon enactment of Pub. L. 105–276.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–277, div. A, § 122, Oct. 21, 1998, 112 Stat. 2681–546, provided that the amendment made by section 122 is effective upon enactment of Pub. L. 105–276 (Oct. 21, 1998).

§ 4514. Authority to require reports by enterprises

(a) Special reports and reports of financial condition

(1) Financial condition

The Director may require an enterprise to submit reports of financial condition and operations (in addition to the annual and quarterly reports required under section 1723a(k) of this title and section 1456(c) of this title).

(2) Special reports

The Director may also require an enterprise to submit special reports whenever, in the judgment of the Director, such reports are necessary to carry out the purposes of this chapter.

(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.

(4) Notice and declaration

The Director shall notify the enterprise, 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 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 to submit a report to the Director after the declaration of any capital distribution by the enterprise 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.

(Pub. L. 102–550, title XIII, § 1314, Oct. 28, 1992, 106 Stat. 3946.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original ''this title'', meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

§ 4515. Personnel

(a) Office personnel

The Director may appoint and fix the compensation of such officers and employees of the Office as the Director considers necessary to carry out the functions of the Director and the Office. Officers and employees may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification and General Schedule pay rates.

(b) Comparability of compensation with Federal banking agencies

In fixing and directing compensation under subsection (a) of this section, the Director shall consult with, and maintain comparability with compensation of officers and employees of the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision.

(c) Personnel of other Federal agencies

In carrying out the duties of the Office, 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) 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.

(f) Equal opportunity report

Not later than the expiration of the 180-day period beginning upon the appointment of the Director under section 4512 of this title, 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.

(Pub. L. 102–550, title XIII, § 1315, Oct. 28, 1992, 106 Stat. 3947.)

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 4516. 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 4517 of this title. 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.

(b) Allocation of annual assessment to enterprises

(1) Amount of payment

Each enterprise shall pay to the Director a proportion of the annual assessment made pursuant to subsection (a) of this section that bears the same ratio to the total annual assessment that the total assets of each enterprise bears[1] to the total assets of both enterprises.

(2) Timing of payment

The annual assessment shall be payable semiannually for each fiscal year, on October 1 and April 1.

(3) "Total assets" defined

For the purpose of this section, the term ''total assets'' means, with respect to an enterprise, the sum of—

(A) on-balance-sheet assets of the enterprise, as determined in accordance with generally accepted accounting principles;

(B) the unpaid principal balance of outstanding mortgage-backed securities issued or guaranteed by the enterprise that are not included in subparagraph (A); and

(C) other off-balance-sheet obligations as determined by the Director.

(c) Deficiencies due to increased costs of regulation

The semiannual payments made pursuant to subsection (b) of this section by any enterprise that is not classified (for purposes of subchapter II of this chapter) as adequately capitalized may be increased, as necessary, in the discretion of the Director to pay additional estimated costs of regulation of the enterprise.

(d) Surplus

If any amount from any annual assessment collected from an enterprise 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 enterprise for the following year.

(e) Initial special assessment

Not later than the expiration of the 30-day period beginning on October 28, 1992, the enterprises shall each pay into the Federal Housing Enterprises Oversight Fund established under subsection (f) of this section 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) of this section. Any amounts collected from an enterprise under this subsection shall be credited against the first annual assessment collected pursuant to subsection (a) of this

[1] So in original. Probably should be ''bear''.

section, 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) of this section, 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 chapter.

(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.

(Pub. L. 102–550, title XIII, § 1316, Oct. 28, 1992, 106 Stat. 3947; Pub. L. 104–134, title I, § 101(e) [title II, § 211], Apr. 26, 1996, 110 Stat. 1321–257, 1321–288; renumbered title I, Pub. L. 104–140, § 1(a), May 2, 1996, 110 Stat. 1327.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (f)(2), was in the original ''this title'', meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

AMENDMENTS

1996—Subsec. (b)(2). Pub. L. 104–134 added par. (2) and struck out heading and text of former par. (2). Text read as follows: ''The annual assessment shall be payable semiannually on September 1 and March 1 of the year for which the assessment is made.''

NON-REDUCTION OF FIRST ANNUAL ASSESSMENT

Pub. L. 103–124, title II, Oct. 28, 1993, 107 Stat. 1290, provided in part: ''That notwithstanding the last sentence in section 1316(e) of such Act [12 U.S.C. 4516(e)], the amount of this first annual assessment shall not be reduced by any part of the amount of the initial special assessment under section 1316(e)''.

§ 4517. Examinations

(a) Annual examination

The Director shall annually conduct an on-site examination under this section of each enterprise to determine the condition of the enterprise for the purpose of ensuring its financial safety and soundness.

(b) Other examinations

In addition to annual examinations under subsection (a) of this section, the Director may conduct an examination under this section 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.

(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 Corporation, or the Director of the Office of Thrift Supervision for the services of examiners. The Director shall reimburse such agencies for any costs of providing examiners from amounts available in the Federal Housing Enterprises Oversight Fund.

(d) Law applicable to examiners

The Director and each examiner shall have the same authority and each examiner shall be subject to the same disclosures, prohibitions, obligations, and penalties as are applicable to examiners employed by the Federal Reserve banks.

(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. 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 4641 of this title.

(Pub. L. 102–550, title XIII, § 1317, Oct. 28, 1992, 106 Stat. 3949.)

§ 4518. Prohibition of excessive compensation

(a) In general

The Director shall prohibit the enterprises from providing compensation to any executive officer of the enterprise 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) Prohibition of setting compensation

In carrying out subsection (a) of this section, the Director may not prescribe or set a specific level or range of compensation.

(Pub. L. 102–550, title XIII, § 1318, Oct. 28, 1992, 106 Stat. 3949.)

§ 4519. Authority to provide for review of enterprises by rating organization

The Director may, on such terms and conditions as the Director deems appropriate, con-

tract with any entity that is a nationally recognized statistical rating organization, as such term is defined in section 78c(a) of title 15, to conduct a review of the enterprises.

(Pub. L. 102–550, title XIII, § 1319, Oct. 28, 1992, 106 Stat. 3950; Pub. L. 109–291, § 4(b)(4), Sept. 29, 2006, 120 Stat. 1337.)

AMENDMENTS

2006—Pub. L. 109–291 substituted ''that is a nationally recognized statistical rating organization, as such term is defined in section 78c(a) of title 15'' for ''effectively recognized by the Division of Market Regulation of the Securities and Exchange Commission as a nationally recognized statistical rating organization for the purposes of the capital rules for broker-dealers''.

§ 4520. Equal opportunity in solicitation of contracts

(a) In general

Each enterprise 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 October 28, 1992, 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) of this section.

(Pub. L. 102–550, title XIII, § 1319A, Oct. 28, 1992, 106 Stat. 3950.)

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 4521. Annual reports by Director

(a) General report

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, 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 chapter;

(2) a description of the financial safety and soundness of each enterprise, including the results and conclusions of the annual examinations of the enterprises conducted under section 4517(a) of this title;

(3) any recommendations for legislation to enhance the financial safety and soundness of the enterprises; and

(4) a description of—

(A) whether the procedures established by each enterprise pursuant to section 4012a(b)(3) of title 42 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 4012a(b)(3) of title 42, 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 September 23, 1994.

(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 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 subchapter III of this chapter and describing the disposition of each request, which shall include statements of—

(1) the total number of requests made by the Director;

(2) the number of requests that resulted in the commencement of litigation by the Department of Justice;

(3) the number of requests that did not result in the commencement of litigation by the Department of Justice;

(4) with respect to requests that resulted in the commencement of litigation—

(A) the number of days between the date of the request and the commencement of the litigation; and

(B) the number of days between the date of the commencement and termination of the litigation; and

(5) the number of litigation requests pending at the beginning of the calendar year, the number of requests made during the calendar year, the number of requests for which action was completed during the calendar year, and the number of requests pending at the end of the calendar year.

(Pub. L. 102–550, title XIII, § 1319B, Oct. 28, 1992, 106 Stat. 3950; Pub. L. 103–325, title V, § 529(c), Sept. 23, 1994, 108 Stat. 2267.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1), was in the original ''this title'', meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

AMENDMENTS

1994—Subsec. (a)(4). Pub. L. 103–325 added par. (4).

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 4522. 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) of this section 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 Director under subchapter III of this chapter and that has become final; and

(3) any modification to or termination of any final order made public pursuant to this subsection.

(b) Hearings

All hearings on the record with respect to any action of the Director or notice of charges issued by the Director shall be open to the public, unless the Director, in the 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 Director makes a determination in writing that the public disclosure of any final order pursuant to subsection (a) of this section would seriously threaten the financial health or security of the enterprise, the Director may delay the public disclosure of such order for a reasonable time.

(d) Documents filed under seal in public enforcement hearings

The Director may file any document or part thereof under seal in any hearing under subchapter III of this chapter if the Director determines in writing that disclosure thereof would be contrary to the public interest.

(e) Retention of documents

The Director shall keep and maintain a record, for not less than 6 years, of all documents described in subsection (a) of this section 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 Director under subchapter III of this chapter.

(f) Disclosures to Congress

This section may not be construed to authorize the withholding of any information from, or to prohibit the disclosure of any information to, the Congress or any committee or subcommittee thereof.

(Pub. L. 102–550, title XIII, § 1319C, Oct. 28, 1992, 106 Stat. 3951.)

§ 4523. Limitation on subsequent employment

Neither the Director nor any former officer or employee of the Office who, while employed by the Office, 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 may accept compensation from an enterprise during the 2-year period beginning on the date of separation from employment by the Office.

(Pub. L. 102–550, title XIII, § 1319D, Oct. 28, 1992, 106 Stat. 3951.)

§ 4524. Audits by GAO

The Comptroller General may audit the operations of the Office, and any such audit shall be conducted in accordance with generally accepted Government auditing standards. All books, records, accounts, reports, files, and property belonging to, or used by, the Office shall be made available to the Comptroller General.

(Pub. L. 102–550, title XIII, § 1319E, Oct. 28, 1992, 106 Stat. 3952; Pub. L. 104–316, title I, § 106(h), Oct. 19, 1996, 110 Stat. 3831.)

AMENDMENTS

1996—Pub. L. 104–316, in first sentence, substituted ''may audit'' for ''shall audit'' and inserted '', and any such audit shall be conducted'' after ''Office'', and struck out at end ''Audits under this section shall be conducted annually for the first 2 fiscal years following October 28, 1992, and as appropriate thereafter.''

§ 4525. Information, records, and meetings

For purposes of subchapter II of chapter 5 of title 5—

(1) the Office, and

(2) the Department of Housing and Urban Development, with respect to activities under this chapter,

shall be considered agencies responsible for the regulation or supervision of financial institutions.

(Pub. L. 102–550, title XIII, § 1319F, Oct. 28, 1992, 106 Stat. 3952.)

REFERENCES IN TEXT

This chapter, referred to in cl. (2), was in the original ''this title'', meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

§ 4526. 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 chapter before the expiration of the 18-month period beginning on the appointment of the Director under section 4512 of this title. 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 4513 of this title.

(b) Notice and comment

Any regulations issued by the Director under this section shall be issued after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5.

(c) Congressional review

The Director may not publish any regulation for comment under subsection (b) of this section 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.

(Pub. L. 102–550, title XIII, § 1319G, Oct. 28, 1992, 106 Stat. 3952.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original ''this title'', meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

PART B—AUTHORITY OF SECRETARY

SUBPART 1—GENERAL AUTHORITY

§ 4541. Regulatory authority

Except for the authority of the Director of the Office of Federal Housing Enterprise Oversight described in section 4513(b) of this title 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 [12 U.S.C. 1716 et seq.] and the Federal Home Loan Mortgage Corporation Act [12 U.S.C. 1451 et seq.] are accomplished.

(Pub. L. 102–550, title XIII, § 1321, Oct. 28, 1992, 106 Stat. 3952.)

REFERENCES IN TEXT

The Federal National Mortgage Association Charter Act, referred to in text, is title III of act June 27, 1934, ch. 847, 48 Stat. 1252, as amended, which is classified generally to subchapter III (§ 1716 et seq.) of chapter 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1716 of this title and Tables.

The Federal Home Loan Mortgage Corporation Act, referred to in text, is title III of Pub. L. 91–351, July 24, 1970, 84 Stat. 451, as amended, which is classified generally to chapter 11A (§ 1451 et seq.) of this title. For complete classification of this Act to the Code, see Short Title and Statement of Purpose note set out under section 1451 of this title and Tables.

§ 4542. 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) of this section 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 1717(b) of this title, or under section 1719 of this title;

(B) for a new program of the Federal Home Loan Mortgage Corporation, the Secretary determines that the program is not authorized under section 1454(a)(1), (4), or (5) of this title; 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 4611(e) of this title establishing the risk-based capital test, the Secretary shall approve any new program of an enterprise for purposes of subsection (a) of this section unless—

(A) The[1] 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) of this section, 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

[1] So in original. Probably should not be capitalized.

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) of this section, 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) of this section, the Secretary shall provide the enterprise submitting the request notice of, and opportunity for, a hearing on the record regarding such disapproval.

(Pub. L. 102–550, title XIII, § 1322, Oct. 28, 1992, 106 Stat. 3953.)

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 4543. Public access to mortgage information

(a) In general

The Secretary 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 1723a(m) of this title or section 1456(e) of this title.

(b) Access

(1) Proprietary data

Except as provided in paragraph (2), the Secretary may not make available to the public data that the Secretary determines pursuant to section 4546 of this title are proprietary information.

(2) Exception

The Secretary shall not restrict access to the data provided in accordance with section 1723a(m)(1)(A) of this title or section 1456(e)(1)(A) of this title.

(c) Fees

The Secretary may charge reasonable fees to cover the cost of making data available under this section to the public.

(Pub. L. 102–550, title XIII, § 1323, Oct. 28, 1992, 106 Stat. 3954.)

§ 4544. Annual housing report

(a) In general

After reviewing and analyzing the reports submitted under section 1723a(n) of this title and section 1456(f) of this title, the Secretary shall submit a report, as part of the annual report under section 4548(a) of this title, on the extent to which each enterprise is achieving the annual housing goals established under subpart 2 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 established under sections 4562, 4563, and 4564 of this title, 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 4545(5) of this title with respect to originators found to violate fair lending procedures.

(Pub. L. 102–550, title XIII, § 1324, Oct. 28, 1992, 106 Stat. 3954.)

§ 4545. Fair housing

The Secretary shall—

(1) by regulation, prohibit each enterprise from discriminating in any manner in the purchase of any mortgage because of race, color, religion, sex, handicap, familial status, age, or national origin, including any consideration of the age or location of the dwelling or the age of the neighborhood or census tract where the dwelling is located in a manner that has a discriminatory effect;

(2) by regulation, require each enterprise to submit data to the Secretary to assist the Secretary in investigating whether a mortgage lender with which the enterprise does business has failed to comply with the Fair Housing Act [42 U.S.C. 3601 et seq.];

(3) by regulation, require each enterprise to submit data to the Secretary to assist in investigating whether a mortgage lender with which the enterprise does business has failed to comply with the Equal Credit Opportunity Act [15 U.S.C. 1691 et seq.], and shall submit any such information received to the appropriate Federal agencies, as provided in section 704 of the Equal Credit Opportunity Act [15 U.S.C. 1691c], for appropriate action;

(4) obtain information from other regulatory and enforcement agencies of the Federal Government and State and local governments regarding violations by lenders of the Fair Housing Act and the Equal Credit Opportunity Act and make such information available to the enterprises;

(5) direct the enterprises to undertake various remedial actions, including suspension, probation, reprimand, or settlement, against lenders that have been found to have engaged in discriminatory lending practices in violation of the Fair Housing Act or the Equal Credit Opportunity Act, 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; and

(6) periodically review and comment on the underwriting and appraisal guidelines of each enterprise to ensure that such guidelines are consistent with the Fair Housing Act and this section.

(Pub. L. 102–550, title XIII, § 1325, Oct. 28, 1992, 106 Stat. 3955.)

REFERENCES IN TEXT

The Fair Housing Act, referred to in pars. (2) and (4) to (6), is title VIII of Pub. L. 90–284, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I (§ 3601 et seq.) of chapter 45 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 3601 of Title 42 and Tables.

The Equal Credit Opportunity Act, referred to in pars. (3) to (5), is title VII of Pub. L. 90–321, as added by Pub. L. 93–495, title V, § 503, Oct. 28, 1974, 88 Stat. 1521, as amended, which is classified generally to subchapter IV (§ 1691 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 15 and Tables.

§ 4546. Prohibition of public disclosure of proprietary information

(a) In general

The Secretary may, by regulation or order, provide that certain information shall be treated as proprietary information and not subject to disclosure under section 4543 of this title, section 1723a(n)(3) of this title, or section 1456(f)(3) of this title.

(b) Protection of information on housing activities

The Secretary shall not provide public access to, or disclose to the public, any information required to be submitted by an enterprise under section 1723a(n) of this title or section 1456(f) of this title that the Secretary determines is proprietary.

(c) Nondisclosure pending consideration

This section may not be construed to authorize the disclosure of information to, or examination of data by, the public or a representative of any person or agency pending the issuance of a final decision under this section.

(Pub. L. 102–550, title XIII, § 1326, Oct. 28, 1992, 106 Stat. 3955.)

§ 4547. 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.

(Pub. L. 102–550, title XIII, § 1327, Oct. 28, 1992, 106 Stat. 3956.)

§ 4548. 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) of this section with comments on the plans, forecasts, and reports required under section 4516(g) of this title.

(Pub. L. 102–550, title XIII, § 1328, Oct. 28, 1992, 106 Stat. 3956.)

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

SUBPART 2—HOUSING GOALS

§ 4561. Establishment

(a) In general

The Secretary shall establish, by regulation, housing goals under this subpart for each enter-

prise. The housing goals shall include a low- and moderate-income housing goal pursuant to section 4562 of this title, a special affordable housing goal pursuant to section 4563 of this title, and a central cities, rural areas, and other underserved areas housing goal pursuant to section 4564 of this title. The Secretary shall implement this subpart in a manner consistent with section 1716(3) of this title 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 chapter, from year to year the Secretary may, by regulation, adjust any housing goal established under this subpart.

(Pub. L. 102–550, title XIII, § 1331, Oct. 28, 1992, 106 Stat. 3956.)

REFERENCES IN TEXT

Section 301(b)(3) of the Federal Home Loan Mortgage Corporation Act, referred to in subsec. (a), is section 301(b)(3) of Pub. L. 91–351, as amended, which is set out as a Short Title and Statement of Purpose note under section 1451 of this title.

This chapter, referred to in subsec. (c), was in the original ''this title'', meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

§ 4562. 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 4566 of this title, any other provision of this chapter, or any provision of the Federal National Mortgage Association Charter Act [12 U.S.C. 1716 et seq.] or the Federal Home Loan Mortgage Corporation Act [12 U.S.C. 1451 et seq.].

(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 4566 of this title) 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 October 28, 1992, and shall be effective upon issuance.

(Pub. L. 102–550, title XIII, § 1332, Oct. 28, 1992, 106 Stat. 3956.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original ''this title'', meaning title XIII of Pub. L.

102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

The Federal National Mortgage Association Charter Act, referred to in subsec. (a), is title III of act June 27, 1934, ch. 847, 48 Stat. 1252, as amended, which is classified generally to subchapter III (§ 1716 et seq.) of chapter 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1716 of this title and Tables.

The Federal Home Loan Mortgage Corporation Act, referred to in subsec. (a), is title III of Pub. L. 91–351, July 24, 1970, 84 Stat. 451, as amended, which is classified generally to chapter 11A (§ 1451 et seq.) of this title. For complete classification of this Act to the Code, see Short Title and Statement of Purpose note set out under section 1451 of this title and Tables.

EFFECTIVE DATE

Section 1338 of Pub. L. 102–550 provided that: ''The housing goals established under sections 1332(d), 1333(d), and 1334(d) [12 U.S.C. 4562(d), 4563(d), 4564(d)] shall not become effective until January 1, 1993.''

§ 4563. 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 4566 of this title) 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 4566 of this title) 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 October 28, 1992, and shall be effective upon issuance.

(Pub. L. 102–550, title XIII, § 1333, Oct. 28, 1992, 106 Stat. 3958.)

EFFECTIVE DATE

Housing goals established under subsec. (d) of this section effective Jan. 1, 1993, see section 1338 of Pub. L. 102–550, set out as a note under section 4562 of this title.

§ 4564. 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 located 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 4566 of this title, any other provision of this chapter, or any provision of the Federal National Mortgage Association Charter Act [12 U.S.C. 1716 et seq.] or the Federal Home Loan Mortgage Corporation Act [12 U.S.C. 1451 et seq.].

(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 4566 of this title) 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) "Central city" defined

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 October 28, 1992, and shall be effective upon issuance.

(Pub. L. 102–550, title XIII, § 1334, Oct. 28, 1992, 106 Stat. 3960.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original ''this title'', meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

The Federal National Mortgage Association Charter Act, referred to in subsec. (a), is title III of act June 27, 1934, ch. 847, 48 Stat. 1252, as amended, which is classified generally to subchapter III (§ 1716 et seq.) of chapter 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1716 of this title and Tables.

The Federal Home Loan Mortgage Corporation Act, referred to in subsec. (a), is title III of Pub. L. 91–351, July 24, 1970, 84 Stat. 451, as amended, which is classified generally to chapter 11A (§ 1451 et seq.) of this title. For complete classification of this Act to the Code, see Short Title and Statement of Purpose note set out under section 1451 of this title and Tables.

EFFECTIVE DATE

Housing goals established under subsec. (d) of this section effective Jan. 1, 1993, see section 1338 of Pub. L. 102–550, set out as a note under section 4562 of this title.

§ 4565. Other requirements

(a) In general

To meet the low- and moderate-income housing goal under section 4562 of this title, the special affordable housing goal under section 4563 of this title, and the central cities, rural areas, and other underserved areas housing goal under section 4564 of this title, each enterprise shall—

(1) design programs and products that facilitate the use of assistance provided by the Federal Government and State and local governments;

(2) develop relationships with nonprofit and for-profit organizations that develop and finance housing and with State and local governments, including housing finance agencies;

(3) take affirmative steps to—

(A) assist primary lenders to make housing credit available in areas with concentrations of low-income and minority families, and

(B) assist insured depository institutions to meet their obligations under the Community Reinvestment Act of 1977 [12 U.S.C. 2901 et seq.],

which shall include developing appropriate and prudent underwriting standards, business practices, repurchase requirements, pricing, fees, and procedures;

(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) of this section shall constitute part of the contribution of each entity in meeting its affordable housing goals under sections 4562, 4563, and 4564 of this title for any fiscal year, as determined by the Secretary.

(Pub. L. 102–550, title XIII, § 1335, Oct. 28, 1992, 106 Stat. 3961; Pub. L. 105–65, title V, § 517(c), Oct. 27, 1997, 111 Stat. 1403.)

REFERENCES IN TEXT

The Community Reinvestment Act of 1977, referred to in subsec. (a)(3)(B), is title VIII of Pub. L. 95–128, Oct. 12, 1977, 91 Stat. 1147, as amended, which is classified generally to chapter 30 (§ 2901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2901 of this title and Tables.

The Multifamily Assisted Housing Reform and Affordability Act of 1997, referred to in subsec. (a)(5), is title V of Pub. L. 105–65, Oct. 27, 1997, 111 Stat. 1384. For complete classification of this Act to the Code, see Short Title of 1997 Amendment note set out under section 1701 of this title and Tables.

AMENDMENTS

1997—Subsec. (a). Pub. L. 105–65, § 517(c)(3), designated existing provisions as subsec. (a) and inserted heading.

Subsec. (a)(5). Pub. L. 105–65, § 517(c)(1), (2), (4), added par. (5).

Subsec. (b). Pub. L. 105–65, § 517(c)(4), added subsec. (b).

§ 4566. Monitoring and enforcing compliance with housing goals

(a) In general

(1) Authority

The Secretary shall monitor and enforce compliance with the housing goals established under sections 4562, 4563, and 4564 of this title, as provided in this section.

(2) Guidelines

The Secretary shall establish guidelines to measure the extent of compliance with the housing goals, which may assign full credit, partial credit, or no credit toward achieve-

ment of the housing goals to different categories of mortgage purchase activities of the enterprises, based on such criteria as the Secretary deems appropriate.

(3) Extent of compliance

In determining compliance with the housing goals established under this subpart, the Secretary—

(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.

(b) Notice and 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 4562, 4563, or 4564 of this title, 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.

(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 any written information that the enterprise considers appropriate for consideration by the Secretary in 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.

(D) 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.

(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 shall determine (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 determinations, the Secretary shall take into consideration any relevant information submitted by the enterprise during the response period.

(C) Notice

The Secretary 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, of—

(i) each 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 determination that the achievement of a housing goal was or is feasible; and

(iii) the reasons for each such determination.

Such notice shall respond to any information submitted during the response period.

(c) Housing plans

(1) Requirement

If the Secretary finds pursuant to subsection (b) of this section, 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 4562, 4563, or 4564 of this title, 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.

(2) Contents

Each housing 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 determines that there is a substantial probability that the enterprise will fail to meet a goal in the current year, to make such improvements as are reasonable in the remainder of such year.

The plan shall be sufficiently specific to enable the Secretary to monitor compliance periodically.

(3) Deadline for submission

The Secretary shall, by regulation, establish a deadline for an enterprise to submit a housing plan to the Secretary, which may not be more than 45 days after the enterprise is provided notice under subsection (b)(3) of this section that a housing plan is required. The regulations shall provide that the Secretary may extend the deadline to the extent that the Secretary 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 Secretary shall approve any plan that the Secretary determines is likely to succeed, and conforms with the Federal National Mortgage Association Charter Act [12 U.S.C. 1716 et seq.] or the Federal Home Loan Mortgage Corporation Act [12 U.S.C. 1451 et seq.] (as applicable), this chapter, and any other applicable laws and regulations.

(5) Notice of approval and disapproval

The Secretary 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 within 30 days or such longer period that the Secretary determines is in the public interest.

(Pub. L. 102–550, title XIII, § 1336, Oct. 28, 1992, 106 Stat. 3962.)

REFERENCES IN TEXT

The Federal National Mortgage Association Charter Act, referred to in subsec. (c)(4), is title III of act June 27, 1934, ch. 847, 48 Stat. 1252, as amended, which is classified generally to subchapter III (§ 1716 et seq.) of chapter 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1716 of this title and Tables.

The Federal Home Loan Mortgage Corporation Act, referred to in subsec. (c)(4), is title III of Pub. L. 91–351, July 24, 1970, 84 Stat. 451, as amended, which is classified generally to chapter 11A (§ 1451 et seq.) of this title. For complete classification of this Act to the Code, see Short Title and Statement of Purpose note set out under section 1451 of this title and Tables.

This chapter, referred to in subsec. (c)(4), was in the original ''this title'', meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 4567. 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 4562(d), 4563(d), or 4564(d) of this title, 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.

(Pub. L. 102–550, title XIII, § 1337, Oct. 28, 1992, 106 Stat. 3964.)

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

SUBPART 3—ENFORCEMENT OF HOUSING GOALS

§ 4581. Cease-and-desist proceedings

(a) Grounds 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 4566(c) of this title 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 4566(c) of this title; or

(3) the enterprise has failed to submit the information required under subsection (m) or (n) of section 1723a of this title, subsection (e) or (f) of section 1456 of this title, or section 4567 of this title.

(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 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 4582(a)(4) of this title), the Secretary may issue and serve upon the enterprise an order requiring the enterprise to (A) submit a housing plan in compliance with section 4566(c) of this title, (B) comply with the housing plan, or (C) provide the information required under

subsection (m) or (n) of section 1723a of this title, subsection (e) or (f) of section 1456 of this title, or section 4567 of this title.

(c) 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 (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 or otherwise, as provided in this subpart.

(d) Transition period limitation

The Secretary 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[1] 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 the approved plan.

(Pub. L. 102–550, title XIII, § 1341, Oct. 28, 1992, 106 Stat. 3964.)

§ 4582. Hearings

(a) Requirements

(1) Venue and record

Any hearing under section 4581 or 4585 of this title shall be held on the record and in the District of Columbia.

(2) Timing

Any such hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after service of the notice of charges under section 4581(b)(1) of this title or determination to impose a penalty under section 4585(c)(1) of this title, unless an earlier or a later date is set by the hearing officer at the request of the enterprise served.

(3) Procedure

Any such hearing shall be conducted in accordance with chapter 5 of title 5.

(4) Failure to appear

If the enterprise served fails to appear at the hearing through a duly authorized representative, such enterprise shall be deemed to have consented to the issuance of the cease-and-desist order or the imposition of the penalty for which the hearing is held.

(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 for final decision, the Secretary 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 4583 of this title. Unless such a petition for review is timely filed as provided in section 4583 of this title, and thereafter until the record in the proceeding has been filed as so provided, the Secretary may at any time, modify, terminate, or set aside any such order, upon such notice and in such manner as the Secretary considers proper. Upon such filing of the record, the Secretary may modify, terminate, or set aside any such order with permission of the court.

(Pub. L. 102–550, title XIII, § 1342, Oct. 28, 1992, 106 Stat. 3965.)

§ 4583. Judicial review

(a) Commencement

An enterprise that is a party to a proceeding under section 4581 or 4585 of this title 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 be modified, terminated, or set aside. The clerk of the court shall transmit a copy of the petition to the Secretary.

(b) Filing of record

Upon receiving a copy of a petition, the Secretary shall file in the court the record in the proceeding, as provided in section 2112 of title 28.

(c) Jurisdiction

Upon the filing of a petition, such court shall have jurisdiction, which upon the filing of the record by the Secretary shall (except as provided in the last sentence of section 4582(b)(2) of this title) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Secretary.

(d) Review

Review of such proceedings shall be governed by chapter 7 of title 5.

(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 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.

(Pub. L. 102–550, title XIII, § 1343, Oct. 28, 1992, 106 Stat. 3966.)

§ 4584. 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 4581 or 4585 of this title. Such court shall have jurisdiction and power to order and require compliance herewith.

[1] So in original.

(b) Limitation on jurisdiction

Except as otherwise provided in this subpart, no court shall have jurisdiction to affect, by injunction or otherwise, the issuance or enforcement of any notice or order under section 4581 or 4585 of this title, or to review, modify, suspend, terminate, or set aside any such notice or order.

(Pub. L. 102–550, title XIII, § 1344, Oct. 28, 1992, 106 Stat. 3966.)

§ 4585. 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 4566(c) of this title 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 4566(c) of this title; or

(3) to submit the information required under subsection (m) or (n) of section 1723a of this title, subsection (e) or (f) of section 1456 of this title, or section 4567 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) of this section, $25,000 for each day that the failure occurs; and

(2) for any failure described in subsection (a)(2) or (3) of this section, $10,000 for each day that the failure occurs.

(c) Procedures

(1) Establishment

The Secretary 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 to notify the enterprise in writing of the Secretary'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 has been given an opportunity for a hearing on the record pursuant to section 4582 of this title; 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 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 Secretary may determine, by regulation, to be appropriate.

(d) Action to collect penalty

If an enterprise fails to comply with an order by the Secretary imposing a civil money penalty under this section, after the order is no longer subject to review as provided by sections 4582 and 4583 of this title, 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 to obtain a monetary judgment against the enterprise and such other relief as may be available. 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 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) Deposit of penalties

The Secretary shall deposit any civil money penalties collected under this section into the general fund of the Treasury.

(Pub. L. 102–550, title XIII, § 1345, Oct. 28, 1992, 106 Stat. 3966.)

§ 4586. Public disclosure of final orders and agreements

(a) In general

The Secretary shall make available to the public—

(1) any written agreement or other written statement for which a violation may be redressed by the Secretary or any modification to or termination thereof, unless the Secretary, in the Secretary's discretion, determines that public disclosure would be contrary to the public interest or determines under subsection (c) of this section 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 under this subpart and that has become final in accordance with sections 4582 and 4583 of this title; 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 shall be open to the public, unless the Secretary, in the Secretary'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 makes a determination in writing that the public disclosure of any final

order pursuant to subsection (a) of this section would seriously threaten the financial soundness of the enterprise, the Secretary may delay the public disclosure of such order for a reasonable time.

(d) Documents filed under seal in public enforcement hearings

The Secretary may file any document or part thereof under seal in any hearing under this subpart if the Secretary determines in writing that disclosure thereof would be contrary to the public interest.

(e) Retention of documents

The Secretary shall keep and maintain a record, for not less than 6 years, of all documents described in subsection (a) of this section 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 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.

(Pub. L. 102–550, title XIII, § 1346, Oct. 28, 1992, 106 Stat. 3968.)

§ 4587. Notice of service

Any service required or authorized to be made by the Secretary under this subpart may be made by registered mail or in such other manner reasonably calculated to give actual notice, as the Secretary may by regulation or otherwise provide.

(Pub. L. 102–550, title XIII, § 1347, Oct. 28, 1992, 106 Stat. 3968.)

§ 4588. Subpoena authority

(a) In general

In the course of or in connection with any administrative proceeding under this subpart, the Secretary shall have the authority—

(1) to administer oaths and affirmations;

(2) to take and preserve testimony under oath;

(3) to issue subpoenas and subpoenas duces tecum; and

(4) to revoke, quash, or modify subpoenas and subpoenas duces tecum issued by the Secretary.

(b) Witnesses and documents

The attendance of witnesses and the production of documents provided for in this section may be required from any place in any State at any designated place where such proceeding is being conducted.

(c) Enforcement

The Secretary may request the Attorney General of the United States to 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, 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.

(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 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 or from its assets.

(Pub. L. 102–550, title XIII, § 1348, Oct. 28, 1992, 106 Stat. 3968.)

§ 4589. Regulations

The Secretary shall issue any final regulations necessary to implement the provisions of this part (not including the provisions of sections 4562(d), 4563(d), and 4564(d) of this title, relating to transition housing goals) not later than the expiration of the 18-month period beginning on October 28, 1992. Such regulations shall be issued after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5.

(Pub. L. 102–550, title XIII, § 1349, Oct. 28, 1992, 106 Stat. 3969.)

PART C—MISCELLANEOUS PROVISIONS

§ 4601. Review of underwriting guidelines

(a) Study

Each of the enterprises shall conduct a study to review the underwriting guidelines of the enterprise. The studies shall examine—

(1) the extent to which the underwriting guidelines prevent or inhibit the purchase or securitization of mortgages for housing located in mixed-use, urban center, and predominantly minority neighborhoods and for housing for low- and moderate-income families;

(2) the standards employed by private mortgage insurers and the extent to which such standards inhibit the purchase and securitization by the enterprises of mortgages described in paragraph (1); and

(3) the implications of implementing underwriting standards that—

(A) establish a downpayment requirement for mortgagors of 5 percent or less;

(B) allow the use of cash on hand as a source for downpayments; and

(C) approve borrowers who have a credit history of delinquencies if the borrower can demonstrate a satisfactory credit history for at least the 12-month period ending on the date of the application for the mortgage.

(b) Report

Not later than the expiration of the 1-year period beginning on October 28, 1992, each enterprise shall submit to the Secretary, the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and the Com-

mittee on Banking, Housing, and Urban Affairs of the Senate a report regarding the study conducted by the enterprise under subsection (a) of this section. Each report shall include any recommendations of the enterprise for better meeting the housing needs of low- and moderate-income families.

(Pub. L. 102–550, title XIII, § 1354, Oct. 28, 1992, 106 Stat. 3970.)

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 4602. Studies of effects of privatization of FNMA and FHLMC

(a) In general

The Comptroller General of the United States, the Secretary of Housing and Urban Development, the Secretary of the Treasury, and the Director of the Congressional Budget Office shall each conduct and 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, not later than the expiration of the 2-year period beginning on October 28, 1992, a study regarding the desirability and feasibility of repealing the Federal charters of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, eliminating any Federal sponsorship of the enterprises, and allowing the enterprises to continue to operate as fully private entities.

(b) Requirements

Each study shall particularly examine the effects of such privatization on—

(1) the requirements applicable to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation under Federal law and the costs to the enterprises;

(2) the cost of capital to the enterprises;

(3) housing affordability and availability and the cost of homeownership;

(4) the level of secondary mortgage market competition subsequently available in the private sector;

(5) whether increased amounts of capital would be necessary for the enterprises to continue operation;

(6) the secondary market for residential loans and the liquidity of such loans; and

(7) any other factors that the Comptroller General, the Secretary of Housing and Urban Development, the Secretary of the Treasury, or the Director of the Congressional Budget Office deems appropriate to enable the Congress to evaluate the desirability and feasibility of privatization of the enterprises.

(c) Information

The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation shall provide full and prompt access to the Comptroller General, the Secretary of Housing and Urban Development, the Secretary of the Treasury, and the Director of the Congressional Budget Office to any books, records, and other information requested for the purposes of conducting the studies under this section.

(d) Views of FNMA and FHLMC

(1) Consideration in studies

In conducting the studies under this section, the Comptroller General, the Secretary of Housing and Urban Development, the Secretary of the Treasury, and the Director of the Congressional Budget Office shall each consider the views of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(2) Direct report

The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation may each report directly 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 its own analysis of the desirability and feasibility of repealing the Federal charters of the enterprises, eliminating any Federal sponsorship, and allowing the enterprises to continue to operate as fully private entities.

(Pub. L. 102–550, title XIII, § 1355, Oct. 28, 1992, 106 Stat. 3970.)

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 4603. Transition

Before the expiration of the period ending 18 months after the appointment of the Director under section 4512 of this title, any rules and regulations promulgated before October 28, 1992, by the Secretary pursuant to the Federal National Mortgage Association Charter Act [12 U.S.C. 1716 et seq.] or the Federal Home Loan Mortgage Corporation Act [12 U.S.C. 1451 et seq.] shall remain in effect unless modified, terminated, superseded, or revoked by operation of law or in accordance with law. Such rules and regulations shall terminate, effective upon the expiration of such period.

(Pub. L. 102–550, title XIII, § 1356, Oct. 28, 1992, 106 Stat. 3971.)

REFERENCES IN TEXT

The Federal National Mortgage Association Charter Act, referred to in text, is title III of act June 27, 1934,

ch. 847, 48 Stat. 1252, as amended, which is classified generally to subchapter III (§ 1716 et seq.) of chapter 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1716 of this title and Tables.

The Federal Home Loan Mortgage Corporation Act, referred to in text, is title III of Pub. L. 91–351, July 24, 1970, 84 Stat. 451, as amended, which is classified generally to chapter 11A (§ 1451 et seq.) of this title. For complete classification of this Act to the Code, see Short Title and Statement of Purpose note set out under section 1451 of this title and Tables.

SUBCHAPTER II—REQUIRED CAPITAL LEVELS FOR ENTERPRISES AND SPECIAL ENFORCEMENT POWERS

§ 4611. 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) of this section, 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) of this section.

(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) of this section, 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) of this section, 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 subchapter, 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) of this section 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) of this section 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

(ii) adjustable.

(C) The priority of the lien securing the mortgage is—

(i) first; or

(ii) second or other.

(D) The term of the mortgage is—

(i) 1 to 15 years;

(ii) 16 to 30 years; or

(iii) more than 30 years.

(E) The owner of the property is—

(i) an owner-occupant; or

(ii) an investor.

(F) The unpaid principal balance of the mortgage—

(i) will amortize completely over the term of the mortgage and will not increase significantly at any time during the term of the mortgage;

(ii) will not amortize completely over the term of the mortgage and will not increase significantly at any time during the term of the mortgage; or

(iii) may increase significantly at some time during the term of the mortgage.

(G) Any other characteristics of the mortgage, as the Director may determine.

(e) Regulations

(1) Issuance

The Director shall issue final regulations establishing the risk-based capital test under this section not later than the expiration of the 18-month period beginning on the date of the appointment of the Director. Such regulations shall be issued after notice and opportunity for public comment pursuant to the provisions of section 553 of title 5 and shall take effect upon issuance.

(2) Contents

The regulations under this subsection shall contain specific requirements, definitions,

methods, variables, and parameters used under the risk-based capital test and in implementing the test (such as loan loss severity, float income, loan-to-value ratios, taxes, yield curve slopes, default experience, and prepayment rates). The regulations shall be sufficiently specific to permit an individual other than the Director to apply the test in the same manner as the Director.

(3) Confidentiality of information

Any person that receives any book, record, or information from the Director or an enterprise to enable the risk-based capital test to be applied shall—

(A) 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 enterprise; and

(B) be exempt from section 552 of title 5 with respect to the book, record, or information.

(f) Availability of model

The Director shall provide copies of the statistical model or models used to implement the risk-based capital test under this section to the Secretary, the Board of Governors of the Federal Reserve System, the Director of the Office of Management and Budget, the Comptroller General of the United States, and the Director of the Congressional Budget Office. The Director shall make copies of such model or models available for public acquisition and may charge a reasonable fee for such copies.

(Pub. L. 102–550, title XIII, § 1361, Oct. 28, 1992, 106 Stat. 3972.)

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 4612. Minimum capital levels

(a) In general

For purposes of this subchapter, the minimum capital level for each enterprise shall be the sum of—

(1) 2.50 percent of the aggregate on-balance sheet assets of the enterprise, as determined in accordance with generally accepted accounting principles;

(2) 0.45 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) 0.45 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 percentage to reflect differences in the credit risk of such obligations in relation to the instruments included in paragraph (2).

(b) Transition

Notwithstanding subsection (a) of this section, during the 18-month period beginning upon October 28, 1992, 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 percentage to reflect differences in the credit risk of such obligations in relation to the instruments included in paragraph (2).

(Pub. L. 102–550, title XIII, § 1362, Oct. 28, 1992, 106 Stat. 3975.)

§ 4613. Critical capital levels

For purposes of this subchapter, the critical capital level for each enterprise shall be the sum of—

(1) 1.25 percent of the aggregate on-balance sheet assets of the enterprise, as determined in accordance with generally accepted accounting principles;

(2) 0.25 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) 0.25 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 percentage to reflect differences in the credit risk of such obligations in relation to the instruments included in paragraph (2).

(Pub. L. 102–550, title XIII, § 1363, Oct. 28, 1992, 106 Stat. 3976.)

§ 4614. Capital classifications

(a) In general

For purposes of this subchapter, the Director shall classify the enterprises according to the following capital classifications:

(1) Adequately capitalized

An enterprise shall be classified as adequately capitalized if the enterprise—

(A) maintains an amount of total capital that is equal to or exceeds the risk-based

capital level established for the enterprise under section 4611 of this title; and

(B) maintains an amount of core capital that is equal to or exceeds the minimum capital level established for the enterprise under section 4612 of this title.

(2) Undercapitalized

An enterprise shall be classified as undercapitalized if—

(A) the enterprise—

(i) does not maintain an amount of total capital that is equal to or exceeds the risk-based capital level established for the enterprise; and

(ii) maintains an amount of core capital that is equal to or exceeds the minimum capital level established for the enterprise; or

(B) the enterprise is otherwise classified as undercapitalized under subsection (b)(1) of this section.

(3) Significantly undercapitalized

An enterprise shall be classified as significantly undercapitalized if—

(A) the enterprise—

(i) does not maintain an amount of total capital that is equal to or exceeds the risk-based capital level established for the enterprise;

(ii) does not maintain an amount of core capital that is equal to or exceeds the minimum capital level established for the enterprise; and

(iii) maintains an amount of core capital that is equal to or exceeds the critical capital level established for the enterprise under section 4613 of this title; or

(B) the enterprise is otherwise classified as significantly undercapitalized under subsection (b)(2) of this section or section 4615(b) of this title.

(4) Critically undercapitalized

An enterprise shall be classified as critically undercapitalized if—

(A) the enterprise—

(i) does not maintain an amount of total capital that is equal to or exceeds the risk-based capital level established for the enterprise; and

(ii) does not maintain an amount of core capital that is equal to or exceeds the critical capital level for the enterprise; or

(B) is otherwise classified as critically undercapitalized under subsection (b)(3) of this section or section 4616(b)(5) of this title.

(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.

(c) Quarterly determination

The Director shall determine the capital classification of the enterprises for purposes of this subchapter on not less than a quarterly basis (and as appropriate under subsection (b) of this section). The first such determination shall be made during the 3-month period beginning on the appointment of the Director.

(d) Implementation

Notwithstanding any other provision of this section, during the period beginning on October 28, 1992, and ending upon the effective date of section 4615 of this title (as provided in section 4615(c) of this title), 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 4612 of this title.

(Pub. L. 102–550, title XIII, § 1364, Oct. 28, 1992, 106 Stat. 3976.)

§ 4615. Supervisory actions applicable to undercapitalized enterprises

(a) Mandatory actions

(1) Capital restoration plan

An enterprise that is classified as undercapitalized shall, within the time period provided in section 4622(b) and (d) of this title, submit to the Director a capital restoration plan that complies with section 4622 of this title and carry out the plan after approval.

(2) Restriction on capital distributions

An enterprise that is classified as undercapitalized may not make any capital distribution that would result in the enterprise being reclassified as significantly undercapitalized or critically undercapitalized.

(b) Discretionary reclassification from undercapitalized to significantly undercapitalized

The Director may reclassify as significantly undercapitalized an enterprise that is classified as undercapitalized (and the enterprise shall be subject to the provisions of section 4616 of this title) if—

(1) the enterprise does not submit a capital restoration plan that is substantially in compliance with section 4622 of this title within the applicable period or the Director does not approve the capital restoration plan submitted by the enterprise; or

(2) the Director determines that the enterprise 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 4611(e) of this title establishing the risk-based capital test.

(Pub. L. 102–550, title XIII, § 1365, Oct. 28, 1992, 106 Stat. 3978.)

§ 4616. Supervisory actions applicable to significantly undercapitalized enterprises

(a) Mandatory supervisory actions

(1) Capital restoration plan

An enterprise that is classified as significantly undercapitalized shall, within the time period under section 4622(b) and (d) of this title, submit to the Director a capital restoration plan that complies with section 4622 of this title and carry out the plan after approval.

(2) Restrictions on capital distributions

(A) Prior approval

An enterprise that is classified as significantly undercapitalized may not make any capital distribution that would result in the enterprise being reclassified as critically undercapitalized. An enterprise that is classified as significantly undercapitalized enterprise[1] 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 classified as significantly undercapitalized only if the Director determines that the distribution (i) will enhance the ability of the enterprise to meet the risk-based capital level and the minimum capital level for the enterprise promptly, (ii) will contribute to the long-term financial safety and soundness of the enterprise, or (iii) is otherwise in the public interest.

(b) Discretionary supervisory actions

In addition to any other actions taken by the Director (including actions under subsection (a) of this section), the Director may, at any time, take any of the following actions with respect to an enterprise 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 enterprise, including off-balance sheet obligations.

(2) Limitation on growth

Limit or prohibit the growth of the assets of the enterprise or require contraction of the assets of the enterprise.

(3) Acquisition of new capital

Require the enterprise to acquire new capital in a form and amount determined by the Director.

(4) Restriction of activities

Require the enterprise to terminate, reduce, or modify any activity that the Director determines creates excessive risk to the enterprise.

(5) Reclassification from significantly to critically undercapitalized

The Director may reclassify as critically undercapitalized an enterprise that is classified as significantly undercapitalized (and the enterprise shall be subject to the provisions of section 4617 of this title) if—

(A) the enterprise does not submit a capital restoration plan that is substantially in compliance with section 4622 of this title within the applicable period or the Director does not approve the capital restoration plan submitted by the enterprise; or

(B) the Director determines that the enterprise 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) Conservatorship

Appoint a conservator for the enterprise in accordance with the provisions of section 4619 of this title (excluding subsection (a)(1) and (2)), but only if the Director determines—

(A) that the amount of core capital of the enterprise is less than the minimum capital level established for the enterprise under section 4612 of this title; and

(B) that alternative remedies available to the Director under this chapter are not satisfactory.

(c) Effective date

This section shall take effect upon the first classification of the enterprises within capital classifications that occurs under section 4614 of this title.

(Pub. L. 102–550, title XIII, § 1366, Oct. 28, 1992, 106 Stat. 3978.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b)(6)(B), was in the original ''this title'', meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

§ 4617. Appointment of conservators for critically undercapitalized enterprises

(a) Appointment

(1) In general

Upon a determination and notice under section 4618(d) of this title that an enterprise is critically undercapitalized and not later than 30 days after providing notice under section 4619(a)(3) of this title, the Director shall appoint a conservator for the enterprise in accordance with the provisions of section 4619 of this title (excluding subsections[1] (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 eco-

[1] So in original. The word ''enterprise'' probably should not appear.

[1] So in original. Probably should be ''subsection''.

nomic 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 chapter.

(b) Authority

The Director shall have the authority to take any actions under sections 4615 and 4616 of this title 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 4542 of this title only with the additional approval of the Director.

(2) No conservator

If the Director determines under subsection (a)(2) of this section not to appoint a conservator for an enterprise classified as critically undercapitalized, the provisions of section 4616 of this title 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 4614 of this title.

(Pub. L. 102–550, title XIII, § 1367, Oct. 28, 1992, 106 Stat. 3980.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(2)(B), was in the original ''this title'', meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

§ 4618. Notice of classification and enforcement action

(a) Notice

Before taking any action referred to in subsection (b) of this section, the Director shall provide to the enterprise 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) of this section shall apply to the following actions:

(1) Classification or reclassification of an enterprise within a particular capital classification under section 4614 of this title.

(2) Any discretionary supervisory action pursuant to section 4615 of this title.

(3) Any discretionary supervisory action pursuant to section 4616 of this title except a decision to appoint a conservator under section 4616(b)(6) of this title.

Notice of classification under paragraph (1) and notice of supervisory actions under paragraph (2) or (3) may be provided together in a single notice under subsection (a) of this section.

(c) Response period

(1) In general

During the 30-day period beginning on the date that an enterprise is provided notice under subsection (a) of this section of a proposed action, the enterprise may submit to the Director any information relevant to the action that the enterprise 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 so requires or the enterprise consents.

(4) Failure to respond

The failure of an enterprise to provide information during the response period under this subsection (as extended or shortened) shall waive any right of the enterprise 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) of this section or upon receipt of information provided during such period by the enterprise, whichever occurs earlier, the Director shall determine whether to take the action proposed, taking into consideration any relevant information submitted by the enterprise 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 Committee on Banking, Finance and Urban Affairs 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) of this section shall take effect upon receipt by the enterprise of notice of the determination of the Director under subsection (d) of this section, unless otherwise provided in such notice.

(Pub. L. 102–550, title XIII, § 1368, Oct. 28, 1992, 106 Stat. 3980.)

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of

House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 4619. 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 chapter 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 subchapter, 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 4631 of this title.

(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 4616 or 4617 of this title 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 4616 or 4617 of this title) 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) of this section 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) of this section 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) of this section 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 4616 or 4617 of this title upon a determination by the Director that the enterprise has maintained an amount of core capital that is equal to or ex-

ceeds the minimum capital level for the enterprise established under section 4612 of this title, 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 4634 and 4635 of this title, to the same extent as any cease-and-desist order issued pursuant to subchapter III of this chapter.

(Pub. L. 102–550, title XIII, § 1369, Oct. 28, 1992, 106 Stat. 3981.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1)(A), was in the original ''this title'', meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

CHANGE OF NAME

Committee on Banking, Finance and Urban Affairs of House of Representatives treated as referring to Committee on Banking and Financial Services of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Banking and Financial Services of House of Representatives abolished and replaced by Committee on Financial Services of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred from Committee on Energy and Commerce of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 4620. 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 4621 of this title, shall have the same rights and privileges and be subject to the same duties, restrictions, 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 4616, 4617, or 4619 of this title, 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) of this section) 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.

(Pub. L. 102–550, title XIII, § 1369A, Oct. 28, 1992, 106 Stat. 3983.)

§ 4621. Liability protection for conservators

(a) Federal agencies and employees

In any case in which a conservator appointed under this subchapter is a Federal agency or an officer or employee of the Federal Government, the provisions of chapters 161 and 171 of title 28 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) of this section, 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.

(Pub. L. 102–550, title XIII, § 1369B, Oct. 28, 1992, 106 Stat. 3984.)

§ 4622. Capital restoration plans

(a) Contents

Each capital restoration plan submitted under this subchapter shall set forth a feasible plan for restoring the core capital of the enterprise subject to the plan to an amount not less than the minimum capital level for the enterprise and for restoring the total capital of the enterprise to an amount not less than the risk-based capital level for the enterprise. Each capital restoration plan shall—

(1) specify the level of capital the enterprise will achieve and maintain;

(2) describe the actions that the enterprise 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) in which the enterprise will engage during the term of the plan; and

(5) describe the actions that the enterprise will take to comply with any mandatory and discretionary requirements imposed under this subchapter.

(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 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 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 enterprise 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.

(Pub. L. 102–550, title XIII, § 1369C, Oct. 28, 1992, 106 Stat. 3985.)

§ 4623. Judicial review of Director action

(a) Jurisdiction

(1) Filing of petition

An enterprise that is not classified as critically undercapitalized and is the subject of a classification under section 4614 of this title or a discretionary supervisory action taken under this subchapter by the Director (other than action to appoint a conservator under section 4616 or 4617 of this title or action under section 4619 of this title) 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.

(2) Place for filing

A petition filed pursuant to this subsection shall be filed in the United States Court of Appeals for the District of Columbia Circuit.

(b) Scope of review

The Court[1] may modify, terminate, or set aside an action taken by the Director and reviewed by the Court[1] pursuant to this section only if the court finds, on the record on which the Director acted, that the action of the Director was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with applicable laws.

(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.

[1] So in original. Probably should not be capitalized.

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 that is classified as significantly or critically undercapitalized or any action of the Director that results in the classification of an enterprise 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 subchapter (other than appointment of a conservator under section 4616 or 4617 of this title or action under section 4619 of this title) or to review, modify, suspend, terminate, or set aside such classification or action.

(Pub. L. 102–550, title XIII, § 1369D, Oct. 28, 1992, 106 Stat. 3985.)

SUBCHAPTER III—ENFORCEMENT PROVISIONS

§ 4631. 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 subchapter II of this chapter) 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) of this section; or

(3) any conduct that violates—

(A) any provision of this chapter, the Federal National Mortgage Association Charter Act [12 U.S.C. 1716 et seq.], the Federal Home Loan Mortgage Corporation Act [12 U.S.C. 1451 et seq.], or any order, rule, or regulation under any such chapter or Act, except that the Director may not enforce compliance with any housing goal established under subpart 2 of part B of subchapter I of this chapter, with section 4566 or 4567 of this title, or with subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act [12 U.S.C. 1723a(m), (n)] or subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act [12 U.S.C. 1456(e), (f)]; 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 subchapter II of this chapter) 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) of this section,

except that the Director may not enforce compliance with any housing goal established under subpart 2 of part B of subchapter I of this chapter, with section 4566 or 4567 of this title, or with subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act [12 U.S.C. 1723a(m), (n)] or subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act [12 U.S.C. 1456(e), (f)].

(c) Procedure

(1) Notice of charges

Each notice of charges under this section shall contain a statement of the facts constituting the alleged conduct or violation 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 or violation should issue.

(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 consents pursuant to section 4633(a)(4) of this title), the Director may issue and serve upon the enterprise, executive officer, or director 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 4632 of this title to issue any order requiring an enterprise, executive officer, or director 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 to make restitution to, or provide reimbursement, indemnification, or guarantee against loss to the enterprise 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 4636(b)(3) of this title;

(2) to require an enterprise to seek restitution, or to obtain reimbursement, indemnification, or guarantee against loss;

(3) to restrict the growth of the enterprise;

(4) to require the enterprise to dispose of any asset involved;

(5) to require the enterprise to rescind agreements or contracts;

(6) to require the enterprise to employ qualified officers or employees (who may be subject to approval by the Director at the direction of the Director); and

(7) to require the enterprise 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 4632 of this title includes the authority to place limitations on the activities or functions of the enterprise or any executive officer or director of the enterprise.

(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, executive officer, or director concerned (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 Director or otherwise, as provided in this subchapter.

(Pub. L. 102–550, title XIII, § 1371, Oct. 28, 1992, 106 Stat. 3986.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(3)(A), was in the original ''this title'', meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

The Federal Home Loan Mortgage Corporation Act, referred to in subsec. (a)(3)(A), is title III of Pub. L. 91–351, July 24, 1970, 84 Stat. 451, as amended, which is classified generally to chapter 11A (§ 1451 et seq.) of this title. For complete classification of this Act to the Code, see Short Title and Statement of Purpose note set out under section 1451 of this title and Tables.

§ 4632. Temporary cease-and-desist orders

(a) Grounds 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 4631(a) or (b) of this title, 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 4631(c) of this title, 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 4631(d) of this title.

(b) Effective date

An order issued pursuant to subsection (a) of this section shall become effective upon service upon the enterprise, executive officer, or director and, unless set aside, limited, or suspended by a court in proceedings pursuant to subsection (d) of this section, 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 4631 of this title.

(c) Incomplete or inaccurate records

(1) Temporary order

If a notice of charges served under section 4631(a) or (b) of this title specifies on the basis of particular facts and circumstances that the books and records of the enterprise served are so incomplete or inaccurate that the Director is unable, through the normal supervisory process, to determine the financial condition of the enterprise or the details or the purpose of any transaction or transactions that may have a material effect on the financial condition of that enterprise, the Director may issue a temporary order requiring—

(A) the cessation of any activity or practice which gave rise, whether in whole or in part, to the incomplete or inaccurate state of the books or records; or

(B) affirmative action to restore the books or records to a complete and accurate state.

(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) of this section, shall remain in effect and enforceable until the earlier of—

(i) the completion of the proceeding initiated under section 4631 of this title 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 are accurate and reflect the financial condition of the enterprise.

(d) Judicial review

An enterprise, executive officer, or director 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 under section 4631(a) or (b) of this title. 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.

(Pub. L. 102–550, title XIII, § 1372, Oct. 28, 1992, 106 Stat. 3988.)

§ 4633. Hearings

(a) Requirements

(1) Venue and record

Any hearing under section 4631 or 4636(c) of this title shall be held on the record and in the District of Columbia.

(2) Timing

Any such hearing shall be fixed for a date not earlier than 30 days nor later than 60 days after service of the notice of charges under section 4631 of this title or determination to impose a penalty under section 4636 of this title, unless an earlier or a later date is set by the hearing officer at the request of the party served.

(3) Procedure

Any such hearing shall be conducted in accordance with chapter 5 of title 5.

(4) Failure to appear

If the party served fails to appear at the hearing through a duly authorized representative, such party shall be deemed to have consented to the issuance of the cease-and-desist order or the imposition of the penalty for which the hearing is held.

(b) Issuance of order

(1) In general

After any such hearing, and within 90 days after the parties have been notified that the case has been submitted to the Director for final decision, the Director shall render the decision (which shall include findings of fact upon which the decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this subchapter.

(2) Modification

Judicial review of any such order shall be exclusively as provided in section 4634 of this title. Unless such a petition for review is timely filed as provided in section 4634 of this title, and thereafter until the record in the proceeding has been filed as so provided, the Director may at any time, modify, terminate, or set aside any such order, upon such notice and in such manner as the Director considers proper. Upon such filing of the record, the Director may modify, terminate, or set aside any such order with permission of the court.

(Pub. L. 102–550, title XIII, § 1373, Oct. 28, 1992, 106 Stat. 3989.)

§ 4634. Judicial review

(a) Commencement

Any party to a proceeding under section 4631 or 4636 of this title 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 Director be modified, terminated, or set aside. The clerk of the court shall transmit a copy of the petition to the Director.

(b) Filing of record

Upon receiving a copy of a petition, the Director shall file in the court the record in the proceeding, as provided in section 2112 of title 28.

(c) Jurisdiction

Upon the filing of a petition, such court shall have jurisdiction, which upon the filing of the record by the Director shall (except as provided in the last sentence of section 4633(b)(2) of this title) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Director.

(d) Review

Review of such proceedings shall be governed by chapter 7 of title 5.

(e) Order to pay penalty

Such court shall have the authority in any such review to order payment of any penalty imposed by the Director under this subchapter.

(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 Director.

(Pub. L. 102–550, title XIII, § 1374, Oct. 28, 1992, 106 Stat. 3990.)

§ 4635. 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 subchapter or subchapter II of this chapter 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.

(b) Limitation on jurisdiction

Except as otherwise provided in this subchapter and sections 4619 and 4623 of this title, no court shall have jurisdiction to affect, by injunction or otherwise, the issuance or enforcement of any notice or order under section 4631, 4632, or 4636 of this title, or subchapter II of this chapter, or to review, modify, suspend, terminate, or set aside any such notice or order.

(Pub. L. 102–550, title XIII, § 1375, Oct. 28, 1992, 106 Stat. 3990.)

§ 4636. 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 of any enterprise, that—

(1) violates any provision of this chapter, the Federal National Mortgage Association Charter Act [12 U.S.C. 1716 et seq.], the Federal Home Loan Mortgage Corporation Act [12 U.S.C. 1451 et seq.], or any order, rule, or regulation under any such chapter or Act, except that the Director may not enforce compliance with any housing goal established under subpart 2 of part B of subchapter I of this chapter, with section 4566 or 4567 of this title, or with subsection (m) or (n) of section 309 of the Federal National Mortgage Association Charter Act [12 U.S.C. 1723a(m), (n)] or subsection (e) or (f) of section 307 of the Federal Home Loan Mortgage Corporation Act [12 U.S.C. 1456(e), (f)];

(2) violates any final or temporary order issued pursuant to section 4615, 4616, 4631, or 4632 of this title;

(3) violates any written agreement between the enterprise and the Director; or

(4) engages in any conduct that causes or is likely to cause a loss to the enterprise.

(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) of this section. 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) of this section 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) of this section 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.

(c) Procedures

(1) Establishment

The Director shall establish standards and procedures governing the imposition of civil money penalties under subsections (a) and (b) of this section. Such standards and procedures—

(A) shall provide for the Director to notify the enterprise 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 has been given an opportunity for a hearing on the record pursuant to section 4633 of this title; 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, 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 4634 of this title.

(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) of this section and section 4634 of this title, 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. 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.

(e) Settlement by Director

The Director may compromise, modify, or remit any civil money penalty which may be, or has been, imposed under this section.

(f) Availability of other remedies

Any civil money penalty under this section shall be in addition to any other available civil remedy and may be imposed whether or not the Director imposes other administrative sanctions.

(g) Prohibition of reimbursement or indemnification

An enterprise may not reimburse or indemnify any individual for any penalty imposed under subsection (b)(3) of this section.

(h) Deposit of penalties

The Director shall deposit any civil money penalties collected under this section into the general fund of the Treasury.

(i) Applicability

A penalty under this section may be imposed only for conduct or violations under subsection (a) of this section occurring after October 28, 1992.

(Pub. L. 102–550, title XIII, § 1376, Oct. 28, 1992, 106 Stat. 3991.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a)(1), was in the original ''this title'', meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

The Federal National Mortgage Association Charter Act, referred to in subsec. (a)(1), is title III of act June 27, 1934, ch. 847, 48 Stat. 1252, as amended, which is classified generally to subchapter III (§ 1716 et seq.) of chapter 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1716 of this title and Tables.

The Federal Home Loan Mortgage Corporation Act, referred to in subsec. (a)(1), is title III of Pub. L. 91–351, July 24, 1970, 84 Stat. 451, as amended, which is classified generally to chapter 11A (§ 1451 et seq.) of this title. For complete classification of this Act to the Code, see Short Title and Statement of Purpose note set out under section 1451 of this title and Tables.

§ 4637. Notice after separation from service

The resignation, termination of employment or participation, or separation of a director or executive officer of an enterprise shall not affect the jurisdiction and authority of the Director to issue any notice and proceed under this subchapter against any such director or executive officer, if such notice is served before the end of the 2-year period beginning on the date such director or executive officer ceases to be associated with the enterprise.

(Pub. L. 102–550, title XIII, § 1377, Oct. 28, 1992, 106 Stat. 3992.)

§ 4638. Private rights of action

This chapter shall not create any private right of action on behalf of any person against an enterprise, or any director or executive officer of an enterprise, or impair any existing private right of action under other applicable law.

(Pub. L. 102–550, title XIII, § 1378, Oct. 28, 1992, 106 Stat. 3993.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original ''this title and the amendments made by this title'', meaning title XIII of Pub. L. 102–550, Oct. 28, 1992, 106 Stat. 3941, which is classified principally to this chapter. For complete classification of title XIII to the Code, see Short Title note set out under section 4501 of this title and Tables.

§ 4639. 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;

(2) any order that is issued with respect to any administrative enforcement proceeding initiated by the Director under this subchapter and that has become final in accordance with sections 4633 and 4634 of this title; and

(3) any modification to or termination of any final order made public pursuant to this subsection.

(b) Hearings

All hearings on the record with respect to any notice of charges issued by the Director shall be open to the public, unless the Director, in the 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 Director makes a determination in writing that the public disclosure of any final order pursuant to subsection (a) of this section would seriously threaten the financial health or security of the enterprise, the Director may delay the public disclosure of such order for a reasonable time.

(d) Documents filed under seal in public enforcement hearings

The Director may file any document or part thereof under seal in any hearing commenced by the Director if the Director determines in writing that disclosure thereof would be contrary to the public interest.

(e) Retention of documents

The Director shall keep and maintain a record, for not less than 6 years, of all documents described in subsection (a) of this section 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 Director under this subchapter or any other law.

(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.

(Pub. L. 102–550, title XIII, § 1379, Oct. 28, 1992, 106 Stat. 3993.)

§ 4640. Notice of service

Any service required or authorized to be made by the Director under this subchapter 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.

(Pub. L. 102–550, title XIII, § 1379A, Oct. 28, 1992, 106 Stat. 3993.)

§ 4641. Subpoena authority

(a) In general

In the course of or in connection with any administrative proceeding under this subchapter, the Director shall have the authority—

(1) to administer oaths and affirmations;

(2) to take and preserve testimony under oath;

(3) to issue subpoenas and subpoenas duces tecum; and

(4) to revoke, quash, or modify subpoenas and subpoenas duces tecum issued by the Director.

(b) Witnesses and documents

The attendance of witnesses and the production of documents provided for in this section may be required from any place in any State at any designated place where such proceeding is being conducted.

(c) Enforcement

The Director may request the Attorney General of the United States to 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, 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 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 or from its assets.

(Pub. L. 102–550, title XIII, § 1379B, Oct. 28, 1992, 106 Stat. 3994.)

CHAPTER 47—COMMUNITY DEVELOPMENT BANKING

SUBCHAPTER I—COMMUNITY DEVELOPMENT BANKING AND FINANCIAL INSTITUTIONS

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SUBCHAPTER I—COMMUNITY DEVELOPMENT BANKING AND FINANCIAL INSTITUTIONS

§ 4701. Findings and purposes

(a) Findings

The Congress finds that—

(1) many of the Nation's urban, rural, and Native American communities face critical social and economic problems arising in part from the lack of economic growth, people living in poverty, and the lack of employment and other opportunities;

(2) the restoration and maintenance of the economies of these communities will require coordinated development strategies, intensive supportive services, and increased access to equity investments and loans for development activities, including investment in businesses, housing, commercial real estate, human development, and other activities that promote the long-term economic and social viability of the community; and

(3) community development financial institutions have proven their ability to identify and respond to community needs for equity investments, loans, and development services.

(b) Purpose

The purpose of this subchapter is to create a Community Development Financial Institutions Fund to promote economic revitalization and community development through investment in and assistance to community development financial institutions, including enhancing the liquidity of community development financial institutions.

(Pub. L. 103–325, title I, § 102, Sept. 23, 1994, 108 Stat. 2163.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (b), was in original ''this subtitle'', meaning subtitle A of title I of Pub. L. 103–325, Sept. 23, 1994, 108 Stat. 2163, which is classified principally to this subchapter. For complete classification of this subtitle to the Code, see Short Title note below and Tables.

SHORT TITLE

Section 1(a) of Pub. L. 103–325 provided that: ''This Act [see Tables for classification] may be cited as the 'Riegle Community Development and Regulatory Improvement Act of 1994'.''

Section 101 of title I of Pub. L. 103–325 provided that: ''This subtitle [subtitle A (§§ 101–121) of title I of Pub. L. 103–325, enacting this subchapter and section 1772c–1 of this title, amending sections 1766 and 1834a of this title, section 5313 of Title 5, Government Organization and Employees, section 11 of Pub. L. 95–452 set out in the Appendix to Title 5, section 657 of Title 18, Crimes and Criminal Procedure, and section 9101 of Title 31, Money and Finance, and enacting provisions set out as a note under section 11 of Pub. L. 95–452 set out in the Appendix to Title 5] may be cited as the 'Community Development Banking and Financial Institutions Act of 1994'.''

§ 4702. Definitions

For purposes of this subchapter, the following definitions shall apply: