

Union Calendar No. 126

109TH CONGRESS
1ST SESSION

H. R. 1461

[Report No. 109–171, Part I]

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

IN THE HOUSE OF REPRESENTATIVES

APRIL 5, 2005

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

JULY 14, 2005

Reported with an amendment and referred to the Committee on the Judiciary for a period ending not later than September 16, 2005 for consideration of such provisions of the bill as fall within the jurisdiction of that committee pursuant to clause 1(l), rule X

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

SEPTEMBER 16, 2005

Additional sponsors: Mr. GARRETT of New Jersey, Mr. WOLF, Mr. GILLMOR, Mr. FEENEY, Mr. BARRETT of South Carolina, Mr. MCHENRY, Ms. ROSLEHTINEN, Mr. BLUNT, Mr. RYAN of Wisconsin, Mr. MCCOTTER, Mr. ADERHOLT, and Mr. SIMMONS

SEPTEMBER 16, 2005

Committee on the Judiciary discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

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

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

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

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

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

Sec. 1. Short title and table of contents.

Sec. 2. Definitions.

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

Subtitle A—Improvement of Safety and Soundness

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

Sec. 102. Duties and authorities of Director.

Sec. 103. Housing Finance Oversight Board.

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

Sec. 105. Disclosure of charitable contributions by enterprises.

Sec. 106. Assessments.

Sec. 107. Examiners and accountants.

Sec. 108. Prohibition and withholding of executive compensation.

Sec. 109. Reviews of regulated entities.

Sec. 110. Regulations and orders.

Sec. 111. Risk-based capital requirements.

Sec. 112. Minimum and critical capital levels.

Sec. 113. Review of and authority over enterprise assets and liabilities.

Sec. 114. Corporate governance of enterprises.

Sec. 115. Required registration under Securities Exchange Act of 1934.

Sec. 116. Financial Institutions Examination Council.

Sec. 117. Guarantee fee study.

Sec. 118. Conforming amendments.

Subtitle B—Improvement of Mission Supervision

- Sec. 121. Transfer of program and activities approval and housing goal oversight.*
- Sec. 122. Review by Director of new programs and activities of enterprises.*
- Sec. 123. Conforming loan limits.*
- Sec. 124. Annual housing report regarding regulated entities.*
- Sec. 125. Revision of housing goals.*
- Sec. 126. Duty to serve underserved markets.*
- Sec. 127. Monitoring and enforcing compliance with housing goals.*
- Sec. 128. Affordable housing fund.*
- Sec. 129. Consistency with mission.*
- Sec. 130. Enforcement.*
- Sec. 131. Conforming amendments.*

Subtitle C—Prompt Corrective Action

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

Subtitle D—Enforcement Actions

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

Subtitle E—General Provisions

- Sec. 181. Presidentially appointed directors of enterprises.*
- Sec. 182. Report on portfolio operations, safety and soundness, and mission of enterprises.*
- Sec. 183. Conforming and technical amendments.*
- Sec. 184. Study of alternative secondary market systems.*
- Sec. 185. Effective date.*

TITLE II—FEDERAL HOME LOAN BANKS

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

Sec. 211. Effective date.

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

Subtitle A—Office of Federal Housing Enterprise Oversight

Sec. 301. Abolishment of OFHEO.

Sec. 302. Continuation and coordination of certain regulations.

Sec. 303. Transfer and rights of employees of OFHEO.

Sec. 304. Transfer of property and facilities.

Subtitle B—Federal Housing Finance Board

Sec. 321. Abolishment of the Federal Housing Finance Board.

Sec. 322. Continuation and coordination of certain regulations.

Sec. 323. Transfer and rights of employees of the Federal Housing Finance Board.

Sec. 324. Transfer of property and facilities.

Subtitle C—Department of Housing and Urban Development

Sec. 341. Termination of enterprise-related functions.

Sec. 342. Continuation and coordination of certain regulations.

Sec. 343. Transfer and rights of employees.

Sec. 344. Transfer of appropriations, property, and facilities.

1 SEC. 2. DEFINITIONS.

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

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

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

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

1 (4) in each of paragraphs (8), (9), (10), and
2 (19), by striking “Secretary” each place that term ap-
3 pears and inserting “Director”;

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

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

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

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

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

14 “(B) the Federal Home Loan Mortgage Cor-
15 poration and any affiliate thereof; and

16 “(C) each Federal home loan bank.

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

19 “(A) any director, officer, employee, or con-
20 trolling stockholder of, or agent for, a regulated
21 entity;

22 “(B) any shareholder, affiliate, consultant,
23 or joint venture partner of a regulated entity,
24 and any other person, as determined by the Di-
25 rector (by regulation or on a case-by-case basis)

1 *that participates in the conduct of the affairs of*
2 *a regulated entity;*

3 “(C) *any independent contractor for a regu-*
4 *lated entity (including any attorney, appraiser,*
5 *or accountant); and*

6 “(D) *any not-for-profit corporation that re-*
7 *ceives its principal funding, on an ongoing*
8 *basis, from any regulated entity.”;*

9 (8) *by redesignating paragraphs (8) through (13)*
10 *as paragraphs (12) through (17), respectively; and*

11 (9) *by inserting after paragraph (7) the fol-*
12 *lowing new paragraph:*

13 “(11) *FEDERAL HOME LOAN BANK.—The term*
14 *‘Federal home loan bank’ means a bank established*
15 *under the authority of the Federal Home Loan Bank*
16 *Act.”;*

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

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

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

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

1 “(A) *the Federal National Mortgage Asso-*
2 *ciation Charter Act;*

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

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

6 “(4) *BOARD.—The term ‘Board’ means the*
7 *Housing Finance Oversight Board established under*
8 *section 1313B.”.*

9 ***TITLE I—REFORM OF REGULA-***
10 ***TION OF ENTERPRISES AND***
11 ***FEDERAL HOME LOAN BANKS***
12 ***Subtitle A—Improvement of Safety***
13 ***and Soundness***

14 ***SEC. 101. ESTABLISHMENT OF THE FEDERAL HOUSING FI-***
15 ***NANCE AGENCY.***

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

20 ***“SEC. 1311. ESTABLISHMENT OF THE FEDERAL HOUSING FI-***
21 ***NANCE AGENCY.***

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

1 “(b) *GENERAL SUPERVISORY AND REGULATORY AU-*
2 *THORITY.*—

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

6 “(2) *AUTHORITY OVER FANNIE MAE, FREDDIE*
7 *MAC, AND FEDERAL HOME LOAN BANKS.*—*The Direc-*
8 *tor of the Federal Housing Finance Agency shall have*
9 *general supervisory and regulatory authority over*
10 *each regulated entity and shall exercise such general*
11 *regulatory authority, including such duties and au-*
12 *thorities set forth under section 1313 of this Act, to*
13 *ensure that the purposes of this Act, the authorizing*
14 *statutes, and any other applicable law are carried*
15 *out.*

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

20 **“SEC. 1312. DIRECTOR.**

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

24 “(b) *APPOINTMENT; TERM.*—

1 “(1) *APPOINTMENT.*—*The Director shall be ap-*
2 *pointed by the President, by and with the advice and*
3 *consent of the Senate, from among individuals who*
4 *are citizens of the United States, have a demonstrated*
5 *understanding of financial management or oversight,*
6 *and have a demonstrated understanding of capital*
7 *markets, including the mortgage securities markets*
8 *and housing finance.*

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

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

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

22 “(5) *TRANSITIONAL PROVISION.*—*Notwith-*
23 *standing paragraphs (1) and (2), the Director of the*
24 *Office of Federal Housing Enterprise Oversight of the*
25 *Department of Housing and Urban Development shall*

1 *serve as the Director until a successor has been ap-*
2 *pointed under paragraph (1).*

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

5 “(1) *IN GENERAL.—The Agency shall have a*
6 *Deputy Director of the Division of Enterprise Regula-*
7 *tion, who shall be appointed by the Director from*
8 *among individuals who are citizens of the United*
9 *States, have a demonstrated understanding of finan-*
10 *cial management or oversight and of mortgage securi-*
11 *ties markets and housing finance.*

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

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

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

1 “(2) *FUNCTIONS.*—*The Deputy Director of the*
2 *Division of Federal Home Loan Bank Regulation*
3 *shall have such functions, powers, and duties with re-*
4 *spect to the oversight of the Federal home loan banks*
5 *as the Director shall prescribe.*

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

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

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

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

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

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

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

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

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

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

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

22 “(a) *DUTIES.*—

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

1 “(A) to oversee the operations of each regu-
2 lated entity; and

3 “(B) to ensure that—

4 “(i) each regulated entity operates in a
5 safe and sound manner, including mainte-
6 nance of adequate capital and internal con-
7 trols;

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

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

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

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

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

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

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

17 “(c) *LITIGATION AUTHORITY.*—

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

1 *may act in the Director’s own name and through the*
2 *Director’s own attorneys.*

3 “(2) *SUBJECT TO SUIT.—Except as otherwise*
4 *provided by law, the Director shall be subject to suit*
5 *(other than suits on claims for money damages) by a*
6 *regulated entity or director or officer thereof with re-*
7 *spect to any matter under this title or any other ap-*
8 *plicable provision of law, rule, order, or regulation*
9 *under this title, in the United States district court for*
10 *the judicial district in which the regulated entity has*
11 *its principal place of business, or in the United*
12 *States District Court for the District of Columbia,*
13 *and the Director may be served with process in the*
14 *manner prescribed by the Federal Rules of Civil Pro-*
15 *cedure.*

16 **“SEC. 1313A. PRUDENTIAL MANAGEMENT AND OPERATIONS**
17 **STANDARDS.**

18 “(a) *STANDARDS.—The Director shall establish stand-*
19 *ards, by regulation, guideline, or order, for each regulated*
20 *entity relating to—*

21 “(1) *adequacy of internal controls and informa-*
22 *tion systems taking into account the nature and scale*
23 *of business operations;*

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

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

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

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

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

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

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

18 “(9) maintenance of adequate records, in accord-
19 ance with consistent accounting policies and practices
20 that enable the Director to evaluate the financial con-
21 dition of the regulated entity;

22 “(10) issuance of subordinated debt by that par-
23 ticular regulated entity, as the Director considers nec-
24 essary;

1 “(11) overall risk management processes, includ-
2 ing adequacy of oversight by senior management and
3 the board of directors and of processes and policies to
4 identify, measure, monitor, and control material
5 risks, including reputational risks, and for adequate,
6 well-tested business resumption plans for all major
7 systems with remote site facilities to protect against
8 disruptive events; and

9 “(12) such other operational and management
10 standards as the Director determines to be appro-
11 priate.

12 “(b) *FAILURE TO MEET STANDARDS.*—

13 “(1) *PLAN REQUIREMENT.*—

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

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

22 “(ii) if such standard is established by
23 guideline, the Director may require the reg-
24 ulated entity to submit a plan described in
25 clause (i).

1 “(B) *CONTENTS.*—Any plan required under
2 subparagraph (A) shall specify the actions that
3 the regulated entity will take to correct the defi-
4 ciency. If the regulated entity is undercapital-
5 ized, the plan may be a part of the capital res-
6 toration plan for the regulated entity under sec-
7 tion 1369C.

8 “(C) *DEADLINES FOR SUBMISSION AND RE-*
9 *VIEW.*—The Director shall by regulation establish
10 deadlines that—

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

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

22 “(2) *REQUIRED ORDER UPON FAILURE TO SUB-*
23 *MIT OR IMPLEMENT PLAN.*—If a regulated entity fails
24 to submit an acceptable plan within the time allowed
25 under paragraph (1)(C), or fails in any material re-

1 *spect to implement a plan accepted by the Director,*
2 *the following shall apply:*

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

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

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

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

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

21 “(II) *in the case of a Federal*
22 *home loan bank, to increase its ratio of*
23 *total capital (as such term is defined*
24 *in section 6(a)(5) of the Federal Home*

1 *Loan Bank Act (12 U.S.C. 1426(a)(5))*
2 *to assets.*

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

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

12 *“(A) the Director determines that the regu-*
13 *lated entity fails to meet any standard pre-*
14 *scribed under subsection (a);*

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

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

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

24 *(b) INDEPENDENCE IN CONGRESSIONAL TESTIMONY*
25 *AND RECOMMENDATIONS.—Section 111 of Public Law 93–*

1 495 (12 U.S.C. 250) is amended by striking “the Federal
2 Housing Finance Board” and inserting “the Director of the
3 Federal Housing Finance Agency”.

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

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

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

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

12 “(b) *DUTIES.*—

13 “(1) *IN GENERAL.*—The Board shall advise the
14 Director with respect to overall strategies and policies
15 in carrying out the duties of the Director under this
16 title, at the request of the Director and at the initia-
17 tive of the Board, and shall carry out such functions
18 as otherwise provided by law.

19 “(2) *LIMITATION.*—The Director may not dele-
20 gate to the Board any of the functions, powers, or du-
21 ties of the Director.

22 “(c) *COMPOSITION.*—The Board shall be comprised of
23 5 members, as follows:

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

1 “(2) *One member shall be the Secretary of the*
2 *Treasury or the designee of the Secretary.*

3 “(3) *One member shall be the Secretary of Hous-*
4 *ing and Urban Development or the designee of the*
5 *Secretary.*

6 “(4) *Two members shall be appointed by the*
7 *President, by and with the advice and consent of the*
8 *Senate, who shall include—*

9 “(A) *one individual who has extensive expe-*
10 *rience and expertise in the capital markets (in-*
11 *cluding debt markets), the secondary mortgage*
12 *market, and mortgage-backed securities; and*

13 “(B) *one individual who has extensive expe-*
14 *rience and expertise in mortgage finance (includ-*
15 *ing single family and multifamily housing mort-*
16 *gage finance), development of affordable housing,*
17 *and economic development and revitalization.*

18 “(d) *TERMS AND VACANCIES.—*

19 “(1) *TERMS.—Each member of the Board pursu-*
20 *ant to paragraph (4) shall be appointed for a term*
21 *of 3 years, and may be removed by the President only*
22 *for cause.*

23 “(2) *VACANCIES.—A member of the Board ap-*
24 *pointed to fill a vacancy occurring before the expira-*
25 *tion of the term for which the member’s predecessor*

1 *was appointed shall be appointed only for the re-*
2 *mainder of that term. A member of the Board may*
3 *serve after the expiration of the member's term until*
4 *a successor has been appointed.*

5 “(e) *PROHIBITION OF ADDITIONAL COMPENSATION.—*
6 *Notwithstanding any other provision of law, members of*
7 *Board pursuant to paragraphs (1), (2), and (3) shall not*
8 *receive additional compensation by reason of service on the*
9 *Board.*

10 “(f) *LIMITATIONS.—Each member of the Board may*
11 *not—*

12 “(1) *have any direct or indirect financial inter-*
13 *est in any regulated entity or regulated entity-affili-*
14 *ated party; or*

15 “(2) *hold any office, position, or employment in*
16 *any regulated entity or regulated entity-affiliated*
17 *party.*

18 “(g) *FULL-TIME MEMBERS AND STAFF.—*

19 “(1) *FULL-TIME MEMBERS.—The members of the*
20 *Board pursuant to subsection (c)(4) shall serve on a*
21 *full-time basis.*

22 “(2) *STAFF.—The staff of the Board shall be ap-*
23 *pointed subject to the provisions of title 5, United*
24 *States Code, governing appointments in the competi-*
25 *tive service, and shall be paid in accordance with the*

1 provisions of chapter 51 and subchapter III of chap-
2 ter 53 of that title relating to classification and Gen-
3 eral Schedule pay rates, except that each member of
4 the Board pursuant to paragraph (4) may appoint
5 one staff member without regard to the such provi-
6 sions governing appointments in the competitive serv-
7 ice and such staff members may be paid by the Board
8 without regard to the such provisions relating to clas-
9 sification and General Schedule pay rates.

10 “(h) MEETINGS.—

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

14 “(2) SPECIAL MEETINGS.—Any member of the
15 Board may, upon giving written notice to the Direc-
16 tor, require a special meeting of the Board, which
17 shall be convened by the Director within 30 days after
18 such notice.

19 “(i) TESTIMONY.—On an annual basis, the Board
20 shall testify before Congress regarding—

21 “(1) the safety and soundness of the regulated en-
22 tities;

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

1 “(3) *the overall operational status of the regu-*
2 *lated entities;*

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

6 “(5) *operations, resources, and performance of*
7 *the Agency and the Board; and*

8 “(6) *such other matters relating to the Agency,*
9 *the Board, and the regulated entities, and their fulfill-*
10 *ment of their missions, as the Board determines ap-*
11 *propriate.*

12 “(j) *COSTS.—Costs of the Board, including staff, shall*
13 *be paid by the Agency as a cost and expense of the Agency.*

14 “(k) *EXEMPTION.—Notwithstanding any other provi-*
15 *sion of law, the provisions of section 552b of title 5, United*
16 *States Code, shall not apply to the Board.”.*

17 (b) *ANNUAL REPORT OF THE DIRECTOR.—Section*
18 *1319B(a) of the Housing and Community Development Act*
19 *of 1992 (12 U.S.C. 4521 (a)) is amended—*

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

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

24 “(4) *an assessment of the Board with respect*
25 *to—*

1 “(A) the safety and soundness of the regu-
2 lated entities;

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

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

7 “(D) an evaluation of the performance of
8 the regulated entities in carrying out their mis-
9 sions, including compliance of the enterprises
10 with the housing goals under subpart B of part
11 2 of this subtitle and compliance of the Federal
12 home loan banks with the community investment
13 and affordable housing programs under sub-
14 sections (i) and (j) of section 10 of the Federal
15 Home Loan Bank Act;

16 “(E) an evaluation of the performance of
17 the Agency in fulfilling its duties and respon-
18 sibilities under law; and

19 “(F) such other matters relating to the
20 Board and the fulfillment of its duties as the
21 Board considers appropriate;

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

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

1 **SEC. 104. AUTHORITY TO REQUIRE REPORTS BY REGU-**
2 **LATED ENTITIES.**

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

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

7 *(2) in subsection (a)—*

8 *(A) in the subsection heading, by striking*
9 *“Special Reports and Reports of Financial Con-*
10 *dition” and inserting “Regular and Special Re-*
11 *ports”;*

12 *(B) in paragraph (1)—*

13 *(i) in the paragraph heading, by strik-*
14 *ing “FINANCIAL CONDITION” and inserting*
15 *“REGULAR REPORTS”; and*

16 *(ii) by striking “reports of financial*
17 *condition and operations” and inserting*
18 *“regular reports on the condition (including*
19 *financial condition), management, activi-*
20 *ties, or operations of the regulated entity, as*
21 *the Director considers appropriate”; and*

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

25 *(3) by adding at the end the following new sub-*
26 *section:*

1 “(c) *REPORTS OF FRAUDULENT FINANCIAL TRANS-*
2 *ACTIONS.*—

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

12 “(2) *PROTECTION FROM LIABILITY FOR RE-*
13 *PORTS.*—

14 “(A) *IN GENERAL.*—*If a regulated entity*
15 *makes a report pursuant to paragraph (1), or a*
16 *regulated entity-affiliated party makes, or re-*
17 *quires another to make, such a report, and such*
18 *report is made in a good faith effort to comply*
19 *with the requirements of paragraph (1), such*
20 *regulated entity or regulated entity-affiliated*
21 *party shall not be liable to any person under*
22 *any law or regulation of the United States, any*
23 *constitution, law, or regulation of any State or*
24 *political subdivision of any State, or under any*
25 *contract or other legally enforceable agreement*

1 *(including any arbitration agreement), for such*
2 *report or for any failure to provide notice of*
3 *such report to the person who is the subject of*
4 *such report or any other person identified in the*
5 *report.*

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

8 “(i) *any inference that the term ‘per-*
9 *son’, as used in such subparagraph, may be*
10 *construed more broadly than its ordinary*
11 *usage so as to include any government or*
12 *agency of government; or*

13 “(ii) *any immunity against, or other-*
14 *wise affecting, any civil or criminal action*
15 *brought by any government or agency of*
16 *government to enforce any constitution, law,*
17 *or regulation of such government or agen-*
18 *cy.”.*

19 ***SEC. 105. DISCLOSURE OF CHARITABLE CONTRIBUTIONS BY***
20 ***ENTERPRISES.***

21 *Section 1314 of the Housing and Community Develop-*
22 *ment Act of 1992 (12 U.S.C. 4514), as amended by the pre-*
23 *ceding provisions of this Act, is further amended by adding*
24 *at the end the following new subsection:*

1 “(d) *DISCLOSURE OF CHARITABLE CONTRIBU-*
2 *TIONS BY ENTERPRISES.—*

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

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

10 “(B) *SUBSTANTIAL CONTRIBUTIONS.—If the*
11 *value of contributions made by the enterprise to*
12 *any nonprofit organization during its previous*
13 *fiscal year exceeds the designated amount, the*
14 *name of that organization and the value of con-*
15 *tributions.*

16 “(C) *SUBSTANTIAL CONTRIBUTIONS TO IN-*
17 *SIDER-AFFILIATED CHARITIES.—Identification of*
18 *each contribution whose value exceeds the des-*
19 *ignated amount that were made by the enterprise*
20 *during the enterprise’s previous fiscal year to*
21 *any nonprofit organization of which a director,*
22 *officer, or controlling person of the enterprise, or*
23 *a spouse thereof, was a director or trustee, the*
24 *name of such nonprofit organization, and the*
25 *value of the contribution.*

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

3 “(A) *the term ‘designated amount’ means*
4 *such amount as may be designated by the Direc-*
5 *tor by regulation, consistent with the public in-*
6 *terest and the protection of investors for purposes*
7 *of this subsection; and*

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

12 “(3) *PUBLIC AVAILABILITY.*—*The Director shall*
13 *make the information submitted pursuant to this sub-*
14 *section publicly available.”.*

15 **SEC. 106. ASSESSMENTS.**

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

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

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

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

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

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

10 (2) in subsection (b)—

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

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

18 (C) in paragraph (1)—

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

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

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

25 (D) in paragraph (3)—

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

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

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

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

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

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

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

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

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

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

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

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

1 *Agency with respect to such entity, the Director may*
2 *make and collect from such regulated entity an imme-*
3 *diately assessment to cover the amount of such defi-*
4 *ciency for the semiannual period. If, at the end of*
5 *any semiannual period during which such an assess-*
6 *ment is made, any amount remains from such assess-*
7 *ment, such remaining amount shall be deducted from*
8 *the assessment for such regulated entity for the fol-*
9 *lowing semiannual period.”;*

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

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

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

22 *“(f) TREATMENT OF ASSESSMENTS.—*

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

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

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

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

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

18 “(5) *AVAILABILITY OF OVERSIGHT FUND*
19 *AMOUNTS.—Notwithstanding any other provision of*
20 *law, any amounts remaining in the Federal Housing*
21 *Enterprises Oversight Fund established under this*
22 *section (as in effect before the effective date under sec-*
23 *tion 185 of the Federal Housing Finance Reform Act*
24 *of 2005), and any amounts remaining from assess-*
25 *ments on the Federal Home Loan banks pursuant to*

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

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

6 *“(1) FINANCIAL OPERATING PLANS AND FORE-*
7 *CASTS.—The Director shall provide to the Director of*
8 *the Office of Management and Budget copies of the*
9 *Director’s financial operating plans and forecasts as*
10 *prepared by the Director in the ordinary course of the*
11 *Agency’s operations, and copies of the quarterly re-*
12 *ports of the Agency’s financial condition and results*
13 *of operations as prepared by the Director in the ordi-*
14 *nary course of the Agency’s operations.*

15 *“(2) FINANCIAL STATEMENTS.—The Agency shall*
16 *prepare annually a statement of assets and liabilities*
17 *and surplus or deficit; a statement of income and ex-*
18 *penses; and a statement of sources and application of*
19 *funds.*

20 *“(3) FINANCIAL MANAGEMENT SYSTEMS.—The*
21 *Agency shall implement and maintain financial*
22 *management systems that comply substantially with*
23 *Federal financial management systems requirements,*
24 *applicable Federal accounting standards, and that*

1 *uses a general ledger system that accounts for activity*
2 *at the transaction level.*

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

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

17 *“(h) AUDIT OF AGENCY.—*

18 *“(1) IN GENERAL.—The Comptroller General*
19 *shall annually audit the financial transactions of the*
20 *Agency in accordance with the U.S. generally accept-*
21 *ed government auditing standards as may be pre-*
22 *scribed by the Comptroller General of the United*
23 *States. The audit shall be conducted at the place or*
24 *places where accounts of the Agency are normally*
25 *kept. The representatives of the Government Account-*

1 *ability Office shall have access to the personnel and*
2 *to all books, accounts, documents, papers, records (in-*
3 *cluding electronic records), reports, files, and all other*
4 *papers, automated data, things, or property belonging*
5 *to or under the control of or used or employed by the*
6 *Agency pertaining to its financial transactions and*
7 *necessary to facilitate the audit, and such representa-*
8 *tives shall be afforded full facilities for verifying*
9 *transactions with the balances or securities held by*
10 *depositories, fiscal agents, and custodians. All such*
11 *books, accounts, documents, records, reports, files, pa-*
12 *pers, and property of the Agency shall remain in pos-*
13 *session and custody of the Agency. The Comptroller*
14 *General may obtain and duplicate any such books,*
15 *accounts, documents, records, working papers, auto-*
16 *mated data and files, or other information relevant to*
17 *such audit without cost to the Comptroller General*
18 *and the Comptroller General's right of access to such*
19 *information shall be enforceable pursuant to section*
20 *716(c) of title 31, United States Code.*

21 *“(2) REPORT.—The Comptroller General shall*
22 *submit to the Congress a report of each annual audit*
23 *conducted under this subsection. The report to the*
24 *Congress shall set forth the scope of the audit and*
25 *shall include the statement of assets and liabilities*

1 *and surplus or deficit, the statement of income and*
2 *expenses, the statement of sources and application of*
3 *funds, and such comments and information as may*
4 *be deemed necessary to inform Congress of the finan-*
5 *cial operations and condition of the Agency, together*
6 *with such recommendations with respect thereto as the*
7 *Comptroller General may deem advisable. A copy of*
8 *each report shall be furnished to the President and to*
9 *the Agency at the time submitted to the Congress.*

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

1 *shall be available upon receipt and without fiscal*
2 *year limitation to cover the full costs of the audit and*
3 *report.”.*

4 **SEC. 107. EXAMINERS AND ACCOUNTANTS.**

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

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

17 *(2) in subsection (b)—*

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

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

24 *(3) in subsection (c)—*

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

4 (B) in the third sentence, by striking “from
5 amounts available in the Federal Housing En-
6 terprises Oversight Fund”.

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

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

13 “(1) *APPLICABILITY.*—This section applies with
14 respect to any position of examiner, accountant, spe-
15 cialist in financial markets, specialist in technology,
16 and economist at the Agency, with respect to super-
17 vision and regulation of the regulated entities, that is
18 in the competitive service.

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

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

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

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

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

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

10 (3) by striking the first two sentences and insert-
11 ing the following: “The Federal home loan banks shall
12 be subject to examinations by the Director to the ex-
13 tent provided in section 1317 of the Federal Housing
14 Enterprises Financial Safety and Soundness Act of
15 1992 (12 U.S.C. 4517).”.

16 **SEC. 108. PROHIBITION AND WITHHOLDING OF EXECUTIVE**
17 **COMPENSATION.**

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

21 (1) in the section heading, by striking “**OF EX-**
22 **CESSIVE**” and inserting “**AND WITHHOLDING OF**
23 **EXECUTIVE**”;

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

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

3 “(b) *FACTORS*.—In making any determination under
4 subsection (a), the Director may take into consideration
5 any factors the Director considers relevant, including any
6 wrongdoing on the part of the executive officer, and such
7 wrongdoing shall include any fraudulent act or omission,
8 breach of trust or fiduciary duty, violation of law, rule, reg-
9 ulation, order, or written agreement, and insider abuse with
10 respect to the regulated entity. The approval of an agree-
11 ment or contract pursuant to section 309(d)(3)(B) of the
12 Federal National Mortgage Association Charter Act (12
13 U.S.C. 1723a(d)(3)(B)) or section 303(h)(2) of the Federal
14 Home Loan Mortgage Corporation Act (12 U.S.C.
15 1452(h)(2)) shall not preclude the Director from making
16 any subsequent determination under subsection (a).

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

23 (b) *CONFORMING AMENDMENTS*.—

24 (1) *FANNIE MAE*.—Section 309(d) of the Federal
25 National Mortgage Association Charter Act (12

1 *U.S.C. 1723a(d)* is amended by adding at the end
2 the following new paragraph:

3 “(4) Notwithstanding any other provision of this sec-
4 tion, the corporation shall not transfer, disburse, or pay
5 compensation to any executive officer, or enter into an
6 agreement with such executive officer, without the approval
7 of the Director, for matters being reviewed under section
8 1318 of the Federal Housing Enterprises Financial Safety
9 and Soundness Act of 1992 (12 U.S.C. 4518).”.

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

14 “(4) Notwithstanding any other provision of this sec-
15 tion, the Corporation shall not transfer, disburse, or pay
16 compensation to any executive officer, or enter into an
17 agreement with such executive officer, without the approval
18 of the Director, for matters being reviewed under section
19 1318 of the Federal Housing Enterprises Financial Safety
20 and Soundness Act of 1992 (12 U.S.C. 4518).”.

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

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

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

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

12 (1) *by striking the section designation and head-*
 13 *ing and inserting the following:*

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

15 (2) *by inserting after “any entity” the following:*
 16 *“that the Director considers appropriate, including*
 17 *an entity”.*

18 **SEC. 110. REGULATIONS AND ORDERS.**

19 *Section 1319G of the Housing and Community Develop-*
 20 *ment Act of 1992 (12 U.S.C. 4526) is amended—*

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

23 “(a) *AUTHORITY.*—*The Director shall issue any regu-*
 24 *lations, guidelines, and orders necessary to carry out the*
 25 *duties of the Director under this title and each of the au-*

1 *thorizing statutes to ensure that the purposes of this title*
2 *and such Acts are accomplished.”;*

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

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

7 **SEC. 111. RISK-BASED CAPITAL REQUIREMENTS.**

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

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

13 “(a) *IN GENERAL.*—

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

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

24 “(b) *CONFIDENTIALITY OF INFORMATION.*—*Any person*
25 *that receives any book, record, or information from the Di-*

1 *rector or a regulated entity to enable the risk-based capital*
2 *requirements established under this section to be applied*
3 *shall—*

4 “(1) *maintain the confidentiality of the book,*
5 *record, or information in a manner that is generally*
6 *consistent with the level of confidentiality established*
7 *for the material by the Director or the regulated enti-*
8 *ty; and*

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

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

16 “(b) *FEDERAL HOME LOAN BANKS RISK-BASED CAP-*
17 *ITAL.—Section 6(a)(3) of the Federal Home Loan Bank Act*
18 *(12 U.S.C. 1426(a)(3)) is amended—*

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

21 “(A) *RISK-BASED CAPITAL STANDARDS.—*
22 *The Director shall, by regulation, establish risk-*
23 *based capital standards for the Federal home*
24 *loan banks to ensure that the Federal home loan*
25 *banks operate in a safe and sound manner, with*

1 *sufficient permanent capital and reserves to sup-*
 2 *port the risks that arise in the operations and*
 3 *management of the Federal home loans banks.”;*
 4 *and*
 5 *(2) in subparagraph (B), by striking “(A)(ii)”*
 6 *and inserting “(A)”.*

7 **SEC. 112. MINIMUM AND CRITICAL CAPITAL LEVELS.**

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

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

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

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

21 *“(c) ESTABLISHMENT OF REVISED MINIMUM CAPITAL*
 22 *LEVELS.—Notwithstanding subsections (a) and (b) and*
 23 *notwithstanding the capital classifications of the regulated*
 24 *entities, the Director may, by regulations issued under sec-*
 25 *tion 1319G(b), establish a minimum capital level for the*

1 enterprises, for the Federal home loan banks, or for both
2 the enterprises and the banks, that is higher than the level
3 specified in subsection (a) for the enterprises or the level
4 specified in subsection (b) for the Federal home loan banks,
5 to the extent needed to ensure that the regulated entities
6 operate in a safe and sound manner.

7 “(d) *AUTHORITY TO REQUIRE TEMPORARY IN-*
8 *CREASE.*—Notwithstanding subsections (a) and (b) and any
9 minimum capital level established pursuant to subsection
10 (c), the Director may, by order, increase the minimum cap-
11 ital level for a regulated entity for such period as the Direc-
12 tor may provide if the Director—

13 “(1) makes any of the determinations specified
14 in subparagraphs (A) through (C) of section
15 1364(c)(1); or

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

21 “(e) *AUTHORITY TO ESTABLISH ADDITIONAL CAPITAL*
22 *AND RESERVE REQUIREMENTS FOR PARTICULAR PRO-*
23 *GRAMS.*—The Director may, at any time by order or regula-
24 tion, establish such capital or reserve requirements with re-
25 spect to any program or activity of a regulated entity as

1 *the Director considers appropriate to ensure that the regu-*
2 *lated entity operates in a safe and sound manner, with suf-*
3 *ficient capital and reserves to support the risks that arise*
4 *in the operations and management of the regulated entity.*

5 “(f) *PERIODIC REVIEW.*—*The Director shall periodi-*
6 *cally review the amount of core capital maintained by the*
7 *enterprises, the amount of capital retained by the Federal*
8 *home loan banks, and the minimum capital levels estab-*
9 *lished for such regulated entities pursuant to this section.*
10 *The Director may, by regulations issued under section*
11 *1319G(b), adjust the minimum capital levels as necessary,*
12 *based on the Director’s review.”.*

13 (b) *CRITICAL CAPITAL LEVELS.*—

14 (1) *IN GENERAL.*—*Section 1363 of the Housing*
15 *and Community Development Act of 1992 (12 U.S.C.*
16 *4613) is amended—*

17 (A) *by striking “For” and inserting “(a)*
18 *Enterprises.—For”;* and

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

21 “(b) *FEDERAL HOME LOAN BANKS.*—

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

1 “(2) *CONSIDERATION OF OTHER CRITICAL CAP-*
2 *ITAL LEVELS.*—*In establishing the critical capital*
3 *level under paragraph (1) for the Federal home loan*
4 *banks, the Director shall take due consideration of the*
5 *critical capital level established under subsection (a)*
6 *for the enterprises, with such modifications as the Di-*
7 *rector determines to be appropriate to reflect the dif-*
8 *ference in operations between the banks and the enter-*
9 *prises.*”.

10 (2) *REGULATIONS.*—*Not later than the expira-*
11 *tion of the 180-day period beginning on the effective*
12 *date under section 185, the Director of the Federal*
13 *Housing Finance Agency shall issue regulations pur-*
14 *suant to section 1363(b) of the Housing and Commu-*
15 *nity Development Act of 1992 (as added by para-*
16 *graph (1) of this subsection) establishing the critical*
17 *capital level under such section.*

18 **SEC. 113. REVIEW OF AND AUTHORITY OVER ENTERPRISE**

19 **ASSETS AND LIABILITIES.**

20 *Subtitle B of title XIII of the Housing and Community*
21 *Development Act of 1992 (12 U.S.C. 4611 et seq.) is amend-*
22 *ed—*

23 (1) *by striking the subtitle designation and head-*
24 *ing and inserting the following:*

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

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

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

10 “(a) *IN GENERAL.*—The Director shall conduct, on a
 11 periodic basis, a review of the on-balance sheet and off-bal-
 12 ance sheet assets and liabilities of each enterprise.

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

22 **SEC. 114. CORPORATE GOVERNANCE OF ENTERPRISES.**

23 *The Housing and Community Development Act of*
 24 *1992 is amended by inserting before section 1323 (12 U.S.C.*
 25 *4543) the following new section:*

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

2 “(a) *BOARD OF DIRECTORS.—*

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

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

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

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

22 “(5) *INFORMATION.—The management of an en-*
23 *terprise shall provide a board member of the enter-*
24 *prise with such adequate and appropriate informa-*
25 *tion that a reasonable board member would find im-*

1 *portant to the fulfillment of his or her fiduciary du-*
2 *ties and obligations.*

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

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

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

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

17 *“(A) Audit committee.*

18 *“(B) Compensation committee.*

19 *“(C) Nominating/corporate governance com-*
20 *mittee.*

21 *Such committees shall be in compliance with the*
22 *charter, independence, composition, expertise, duties,*
23 *responsibilities, and other requirements set forth*
24 *under section 10A(m) of the Securities Exchange Act*
25 *of 1934 (15 U.S.C. 78j-1(m)), with respect to the*

1 *audit committee, and under rules issued by the New*
2 *York Stock Exchange, as such rules may be amended*
3 *from time to time.*

4 “(c) *COMPENSATION.*—

5 “(1) *IN GENERAL.*—*The compensation of board*
6 *members, executive officers, and employees of an en-*
7 *terprise—*

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

10 “(B) *shall be commensurate with the duties*
11 *and responsibilities of such persons,*

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

14 “(D) *shall not focus solely on earnings per-*
15 *formance, but shall take into account risk man-*
16 *agement, operational stability and legal and reg-*
17 *ulatory compliance as well; and*

18 “(E) *shall be undertaken in a manner that*
19 *complies with applicable laws, rules, and regula-*
20 *tions.*

21 “(2) *REIMBURSEMENT.*—*If an enterprise is re-*
22 *quired to prepare an accounting restatement due to*
23 *the material noncompliance of the enterprise, as a re-*
24 *sult of misconduct, with any financial reporting re-*
25 *quirement under the securities laws, the chief execu-*

1 *tive officer and chief financial officer of the enterprise*
2 *shall reimburse the enterprise as provided under sec-*
3 *tion 304 of the Sarbanes-Oxley Act of 2002 (15*
4 *U.S.C. 7243). This provision does not otherwise limit*
5 *the authority of the Agency to employ remedies avail-*
6 *able to it under its enforcement authorities.*

7 *“(d) CODE OF CONDUCT AND ETHICS.—*

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

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

23 *“(e) CONDUCT AND RESPONSIBILITIES OF BOARD OF*
24 *DIRECTORS.—The board of directors of an enterprise shall*
25 *be responsible for directing the conduct and affairs of the*

1 *enterprise in furtherance of the safe and sound operation*
2 *of the enterprise and shall remain reasonably informed of*
3 *the condition, activities, and operations of the enterprise.*
4 *The responsibilities of the board of directors shall include*
5 *having in place adequate policies and procedures to assure*
6 *its oversight of, among other matters, the following:*

7 “(1) *Corporate strategy, major plans of action,*
8 *risk policy, programs for legal and regulatory compli-*
9 *ance and corporate performance, including prudent*
10 *plans for growth and allocation of adequate resources*
11 *to manage operations risk.*

12 “(2) *Hiring and retention of qualified executive*
13 *officers and succession planning for such executive of-*
14 *ficers.*

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

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

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

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

24 “(7) *Responsiveness of executive officers in pro-*
25 *viding accurate and timely reports to Federal regu-*

1 *lators and in addressing the supervisory concerns of*
2 *Federal regulators in a timely and appropriate man-*
3 *ner.*

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

11 “(g) *CERTIFICATION OF DISCLOSURES.—The chief ex-*
12 *ecutive officer and the chief financial officer of an enterprise*
13 *shall review each quarterly report and annual report issued*
14 *by the enterprise and such reports shall include certifi-*
15 *cations by such officers as required by section 302 of the*
16 *Sarbanes-Oxley Act of 2002 (15 U.S.C. 7241).*

17 “(h) *CHANGE OF AUDIT PARTNER.—An enterprise*
18 *may not accept audit services from an external auditing*
19 *firm if the lead or coordinating audit partner who has pri-*
20 *mary responsibility for the external audit of the enterprise,*
21 *or the external audit partner who has responsibility for re-*
22 *viewing the external audit has performed audit services for*
23 *the enterprise in each of the five previous fiscal years.*

24 “(i) *COMPLIANCE PROGRAM.—*

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

6 “(2) *COMPLIANCE OFFICER.*—*The compliance*
7 *program of an enterprise shall be headed by a compli-*
8 *ance officer, however styled, who reports directly to*
9 *the chief executive officer of the enterprise. The com-*
10 *pliance officer shall report regularly to the board of*
11 *directors or an appropriate committee of the board of*
12 *directors on compliance with and the adequacy of*
13 *current compliance policies and procedures of the en-*
14 *terprise, and shall recommend any adjustments to*
15 *such policies and procedures that the compliance offi-*
16 *cer considers necessary and appropriate.*

17 “(j) *RISK MANAGEMENT PROGRAM.*—

18 “(1) *REQUIREMENT.*—*Each enterprise shall es-*
19 *tablish and maintain a risk management program*
20 *that is reasonably designed to manage the risks of the*
21 *operations of the enterprise.*

22 “(2) *RISK MANAGEMENT OFFICER.*—*The risk*
23 *management program of an enterprise shall be headed*
24 *by a risk management officer, however styled, who re-*
25 *ports directly to the chief executive officer of the enter-*

1 *prise. The risk management officer shall report regu-*
2 *larly to the board of directors or an appropriate com-*
3 *mittee of the board of directors on compliance with*
4 *and the adequacy of current risk management policies*
5 *and procedures of the enterprise, and shall rec-*
6 *ommend any adjustments to such policies and proce-*
7 *dures that the risk management officer considers nec-*
8 *essary and appropriate.*

9 *“(k) COMPLIANCE WITH OTHER LAWS.—*

10 *“(1) DEREGISTERED OR UNREGISTERED COM-*
11 *MON STOCK.—If an enterprise deregisters or has not*
12 *registered its common stock with the Securities and*
13 *Exchange Commission under the Securities Exchange*
14 *Act of 1934, the enterprise shall comply or continue*
15 *to comply with sections 10A(m) and 13(k) of the Se-*
16 *curities Exchange Act of 1934 (15 U.S.C. 78j-1(m),*
17 *78m(k)) and sections 302, 304, and 406 of the Sar-*
18 *banes-Oxley Act of 2002 (15 U.S.C. 7241, 7243,*
19 *7264), subject to such requirements as provided by*
20 *subsection (l) of this section.*

21 *“(2) REGISTERED COMMON STOCK.—An enter-*
22 *prise that has its common stock registered with the*
23 *Securities and Exchange Commission shall maintain*
24 *such registered status, unless it provides 60 days*
25 *prior written notice to the Director stating its intent*

1 *by the preceding provisions of this Act, the following new*
2 *section:*

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

5 *“(a) IN GENERAL.—Each regulated entity shall reg-*
6 *ister at least one class of the capital stock of such regulated*
7 *entity, and maintain such registration with the Securities*
8 *and Exchange Commission, under the Securities Exchange*
9 *Act of 1934.*

10 *“(b) ENTERPRISES.—Each enterprise shall comply*
11 *with sections 14 and 16 of the Securities Exchange Act of*
12 *1934.”.*

13 **SEC. 116. FINANCIAL INSTITUTIONS EXAMINATION COUN-**
14 **CIL.**

15 *The Federal Financial Institutions Examination*
16 *Council Act of 1978 is amended—*

17 *(1) in section 1003 (12 U.S.C. 3302)—*

18 *(A) in paragraph (1), by inserting “Direc-*
19 *tor of the Federal Housing Finance Agency,”*
20 *after “Supervision,”; and*

21 *(B) in paragraph (3), by striking “or a*
22 *credit union;” and inserting “a credit union, or*
23 *a regulated entity (as such term is defined in*
24 *section 1303 of the Housing and Community De-*
25 *velopment Act of 1992 (12 U.S.C. 4502)).”;*

1 (2) *in section 1004 (12 U.S.C. 3303)—*

2 (A) *in paragraph (4), by inserting a semi-*
3 *colon at the end;*

4 (B) *by redesignating paragraph (5) as*
5 *paragraph (6); and*

6 (C) *by inserting after paragraph (4) the fol-*
7 *lowing new paragraph:*

8 “*(5) the Director of the Federal Housing Finance*
9 *Agency; and”;* and

10 (3) *in section 1006(d) (12 U.S.C. 3305(d)), by*
11 *striking “and employees of the Federal Housing Fi-*
12 *nance Board”.*

13 **SEC. 117. GUARANTEE FEE STUDY.**

14 (a) *IN GENERAL.—The Comptroller General of the*
15 *United States, in consultation with the heads of the federal*
16 *banking agencies and the Director of the Office of Federal*
17 *Housing Enterprise Oversight of the Department of Hous-*
18 *ing and Urban Development, shall, not later than one year*
19 *after the date of the enactment of this Act, submit to the*
20 *Congress a study concerning the pricing, transparency and*
21 *reporting of the Federal National Mortgage Association, the*
22 *Federal Home Loan Mortgage Corporation, and the Federal*
23 *home loan banks with regard to guarantee fees and con-*
24 *cerning analogous practices, transparency and reporting*
25 *requirements (including advances pricing practices by the*

1 *Federal Home Loan Banks) of other participants in the*
2 *business of mortgage purchases and securitization.*

3 **(b) FACTORS.**—*The study required by this section shall*
4 *examine various factors such as credit risk, counterparty*
5 *risk considerations, economic value considerations, and vol-*
6 *ume considerations used by the regulated entities (as such*
7 *term is defined in section 1303 of the Housing and Commu-*
8 *nity Development Act of 1992) included in the study in*
9 *setting the amount of fees they charge.*

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

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

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

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

20 **(4)** *the average guarantee fee charged by the en-*
21 *terprises;*

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

1 (6) a breakdown of the revenue and costs associ-
2 ated with providing guarantees, based on product
3 type and risk classifications; and

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

7 (d) *PROTECTION OF INFORMATION.*—Nothing in this
8 section may be construed to require or authorize the Govern-
9 ment Accounting Office, in connection with the study man-
10 dated by this section, to disclose information of the enter-
11 prises or other organization that is confidential or propri-
12 etary.

13 **SEC. 118. CONFORMING AMENDMENTS.**

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

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

22 (2) by striking “the enterprise” each place such
23 term appears in such part (except in section
24 1316(b)(3)) and inserting “the regulated entity”;

1 (3) by striking “the enterprises” each place such
2 term appears in such part (except in sections
3 1312(c)(2), 1312(e)(2), and 1319B(a)(4)(D)) and in-
4 serting “the regulated entities”;

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

8 (5) by striking “Office” each place such term ap-
9 pears in such part (except in sections 1312(b)(5),
10 1315(b), and 1316(g), and section 1317(c)) and in-
11 serting “Agency”;

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

13 (A) in subsection (a)—

14 (i) in the subsection heading, by strik-
15 ing “Office Personnel” and inserting “In
16 General”; and

17 (ii) by striking “The” and inserting
18 “Subject to titles III and IV of the Federal
19 Housing Finance Reform Act of 2005, the”;

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

21 (C) by redesignating subsection (e) as sub-
22 section (d);

23 (7) in section 1319A (12 U.S.C. 4520)—

1 (A) by striking “(a) In General.—Each en-
2 terprise” and inserting “Each regulated entity”;
3 and

4 (B) by striking subsection (b);

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

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

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

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

22 (A) section 303(c)(2) (12 U.S.C.
23 1718(c)(2));

24 (B) section 309(d)(3)(B) (12 U.S.C.
25 1723a(d)(3)(B)); and

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

2 (2) in section 309—

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

7 (B) in subsection (m)—

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

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

14 (iii) by striking “Secretary” each other
15 place such term appears and inserting “Di-
16 rector of the Federal Housing Finance
17 Agency”; and

18 (C) in subsection (n), by striking “Sec-
19 retary” each place such term appears and insert-
20 ing “Director of the Federal Housing Finance
21 Agency”.

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

24 (1) by striking “Director of the Office of Federal
25 Housing Enterprise Oversight of the Department of

1 *Housing and Urban Development*” each place such
2 term appears, and inserting “*Director of the Federal*
3 *Housing Finance Agency*”, in—

4 (A) *section 303(b)(2) (12 U.S.C.*
5 *1452(b)(2))*;

6 (B) *section 303(h)(2) (12 U.S.C.*
7 *1452(h)(2))*; and

8 (C) *section 307(c)(1) (12 U.S.C.*
9 *1456(c)(1))*;

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

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

15 (A) *by striking “1316(c)” and inserting*
16 *“306(c)”*; and

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

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

20 (A) *in subsection (e)*—

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

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

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

8 (B) in subsection (f), by striking “Sec-
9 retary” each place such term appears and insert-
10 ing “Director of the Federal Housing Finance
11 Agency”.

12 **Subtitle B—Improvement of Mission**
13 **Supervision**

14 **SEC. 121. TRANSFER OF PROGRAM AND ACTIVITIES AP-**
15 **PROVAL AND HOUSING GOAL OVERSIGHT.**

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

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

21 **“PART 2—PROGRAM AND ACTIVITIES APPROVAL**
22 **BY DIRECTOR, CORPORATE GOVERNANCE,**
23 **AND ESTABLISHMENT OF HOUSING GOALS”;**

24 and

25 (2) by striking sections 1321 and 1322.

1 **SEC. 122. REVIEW BY DIRECTOR OF NEW PROGRAMS AND**
2 **ACTIVITIES OF ENTERPRISES.**

3 (a) *IN GENERAL.*—Part 2 of subtitle A of title XIII
4 of the Housing and Community Development Act of 1992
5 is amended by inserting before section 1323 (12 U.S.C.
6 4543) the following new section:

7 **“SEC. 1321. REVIEW AND APPROVAL BY DIRECTOR OF NEW**
8 **PROGRAMS AND BUSINESS ACTIVITIES OF**
9 **ENTERPRISES.**

10 *“(a) LIMITATION ON AUTHORITY TO UNDERTAKE PRO-*
11 *GRAMS AND ACTIVITIES.*—An enterprise may not undertake
12 any new program, including a pilot program, or any new
13 business activity except in accordance with the procedures
14 set forth in this section and orders and regulations issued
15 under this section.

16 *“(b) NEW PROGRAMS.*—

17 *“(1) PRIOR APPROVAL REQUIREMENT.*—An en-
18 terprise may not commence any new program before
19 it has obtained the approval of the Director, pursuant
20 to this subsection, for the new program.

21 *“(2) APPLICATION.*—The Director shall, by order
22 or regulation, require that an enterprise shall, to ob-
23 tain a determination by the Director regarding ap-
24 proval of a new program by the enterprise, submit to
25 the Director a written application for the new pro-
26 gram in a format as prescribed by the Director.

1 “(3) *NOTICE.*—Immediately upon receipt of a
2 complete application for a new program, the Director
3 shall cause to be published in the *Federal Register* no-
4 tice of the receipt of such application and of the pe-
5 riod for public comment pursuant to paragraph (4)
6 regarding such new program, and a description of the
7 new program proposed by the application.

8 “(4) *PUBLIC COMMENT PERIOD.*—During the 30-
9 day period beginning upon publication pursuant to
10 paragraph (3) of a notice regarding such an applica-
11 tion, the Director shall receive public comments re-
12 garding the new program.

13 “(5) *DETERMINATION.*—Not less than 15 days
14 after the conclusion of the public comment period
15 pursuant to paragraph (4) regarding an application
16 but not more than 30 days after the conclusion of
17 such comment period, the Director shall approve, con-
18 ditionally approve, or reject such program, in writ-
19 ing.

20 “(6) *STANDARD FOR APPROVAL.*—The Director
21 may approve, or conditionally approve, a new pro-
22 gram of an enterprise only if the Director determines,
23 taking into consideration any relevant information
24 and comments received during the public comment
25 period, that such new program—

1 “(A) does not contravene and is not incon-
2 sistent with the purposes of this title, the Federal
3 National Mortgage Association Charter Act, or
4 the Federal Home Loan Mortgage Corporation
5 Act, as such purposes are determined taking into
6 consideration the definitions of the terms ‘mort-
7 gage loan origination’ and ‘secondary mortgage
8 market’ pursuant to section 1303;

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

11 “(C) is in the public interest.

12 “(7) *LIMITATION.*—The Director, in imple-
13 menting this subsection, may not prevent an enter-
14 prise from continuing to offer the automated loan un-
15 derwriting system in existence on the date of the en-
16 actment of the Federal Housing Finance Reform Act
17 of 2005 or continuing to engage in counseling and
18 education activities.

19 “(c) *NEW BUSINESS ACTIVITIES.*—

20 “(1) *AUTHORITY OF DIRECTOR TO PROHIBIT*
21 *NEW BUSINESS ACTIVITIES.*—The Director shall have
22 authority to prohibit any new business activity by an
23 enterprise if the Director determines, in writing, that
24 such activity—

1 “(A) *contravenes or is inconsistent with the*
2 *purposes of this title, the Federal National Mort-*
3 *gage Association Charter Act, or the Federal*
4 *Home Loan Mortgage Corporation Act;*

5 “(B) *is otherwise inconsistent with the safe-*
6 *ty and soundness of the enterprise; or*

7 “(C) *is not in the public interest.*

8 “(2) *NOTIFICATION OF NEW BUSINESS ACTIVI-*
9 *TIES.—An enterprise that undertakes any new busi-*
10 *ness activity shall provide written notice of the activi-*
11 *ty to the Director and may commence the new busi-*
12 *ness activity only in accordance with paragraph (4).*

13 “(3) *DIRECTOR DETERMINATION OF APPLICABLE*
14 *PROCEDURE.—*

15 “(A) *TIMING.—Immediately upon receipt of*
16 *any notice under paragraph (2) regarding a new*
17 *business activity, the Director shall undertake a*
18 *determination under subparagraph (B) of this*
19 *paragraph regarding the new business activity.*

20 “(B) *DETERMINATION AND TREATMENT AS*
21 *NEW PROGRAM.—If the Director determines that*
22 *any new business activity consists of, relates to,*
23 *or involves any new program—*

24 “(i) *the Director shall notify the enter-*
25 *prise of the determination;*

1 “(ii) the new business activity de-
2 scribed in the notice shall be considered a
3 new program for purposes of this section;
4 and

5 “(iii) the Director shall prohibit the
6 enterprise from carrying out the activity ex-
7 cept to the extent that approval for the ac-
8 tivity is obtained pursuant to subsection
9 (b).

10 “(4) COMMENCEMENT.—An enterprise may com-
11 mence a new business activity—

12 “(A) if the Director issues a written ap-
13 proval regarding such new business activity, im-
14 mediately upon such issuance or at such other
15 time as provided by the Director in such letter;
16 or

17 “(B) if, during the 30-day period beginning
18 upon receipt by the Director of notice pursuant
19 to paragraph (2) regarding a new business activ-
20 ity, the Director has not issued to the enterprise
21 a written approval or denial of the new business
22 activity, upon the expiration of such 30-day pe-
23 riod.

24 “(d) APPROVAL AND CONDITIONAL APPROVAL.—The
25 Director may at any time conditionally approve the under-

1 *taking of a particular new program or new business activ-*
2 *ity by an enterprise and set forth the terms and conditions*
3 *that apply to the program or activity with which the enter-*
4 *prise shall comply if it undertakes the new program or ac-*
5 *tivity. Such approval may, in the discretion of the Director,*
6 *be in the form of a written agreement between the enterprise*
7 *and the Director and shall be subject to such terms and*
8 *conditions therein. Such a written agreement or conditional*
9 *approval shall be enforceable under subtitle C.*

10 “(e) *DETERMINATION AND TREATMENT OF ACTIVITY*
11 *AS NEW BUSINESS ACTIVITY.*—*If the Director determines*
12 *that any activity of an enterprise consists of, relates to, or*
13 *involves any new business activity—*

14 “(1) *the Director shall notify the enterprise of*
15 *the determination;*

16 “(2) *such activity shall be considered a new busi-*
17 *ness activity for purposes of this section; and*

18 “(3) *the Director shall prohibit the enterprise*
19 *from carrying out the activity except to the extent*
20 *that approval for the activity is obtained pursuant to*
21 *subsection (c).*

22 “(f) *EFFECT ON OTHER AUTHORITIES.*—

23 “(1) *EXAMINATIONS.*—*Nothing in this section*
24 *may be construed to limit, in any manner, any other*
25 *authority or right the Director may have under other*

1 *provisions of law to conduct an examination of an*
2 *enterprise.*

3 “(2) *REQUESTS FOR INFORMATION.—Nothing in*
4 *this section may be construed to limit the right of the*
5 *Director at any time to request additional informa-*
6 *tion from an enterprise concerning any business ac-*
7 *tivity.*

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

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

18 “(g) *REPORT ON PROGRAMS AND BUSINESS ACTIVI-*
19 *TIES.—Not later than the expiration of the 180-day period*
20 *beginning on the effective date under section 185 of the Fed-*
21 *eral Housing Finance Reform Act of 2005, each enterprise*
22 *shall submit to the Director a report identifying and de-*
23 *scribing each program and business activity of the enter-*
24 *prise engaged in or existing as of the submission of the re-*
25 *port.*

1 “(h) *REGULATIONS.*—*The Director shall by order or*
2 *regulation issue rules and procedures to implement this sec-*
3 *tion, including in the discretion of the Director, such defini-*
4 *tions, interpretations, forms, and other guidances as the Di-*
5 *rector considers appropriate.”.*

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

9 (1) *by redesignating paragraphs (17) through*
10 *(23) as paragraphs (20) through (26), respectively;*

11 (2) *by inserting after paragraph (16) the fol-*
12 *lowing new paragraph:*

13 “(19) *NEW BUSINESS ACTIVITY.*—*The term ‘new*
14 *business activity’ means, with respect to an enter-*
15 *prise, a business activity that—*

16 “(A) *is materially changed or materially*
17 *different from any of the business activities that*
18 *the enterprise was engaging in on the effective*
19 *date under section 185 of the Federal Housing*
20 *Finance Reform Act of 2005; and*

21 “(B) *the enterprise has not previously ob-*
22 *tained authorization, pursuant to the provisions*
23 *of section 1321(c), to offer, undertake, transact,*
24 *conduct, or engage in.”;*

1 (3) by redesignating paragraphs (15) and (16)
2 as paragraphs (17) and (18), respectively;

3 (4) by inserting after paragraph (14) the fol-
4 lowing new paragraph:

5 “(16) *MORTGAGE MARKETS*.—The terms ‘mort-
6 gage loan origination’ and ‘secondary mortgage mar-
7 ket’ shall have such meanings as the Director shall, by
8 regulation, prescribe consistent with the Federal Na-
9 tional Mortgage Association Charter Act and the Fed-
10 eral Home Loan Mortgage Corporation Act. The Di-
11 rector shall issue such regulations not later than the
12 expiration of the 12-month period beginning on the
13 effective date under section 185 of the Federal Hous-
14 ing Finance Reform Act of 2005, and the Director
15 shall review such regulations on a periodic basis.”;

16 (5) by redesignating paragraphs (5) through (14)
17 as paragraphs (6) through (15), respectively; and

18 (6) by inserting after paragraph (4) the fol-
19 lowing new paragraph:

20 “(5) *BUSINESS ACTIVITY*.—The term ‘business
21 activity’ means, with respect to an enterprise, any of-
22 fering, undertaking, transacting, conducting, or en-
23 gaging in any conduct, activity, or product by the en-
24 terprise, as the Director shall provide.”.

25 (c) *CONFORMING AMENDMENTS*.—

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

4 (A) by striking “new program (as such term
5 is” and inserting “new program or new business
6 activity (as such terms are”); and

7 (B) by striking “before obtaining the ap-
8 proval of the Secretary under section 1322” and
9 inserting “except in accordance with section
10 1321”.

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

14 (A) by striking “new program (as such term
15 is” and inserting “new program or new business
16 activity (as such terms are”); and

17 (B) by striking “before obtaining the ap-
18 proval of the Secretary under section 1322” and
19 inserting “except in accordance with section
20 1321”.

21 **SEC. 123. CONFORMING LOAN LIMITS.**

22 (a) *FANNIE MAE*.—

23 (1) *GENERAL LIMIT*.—Section 302(b)(2) of the
24 *Federal National Mortgage Association Charter Act*
25 (12 *U.S.C. 1717(b)(2)*) is amended by striking the 7th

1 *and 8th sentences and inserting the following new*
2 *sentences: “Such limitations shall not exceed \$359,650*
3 *for a mortgage secured by a single-family residence,*
4 *\$460,400 for a mortgage secured by a 2-family resi-*
5 *dence, \$556,500 for a mortgage secured by a 3-family*
6 *residence, and \$691,600 for a mortgage secured by a*
7 *4-family residence, except that such maximum limita-*
8 *tions shall be adjusted effective January 1 of each*
9 *year beginning after the effective date under section*
10 *185 of the Federal Housing Finance Reform Act of*
11 *2005, subject to the limitations in this paragraph.*
12 *Each adjustment shall be made by adding to or sub-*
13 *tracting from each such amount (as it may have been*
14 *previously adjusted) a percentage thereof equal to the*
15 *percentage increase or decrease, during the most re-*
16 *cent 12-month or fourth-quarter period ending before*
17 *the time of determining such annual adjustment, in*
18 *the housing price index maintained by the Director of*
19 *the Federal Housing Finance Agency (pursuant to*
20 *section 1322 of the Housing and Community Develop-*
21 *ment Act of 1992 (12 U.S.C. 4541)).”.*

22 *(2) HIGH-COST AREA LIMIT.—Section 302(b)(2)*
23 *of the Federal National Mortgage Association Charter*
24 *Act is (12 U.S.C. 1717(b)(2)) is amended by adding*
25 *after the period at the end the following: “Such fore-*

1 *going limitations shall also be increased with respect*
2 *to properties of a particular size located in any area*
3 *for which the median price for such size residence ex-*
4 *ceeds the foregoing limitation for such size residence,*
5 *to the lesser of 150 percent of such foregoing limita-*
6 *tion for such size residence or the amount that is*
7 *equal to the median price in such area for such size*
8 *residence, except that, subject to the order, if any,*
9 *issued by the Director of the Federal Housing Fi-*
10 *nance Agency pursuant to section 123(d)(3) of the*
11 *Federal Housing Finance Reform Act of 2005, such*
12 *increase shall apply only with respect to mortgages on*
13 *which are based securities issued and sold by the cor-*
14 *poration.”*

15 **(b) FREDDIE MAC.—**

16 **(1) GENERAL LIMIT.—** *Section 305(a)(2) of the*
17 *Federal Home Loan Mortgage Corporation Act (12*
18 *U.S.C. 1454(a)(2)) is amended by striking the 6th*
19 *and 7th sentences and inserting the following new*
20 *sentences: “Such limitations shall not exceed \$359,650*
21 *for a mortgage secured by a single-family residence,*
22 *\$460,400 for a mortgage secured by a 2-family resi-*
23 *dence, \$556,500 for a mortgage secured by a 3-family*
24 *residence, and \$691,600 for a mortgage secured by a*
25 *4-family residence, except that such maximum limita-*

1 *tions shall be adjusted effective January 1 of each*
2 *year beginning after the effective date under section*
3 *185 of the Federal Housing Finance Reform Act of*
4 *2005, subject to the limitations in this paragraph.*
5 *Each adjustment shall be made by adding to or sub-*
6 *tracting from each such amount (as it may have been*
7 *previously adjusted) a percentage thereof equal to the*
8 *percentage increase or decrease, during the most re-*
9 *cent 12-month or fourth-quarter period ending before*
10 *the time of determining such annual adjustment, in*
11 *the housing price index maintained by the Director of*
12 *the Federal Housing Finance Agency (pursuant to*
13 *section 1322 of the Housing and Community Develop-*
14 *ment Act of 1992 (12 U.S.C. 4541)).”.*

15 (2) *HIGH-COST AREA LIMIT.*—Section 305(a)(2)
16 *of the Federal Home Loan Mortgage Corporation Act*
17 *is amended by adding after the period at the end the*
18 *following: “Such foregoing limitations shall also be*
19 *increased with respect to properties of a particular*
20 *size located in any area for which the median price*
21 *for such size residence exceeds the foregoing limitation*
22 *for such size residence, to the lesser of 150 percent of*
23 *such foregoing limitation for such size residence or the*
24 *amount that is equal to the median price in such*
25 *area for such size residence, except that, subject to the*

1 *order, if any, issued by the Director of the Federal*
2 *Housing Finance Agency pursuant to section*
3 *123(d)(3) of the Federal Housing Finance Reform Act*
4 *of 2005, such increase shall apply only with respect*
5 *to mortgages on which are based securities issued and*
6 *sold by the Corporation.”*

7 *(c) HOUSING PRICE INDEX.—Subpart A of part 2 of*
8 *subtitle A of title XIII of the Housing and Community De-*
9 *velopment Act of 1992 (as amended by the preceding provi-*
10 *sions of this Act) is amended by inserting after section 1321*
11 *(as added by section 122 of this Act) the following new sec-*
12 *tion:*

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

14 *“(a) IN GENERAL.—The Director shall establish and*
15 *maintain a method of assessing the national average 1-fam-*
16 *ily house price for use for adjusting the conforming loan*
17 *limitations of the enterprises. In establishing such method,*
18 *the Director shall take into consideration the monthly sur-*
19 *vey of all major lenders conducted by the Federal Housing*
20 *Finance Agency to determine the national average 1-family*
21 *house price, the House Price Index maintained by the Office*
22 *of Federal Housing Enterprise Oversight of the Department*
23 *of Housing and Urban Development before the effective date*
24 *under section 185 of the Federal Housing Finance Reform*
25 *Act of 2005, any appropriate house price indexes of the Bu-*

1 *reau of the Census of the Department of Commerce, and*
2 *any other indexes or measures that the Director considers*
3 *appropriate.*

4 “(b) *GAO AUDIT.*—

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

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

17 “(A) *ESTABLISHMENT.*—*The date upon*
18 *which such methodology is initially established*
19 *under subsection (a) in final form by the Direc-*
20 *tor.*

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

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

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

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

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

16 (A) *the effect that restricting the conforming*
17 *loan limits for high-cost areas only to mortgages*
18 *on which are based securities issued and sold by*
19 *the Federal National Mortgage Association and*
20 *the Federal Home Loan Mortgage Corporation*
21 *(as provided in the last sentence of section*
22 *302(b)(2) of the Federal National Mortgage Asso-*
23 *ciation Charter Act and the last sentence of sec-*
24 *tion 305(a)(2) of the Federal Home Loan Mort-*
25 *gage Corporation Act, pursuant to the amend-*

1 *ments made by subsections (a)(2) and (b)(2) of*
2 *this section) would have on the cost to borrowers*
3 *for mortgages on housing in such high-cost areas;*

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

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

12 *(3) DETERMINATION.—*

13 *(A) IN GENERAL.—Not later than the expi-*
14 *ration of the six-month period specified in para-*
15 *graph (1), the Director of the Federal Housing*
16 *Finance Agency shall make a determination,*
17 *based on the results of the study under this sub-*
18 *section, of whether the restriction of conforming*
19 *loan limits for high-cost areas only to mortgages*
20 *on which are based securities issued and sold by*
21 *the Federal National Mortgage Association and*
22 *the Federal Home Loan Mortgage Corporation*
23 *(as provided in the amendments made by sub-*
24 *sections (a)(2) and (b)(2) of this section) will re-*

1 *sult in an increase in the cost to borrowers for*
2 *mortgages on housing in such high-cost areas.*

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

8 *(4) PUBLICATION.— Not later than the expira-*
9 *tion of the six-month period specified in paragraph*
10 *(1), the Director of the Federal Housing Finance*
11 *Agency shall cause to be published in the Federal Reg-*
12 *ister—*

13 *(A) a report that—*

14 *(i) describes the study under this sub-*
15 *section; and*

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

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

21 *(C) the order of the Director under para-*
22 *graph (3).*

23 *(5) DEFINITION.—For purposes of this sub-*
24 *section, the term “conforming loan limits for high-cost*
25 *areas” means the dollar amount limitations applica-*

1 *ble under the section 302(b)(2) of the Federal Na-*
2 *tional Mortgage Association Charter Act and section*
3 *305(a)(2) of the Federal Home Loan Mortgage Cor-*
4 *poration Act (as amended by subsections (a) and (b)*
5 *of this section) for areas described in the last sentence*
6 *of such sections (as so amended).*

7 *(e) REGULAR ADJUSTMENT OF CONFORMING LOAN*
8 *LIMITS.—*

9 *(1) ADJUSTMENT FOR YEAR INTERVENING BE-*
10 *FORE EFFECTIVE DATE.—Notwithstanding section*
11 *302(b)(2) of the Federal National Mortgage Associa-*
12 *tion Charter Act and section 305(a)(2) of the Federal*
13 *Home Loan Mortgage Corporation Act, as amended*
14 *by this section, the maximum dollar amount limita-*
15 *tions in such sections shall be adjusted on the effective*
16 *date under section 185 of this Act, and the limita-*
17 *tions as so adjusted shall be immediately effective, so*
18 *that the limitations under such sections applicable to*
19 *the year in which such effective date occurs are equal*
20 *to the limitations in effect under such sections imme-*
21 *diately before such effective date.*

22 *(2) FURTHER ADJUSTMENTS.—After such effec-*
23 *tive date, the dollar amount limitations as adjusted*
24 *pursuant to paragraph (1) shall be considered “such*
25 *amount (as it may have been previously adjusted” for*

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

4 “(B) each enterprise is complying with sec-
5 tion 1337;

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

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

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

15 “(3) aggregate and analyze data on income, race,
16 and gender by census tract and other relevant classi-
17 fications, and compare such data with larger demo-
18 graphic, housing, and economic trends;

19 “(4) examine actions that—

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

24 “(B) each Federal home loan bank has
25 taken or could undertake to promote and expand

1 *the community investment program and afford-*
2 *able housing program of the bank established*
3 *under section subsections (i) and (j) of section 10*
4 *of the Federal Home Loan Bank Act;*

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

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

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

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

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

18 “(7) *describe any actions taken under section*
19 *1325(5) with respect to originators found to violate*
20 *fair lending procedures;*

21 “(8) *discuss and analyze existing conditions and*
22 *trends, including conditions and trends relating to*
23 *pricing, in the housing markets and mortgage mar-*
24 *kets; and*

1 “(9) identify the extent to which each enterprise
2 is involved in mortgage purchases and secondary
3 market activities involving subprime loans (as identi-
4 fied in accordance with the regulations issued pursu-
5 ant to section 124(b) of the Federal Housing Finance
6 Reform Act of 2005) and compare the characteristics
7 of subprime loans purchased and securitized by the
8 enterprises to other loans purchased and securitized
9 by the enterprises

10 “(c) DATA COLLECTION AND REPORTING.—

11 “(1) IN GENERAL.—To assist the Director in
12 analyzing the matters described in subsection (b) and
13 establishing the methodology described in section
14 1322, the Director shall conduct, on a monthly basis,
15 a survey of mortgage markets in accordance with this
16 subsection.

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

20 “(A) the characteristics of individual mort-
21 gages that are eligible for purchase by the enter-
22 prises and the characteristics of individual mort-
23 gages that are not eligible for purchase by the en-
24 terprises including, in both cases, information
25 concerning—

1 “(i) the price of the house that secures
2 the mortgage;

3 “(ii) the loan-to-value ratio of the
4 mortgage, which shall reflect any secondary
5 liens on the relevant property;

6 “(iii) the terms of the mortgage;

7 “(iv) the creditworthiness of the bor-
8 rower or borrowers; and

9 “(v) whether the mortgage, in the case
10 of a conforming mortgage, was purchased
11 by an enterprise; and

12 “(B) such other matters as the Director de-
13 termines to be appropriate.

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

20 “(4) DEFINITION.—For purposes of this sub-
21 section, the term ‘identifiable form’ means any rep-
22 resentation of information that permits the identity of
23 a borrower to which the information relates to be rea-
24 sonably inferred by either direct or indirect means.”.

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

10 **SEC. 125. REVISION OF HOUSING GOALS.**

11 (a) *HOUSING GOALS.*—*The Housing and Community*
12 *Development Act of 1992 is amended by striking sections*
13 *1331 through 1334 (12 U.S.C. 4561–4) and inserting the*
14 *following new sections:*

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

16 “(a) *IN GENERAL.*—*The Director shall establish, effec-*
17 *tive for the first year that begins after the effective date*
18 *under section 185 of the Federal Housing Finance Reform*
19 *Act of 2005 and each year thereafter, annual housing goals,*
20 *with respect to the mortgage purchases by the enterprises,*
21 *as follows:*

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

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

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

5 “(1) *IN GENERAL.*—*In establishing and imple-*
6 *menting the housing goals under this subpart, the Di-*
7 *rector shall require the enterprises to disclose appro-*
8 *prate information to allow the Director to assess if*
9 *there are any disparities in interest rates charged on*
10 *mortgages to borrowers who are minorities as com-*
11 *pared with borrowers of similar creditworthiness who*
12 *are not minorities, as evidenced in reports pursuant*
13 *to the Home Mortgage Disclosure Act of 1975.*

14 “(2) *REPORT AND REMEDY.*—*Upon a finding by*
15 *the Director, pursuant to the information provided by*
16 *an enterprise in paragraph (1), that a pattern of dis-*
17 *parities in interest rates exists, the Director shall—*

18 “(A) *submit to the Committee on Financial*
19 *Services of the House of Representatives and the*
20 *Committee on Banking, Housing, and Urban Af-*
21 *airs of the Senate a report detailing the dispari-*
22 *ties; and*

23 “(B) *require the enterprise to take such ac-*
24 *tion as the Director deems appropriate pursuant*

1 to this Act to remedy the interest rate disparities
2 identified.

3 “(3) *PROTECTION OF IDENTITY.*—In carrying
4 out this subsection, the Director shall ensure that no
5 information is made public that would reasonably
6 allow identification, directly or indirectly, of an indi-
7 vidual borrower.

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

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

16 “(a) *IN GENERAL.*—The Director shall establish an
17 annual goal for the purchase by each enterprise of conven-
18 tional, conforming, single-family, owner-occupied, purchase
19 money mortgages financing housing for each of the fol-
20 lowing categories of families:

21 “(1) *Low-income families.*

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

23 “(3) *Very low-income families.*

24 “(b) *DETERMINATION OF COMPLIANCE.*—The Director
25 shall determine, for each year that the housing goal under

1 *this section is in effect pursuant to section 1331(a), whether*
2 *each enterprise has complied with the single-family housing*
3 *goal established under this section for such year. An enter-*
4 *prise shall be considered to be in compliance with such a*
5 *goal for a year only if—*

6 “(1) *for each of the types of families described in*
7 *subsection (a), the percentage of the number of con-*
8 *ventional, conforming, single-family, owner-occupied,*
9 *purchase money mortgages purchased by each enter-*
10 *prise in such year that serve such families, meets or*
11 *exceeds*

12 “(2) *the target for the year for such type of fam-*
13 *ily that is established under subsection (c).*

14 “(c) *ANNUAL TARGETS.—*

15 “(1) *IN GENERAL.—Except as provided in para-*
16 *graph (2), for each of the types of families described*
17 *in subsection (a), the target under this subsection for*
18 *a year shall be the average percentage, for the three*
19 *years that most recently precede such year and for*
20 *which information under the Home Mortgage Disclo-*
21 *sure Act of 1975 is publicly available, of the number*
22 *of conventional, conforming, single-family, owner-oc-*
23 *cupied, purchase money mortgages originated in such*
24 *year that serves such type of family, as determined by*

1 *the Director using the information obtained and de-*
2 *termined pursuant to paragraphs (3) and (4).*

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

4 *“(A) IN GENERAL.—The Director may, for*
5 *any year, establish by regulation, for any or all*
6 *of the types of families described in subsection*
7 *(a), percentage targets that are higher than the*
8 *percentages for such year determined pursuant to*
9 *paragraph (1), to reflect expected changes in*
10 *market performance related to such information*
11 *under the Home Mortgage Disclosure Act of*
12 *1975.*

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

16 *“(i) National housing needs.*

17 *“(ii) Economic, housing, and demo-*
18 *graphic conditions.*

19 *“(iii) The performance and effort of the*
20 *enterprises toward achieving the housing*
21 *goals under this section in previous years.*

22 *“(iv) The size of the conventional mort-*
23 *gage market serving each of the types of*
24 *families described in subsection (a) relative*

1 to the size of the overall conventional mort-
2 gage market.

3 “(v) *The need to maintain the sound*
4 *financial condition of the enterprises.*

5 “(3) *HMDA INFORMATION.—The Director shall*
6 *annually obtain information submitted in compliance*
7 *with the Home Mortgage Disclosure Act of 1975 re-*
8 *garding conventional, conforming, single-family,*
9 *owner-occupied, purchase money mortgages originated*
10 *and purchased for the previous year.*

11 “(4) *CONFORMING MORTGAGES.—In determining*
12 *whether a mortgage is a conforming mortgage for*
13 *purposes of this paragraph, the Director shall con-*
14 *sider the original principal balance of the mortgage*
15 *loan to be the principal balance as reported in the in-*
16 *formation referred to in paragraph (3), as rounded to*
17 *the nearest thousand dollars.*

18 “(d) *NOTICE OF DETERMINATION AND ENTERPRISE*
19 *COMMENT.—*

20 “(1) *NOTICE.—Within 30 days of making a de-*
21 *termination under subsection (b) regarding a compli-*
22 *ance of an enterprise for a year with the housing goal*
23 *established under this section and before any public*
24 *disclosure thereof, the Director shall provide notice of*
25 *the determination to the enterprise, which shall in-*

1 *clude an analysis and comparison, by the Director, of*
2 *the performance of the enterprise for the year and the*
3 *targets for the year under subsection (c).*

4 “(2) *COMMENT PERIOD.*—*The Director shall pro-*
5 *vide each enterprise an opportunity to comment on*
6 *the determination during the 30-day period beginning*
7 *upon receipt by the enterprise of the notice.*

8 “(e) *USE OF BORROWER INCOME.*—*In monitoring the*
9 *performance of each enterprise pursuant to the housing*
10 *goals under this section and evaluating such performance*
11 *(for purposes of section 1336), the Director shall consider*
12 *a mortgagor’s income to be such income at the time of origi-*
13 *nation of the mortgage.*

14 **“SEC. 1333. MULTIFAMILY SPECIAL AFFORDABLE GOAL.**

15 “(a) *ESTABLISHMENT.*—

16 “(1) *IN GENERAL.*—*The Director shall establish,*
17 *by regulation, an annual goal for the purchase by*
18 *each enterprise of each of the following types of mort-*
19 *gages on multifamily housing:*

20 “(A) *Mortgages that finance dwelling units*
21 *for very low-income families.*

22 “(B) *Mortgages that finance dwelling units*
23 *assisted by the low-income housing tax credit*
24 *under section 42 of the Internal Revenue Code of*
25 *1986.*

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

11 “(3) *FACTORS.*—*In establishing the goal under*
12 *this section relating to mortgages on multifamily*
13 *housing for an enterprise, the Director shall con-*
14 *sider—*

15 “(A) *national multifamily mortgage credit*
16 *needs;*

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

20 “(C) *the size of the multifamily mortgage*
21 *market;*

22 “(D) *the ability of the enterprise to lead the*
23 *industry in making mortgage credit available,*
24 *especially for underserved markets, such as for*
25 *small multifamily projects of 5 to 50 units, mul-*

1 *tifamily properties in need of rehabilitation, and*
2 *multifamily properties located in rural areas;*
3 *and*

4 *“(E) the need to maintain the sound finan-*
5 *cial condition of the enterprise.*

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

14 *“(1) such bonds are secured by a guarantee of the*
15 *enterprise; or*

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

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

22 *“(1) the income of the prospective or actual ten-*
23 *ants of the property, where such data are available;*
24 *or*

1 “(1) market and economic conditions or the fi-
2 nancial condition of the enterprise require such ac-
3 tion; or

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

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

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

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

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

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

13 (1) in paragraph (26), by striking “60 percent”
14 each place such term appears and inserting “50 per-
15 cent”;

16 (2) by redesignating paragraphs (23) through
17 (26) as paragraphs (27) through (30), respectively;

18 (3) by inserting after paragraph (22) the fol-
19 lowing new paragraph:

20 “(26) *RURAL AREAS.*—The term ‘rural areas’
21 means any areas that are non-metropolitan areas (as
22 such term is defined by the Director of the Office of
23 Management and Budget), including micropolitan
24 areas and tribal trust lands.”.

1 (4) *by redesignating paragraphs (14) through*
2 *(22) as paragraphs (17) through (25), respectively;*
3 *and*

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

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

15 (6) *by redesignating paragraphs (12) and (13)*
16 *as paragraphs (14) and (15), respectively;*

17 (7) *by inserting after paragraph (11) the fol-*
18 *lowing new paragraph:*

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

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

24 “(B) *in the case of rental units, income not*
25 *in excess of 30 percent of the area median in-*

1 *come, with adjustments for smaller and larger*
 2 *families, as determined by the Secretary.”;*

3 *(8) by redesignating paragraphs (8) through (11)*
 4 *as paragraphs (9) through (12), respectively; and*

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

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

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

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

17 **SEC. 126. DUTY TO SERVE UNDERSERVED MARKETS.**

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

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

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

25 *(3) in subsection (a)—*

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

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

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

9 (D) by striking paragraph (5); and

10 (E) by redesignating such subsection as sub-
11 section (b);

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

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

16 “(1) *DUTY.*—In accordance with the purpose of
17 the enterprises under section 301(3) of the Federal
18 National Mortgage Association Charter Act (12
19 U.S.C. 1716) and section 301(b)(3) of the Federal
20 Home Loan Mortgage Corporation Act (12 U.S.C.
21 1451 note) to undertake activities relating to mort-
22 gages on housing for very low-, low-, and moderate-
23 income families involving a reasonable economic re-
24 turn that may be less than the return earned on other
25 activities, each enterprise shall have the duty to in-

1 crease the liquidity of mortgage investments and im-
2 prove the distribution of investment capital available
3 for mortgage financing for underserved markets.

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

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

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

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

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

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

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

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

11 “(vi) the rural rental housing program
12 under section 515 of the Housing Act of
13 1949.

14 “(C) *RURAL AND OTHER UNDERSERVED*
15 *MARKETS.*—*The enterprise shall lead the indus-*
16 *try in developing loan products and flexible un-*
17 *derwriting guidelines to facilitate a secondary*
18 *market for mortgages on housing for very low-,*
19 *low-, and moderate-income families in rural*
20 *areas, and for mortgages for housing for any*
21 *other underserved market for very low-, low-, and*
22 *moderate-income families that the Secretary*
23 *identifies as lacking adequate credit through con-*
24 *ventional lending sources. Such underserved*

1 *markets may be identified by borrower type,*
2 *market segment, or geographic area.”; and*

3 *(5) by adding at the end the following new sub-*
4 *section:*

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

6 “*(1) IN GENERAL.—Not later than 6 months*
7 *after the effective date under section 185 of the Fed-*
8 *eral Housing Finance Reform Act of 2005, the Direc-*
9 *tor shall establish a manner for evaluating whether,*
10 *and the extent to which, the enterprises have complied*
11 *with the duty under subsection (a) to serve under-*
12 *served markets and for rating the extent of such com-*
13 *pliance. Using such method, the Director shall, for*
14 *each year, evaluate such compliance and rate the per-*
15 *formance of each enterprise as to extent of compli-*
16 *ance. The Director shall include such evaluation and*
17 *rating for each enterprise for a year in the report for*
18 *that year submitted pursuant to section 1319B(a).*

19 “*(2) SEPARATE EVALUATIONS.—In determining*
20 *whether an enterprise has complied with the duty re-*
21 *ferred to in paragraph (1), the Director shall sepa-*
22 *rately evaluate whether the enterprise has complied*
23 *with such duty with respect to each of the underserved*
24 *markets identified in subsection (a), taking into con-*
25 *sideration—*

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

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

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

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

10 (1) in paragraph (1), by inserting “and with the
11 duty under section 1335A of each enterprise with re-
12 spect to underserved markets,” before “as provided in
13 this section,”; and

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

17 “(4) *ENFORCEMENT OF DUTY TO PROVIDE MORT-*
18 *GAGE CREDIT TO UNDERSERVED MARKETS*.—The duty
19 under section 1335(a) of each enterprise to serve un-
20 derserved markets (as determined in accordance with
21 section 1335(c)) shall be enforceable under this section
22 to the same extent and under the same provisions that
23 the housing goals established under sections 1332,
24 1333, and 1334 are enforceable. Such duty shall not
25 be enforceable under any other provision of this title

1 *(including subpart C of this part) other than this sec-*
2 *tion or under any provision of the Federal National*
3 *Mortgage Association Charter Act or the Federal*
4 *Home Loan Mortgage Corporation Act.”.*

5 **SEC. 127. MONITORING AND ENFORCING COMPLIANCE**
6 **WITH HOUSING GOALS.**

7 *Section 1336 of the Housing and Community Develop-*
8 *ment Act of 1992 (12 U.S.C. 4566) is amended—*

9 *(1) in subsection (b)—*

10 *(A) in the subsection heading, by inserting*
11 *“Preliminary” before “Determination”;*

12 *(B) by striking paragraph (1) and inserting*
13 *the following new paragraph:*

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

22 *(C) in paragraph (2)—*

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

1 (ii) by striking subparagraphs (B) and
2 (C) and inserting the following new sub-
3 paragraph:

4 “(B) *EXTENSION OR SHORTENING OF PE-*
5 *RIOD.*—*The Director may—*

6 “(i) extend the period under subpara-
7 graph (A) for good cause for not more than
8 30 additional days; and

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

11 (iii) by redesignating subparagraph
12 (D) as subparagraph (C); and
13 (D) in paragraph (3)—

14 (i) in subparagraph (A), by striking
15 “determine” and inserting “issue a final de-
16 termination of”;

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

19 (iii) in subparagraph (C)—

20 (I) by striking “Committee on
21 Banking, Finance and Urban Affairs”
22 and inserting “Committee on Finan-
23 cial Services”; and

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

4 (2) in subsection (c)—

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

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

10 “(1) REQUIREMENT.—If the Director finds, pur-
11 suant to subsection (b), that there is a substantial
12 probability that an enterprise will fail, or has actu-
13 ally failed, to meet any housing goal under this sub-
14 part and that the achievement of the housing goal was
15 or is feasible, the Director may require that the enter-
16 prise submit a housing plan under this subsection. If
17 the Director makes such a finding and the enterprise
18 refuses to submit such a plan, submits an unaccept-
19 able plan, fails to comply with the plan or the Direc-
20 tor finds that the enterprise has failed to meet any
21 housing goal under this subpart, in addition to re-
22 quiring an enterprise to submit a housing plan, the
23 Director may issue a cease and desist order in accord-
24 ance with section 1341, impose civil money penalties
25 in accordance with section 1345, or order other rem-

1 *edies as set forth in paragraph (7) of this sub-*
2 *section.”;*

3 *(B) in paragraph (2)—*

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

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

11 *(C) in paragraph (3)—*

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

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

17 *(D) in paragraph (4), by striking the first*
18 *two sentences and inserting the following: “The*
19 *Director shall review each submission by an en-*
20 *terprise, including a housing plan submitted*
21 *under this subsection, and not later than 30 days*
22 *after submission, approve or disapprove the plan*
23 *or other action. The Director may extend the pe-*
24 *riod for approval or disapproval for a single ad-*

1 *ditional 30-day period if the Director determines*
2 *such extension necessary.”; and*

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

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

17 **SEC. 128. AFFORDABLE HOUSING FUND.**

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

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

23 *“(a) ESTABLISHMENT AND PURPOSE.—Each enter-*
24 *prise shall establish and manage an affordable housing fund*

1 *in accordance with this section. The purpose of the afford-*
2 *able housing fund shall be—*

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

5 “(2) *to increase investment in housing in low-in-*
6 *come areas, and areas designated as qualified census*
7 *tracts or an area of chronic economic distress pursu-*
8 *ant to section 143(j) of the Internal Revenue Code of*
9 *1986 (26 U.S.C. 143(j));*

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

13 “(4) *to increase investment in economic and*
14 *community development in economically underserved*
15 *areas.*

16 “(b) *ALLOCATION OF AMOUNTS BY ENTERPRISES.—*

17 “(1) *IN GENERAL.—In accordance with regula-*
18 *tions issued by the Director under subsection (l) and*
19 *subject to paragraph (2) of this subsection, each enter-*
20 *prise shall allocate to the affordable housing fund es-*
21 *tablished under subsection (a) by the enterprise, in*
22 *each year beginning after the effective date under sec-*
23 *tion 185 of the Federal Housing Finance Reform Act*
24 *of 2005, 5 percent of the after-tax income of the enter-*
25 *prise for the preceding year.*

1 “(2) *LIMITATION.*—*An enterprise shall not be re-*
2 *quired to make an allocation for a year to the afford-*
3 *able housing fund of the enterprise established under*
4 *subsection (a) unless—*

5 “(A) *the enterprise is classified by the Di-*
6 *rector at the time of such allocation as ade-*
7 *quately capitalized; and*

8 “(B) *the enterprise generated after-tax in-*
9 *come for the preceding year.*

10 “(3) *DETERMINATION OF AFTER-TAX INCOME.*—
11 *For purposes of this section, the term ‘after-tax in-*
12 *come’ means, with respect to an enterprise for a year,*
13 *the amount reported by the enterprise for such year*
14 *in the enterprise’s annual report for such year that*
15 *is filed with the Securities and Exchange Commis-*
16 *sion, except that for any year in which no such filing*
17 *is made by an enterprise or such filing is not timely*
18 *made, such term means the amount determined by the*
19 *Director based on the income tax return filings of the*
20 *enterprise.*

21 “(c) *SELECTION OF ACTIVITIES FUNDED USING AF-*
22 *FORDABLE HOUSING FUND AMOUNTS.*—*Amounts from the*
23 *affordable housing fund of the enterprise may be used, or*
24 *committed for use, only for activities that—*

1 “(1) are eligible under subsection (d) for such
2 use; and

3 “(2) are selected for funding by the enterprise in
4 accordance with the process and criteria for such se-
5 lection established pursuant to subsection (l)(2)(C).

6 “(d) *ELIGIBLE ACTIVITIES*.—Amounts from the afford-
7 able housing fund of an enterprise shall be eligible for use,
8 or for commitment for use, only for assistance for—

9 “(1) the production, preservation, and rehabili-
10 tation of rental housing, including housing under the
11 programs identified in section 1335(a)(2)(B), except
12 that amounts provided from the Fund may be used
13 for the benefit only of extremely low- and very low-
14 income families;

15 “(2) the production, preservation, and rehabili-
16 tation of housing for homeownership, including such
17 forms as downpayment assistance, closing cost assist-
18 ance, and assistance for interest-rate buy-downs,
19 that—

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

23 “(i) extremely low- and very-low in-
24 come families at the times described in sub-
25 paragraphs (A) through (C) of section

1 *215(b)(2) of the Cranston-Gonzalez National*
2 *Affordable Housing Act (42 U.S.C.*
3 *12745(b)(2)); and*

4 *“(i) first-time homebuyers, as such*
5 *term is defined in section 104 of the Cran-*
6 *ston-Gonzalez National Affordable Housing*
7 *Act (42 U.S.C. 12704), except that any ref-*
8 *erence in such section to assistance under*
9 *title II of such Act shall for purposes of this*
10 *section be considered to refer to assistance*
11 *from the affordable housing fund of the en-*
12 *terprise;*

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

17 *“(C) is subject to the same resale restric-*
18 *tions established under section 215(b)(3) of the*
19 *Cranston-Gonzalez National Affordable Housing*
20 *Act and applicable to the participating jurisdic-*
21 *tion that is the State in which such housing is*
22 *located; and*

23 *“(3) leveraged grants under subsection (e).*

24 *“(e) LEVERAGED GRANTS.—*

1 “(1) *IN GENERAL.*—Pursuant to regulations
2 issued by the Director, each enterprise shall carry out
3 a program under this subsection to make leveraged
4 grants from amounts in the affordable housing fund
5 of the enterprise, subject to the requirements under
6 this subsection.

7 “(2) *ELIGIBLE PURPOSES.*—Amounts from the
8 affordable housing fund of an enterprise may be used
9 only for leveraged grants under paragraph (4) for—

10 “(A) the development, preservation, reha-
11 bilitation, or purchase of affordable housing that
12 meets underserved needs for affordable housing;

13 “(B) community or economic development
14 activities in economically underserved areas; or

15 “(C) a combination of the activities identi-
16 fied in subparagraphs (A) and (B).

17 “(3) *ELIGIBLE SPONSORS.*—A leveraged grant
18 under this subsection may be made only on behalf of
19 a sponsor that meets such requirements as the Direc-
20 tor shall establish for experience and success in car-
21 rying out the types of activities proposed under the
22 application of the sponsor, such as the following enti-
23 ties:

24 “(A) A low-income housing fund.

1 “(B) *A housing finance agency of a State or*
2 *unit of general local government.*

3 “(C) *A non-profit organization having as*
4 *one of its principal purposes the development or*
5 *management of affordable housing.*

6 “(D) *A community development financial*
7 *institution.*

8 “(E) *A national non-profit housing inter-*
9 *mediary.*

10 “(F) *A community development corpora-*
11 *tion.*

12 “(G) *A community development entity.*

13 “(4) *ELIGIBLE USES.—Amounts from the afford-*
14 *able housing fund of an enterprise may be used under*
15 *this subsection only for the following types of lever-*
16 *aged grants:*

17 “(A) *To provide loan loss reserves.*

18 “(B) *To capitalize a revolving loan fund.*

19 “(C) *To provide equity capitalization of an*
20 *affordable housing fund.*

21 “(D) *To provide equity capitalization of a*
22 *community development or economic develop-*
23 *ment fund.*

24 “(E) *For risk sharing loans.*

1 “(F) For the funding of a specific, detailed
2 investment plan that identifies the specific types
3 of uses and the expected timeframes with respect
4 to such uses.

5 “(5) APPLICATIONS.—The Director shall provide,
6 in the application process established pursuant to
7 subsection (l)(2)(C), for eligible sponsors under para-
8 graph (3) of this subsection to submit applications to
9 an enterprise for leveraged grants pursuant to this
10 subsection, which shall include a detailed description
11 of—

12 “(A) the types of affordable housing or com-
13 munity or economic development activities for
14 which the leveraged grant is made;

15 “(B) the type of eligible leveraged grants
16 under paragraph (4) to be made in the project;

17 “(C) the types, sources, and amounts of
18 other funding for the project;

19 “(D) and the expected time frame of the le-
20 veraged grant under this subsection.

21 “(6) LIMITATIONS.—The Director shall by regu-
22 lation—

23 “(A) ensure that leveraged grants pursuant
24 to this subsection are designed to alleviate need
25 for affordable housing in underserved markets

1 *identified in section 1335(a) having the greatest*
2 *need for such housing or to address community*
3 *and economic development needs in economically*
4 *underserved areas having the greatest need; and*

5 *“(B) ensure that any returns from leveraged*
6 *grants under this subsection accrue to the afford-*
7 *able housing fund of the enterprise and are*
8 *available for use only as provided under this sec-*
9 *tion.*

10 “(f) *LIMITATIONS ON USE.—*

11 *“(1) AMOUNTS FOR HOMEOWNERSHIP.—Of any*
12 *amounts allocated pursuant to subsection (b) in each*
13 *year to the affordable housing fund of an enterprise,*
14 *not less than 10 percent shall be used for activities*
15 *under paragraph (2) of subsection (d).*

16 *“(2) AMOUNTS FOR LEVERAGED GRANTS.—Of*
17 *any amounts allocated pursuant to subsection (b) in*
18 *each year to the affordable housing fund of an enter-*
19 *prise, not more than 12.5 percent shall be used for le-*
20 *veraged grants under subsection (e).*

21 *“(3) DEADLINE FOR COMMITMENT OR USE.—Any*
22 *amounts allocated to the affordable housing fund of*
23 *an enterprise shall be used or committed for use with-*
24 *in two years of the date of such allocation.*

1 “(4) *USE OF RETURNS.*—Any return on invest-
2 ment of any amounts allocated pursuant to subsection
3 (b) to the affordable housing fund of an enterprise
4 shall be available for use by the enterprise only for el-
5 igible activities under subsection (d).

6 “(5) *ADMINISTRATIVE COSTS.*—The Director
7 shall, by regulation—

8 “(A) provide that, except as provided in
9 subparagraph (B), amounts allocated to the af-
10 fordable housing fund of an enterprise may not
11 be used for administrative, outreach, or other
12 costs of—

13 “(i) the enterprise; or

14 “(ii) any recipient of amounts from
15 the affordable housing fund; and

16 “(B) limit the amount of any such con-
17 tributions that may be used for administrative
18 costs of the enterprise of maintaining the afford-
19 able housing fund and carrying out the program
20 under this section.

21 “(6) *PROHIBITION OF CONSIDERATION OF USE*
22 *FOR MEETING HOUSING GOALS.*—In determining com-
23 pliance with the housing goals under this subpart, the
24 Director may not consider amounts used under this
25 section for eligible activities under subsection (d). The

1 *Director shall give credit toward the achievement of*
2 *such housing goals to purchases of mortgages for hous-*
3 *ing that receives funding under this section, but only*
4 *to the extent that such purchases are funded other*
5 *than under this section.*

6 “(7) *PROHIBITION OF CERTAIN SUBGRANTS.—*
7 *The Director shall, by regulation, ensure that*
8 *amounts from the affordable housing fund of an enter-*
9 *prise awarded under this section to a national non-*
10 *profit housing intermediary are not used for the pur-*
11 *pose of distributing subgrants to other non-profit enti-*
12 *ties.*

13 “(g) *CONSISTENCY OF USE WITH HOUSING NEEDS.—*

14 “(1) *QUARTERLY REPORTS.—The Director shall*
15 *require each enterprise to submit a report, on a quar-*
16 *terly basis, to the Director and the affordable housing*
17 *board established under subsection (j) describing the*
18 *activities funded under this section during such quar-*
19 *ter with amounts from the affordable housing fund of*
20 *the enterprise established under this section. The Di-*
21 *rector shall make such reports publicly available. The*
22 *affordable housing board shall review each report by*
23 *an enterprise to determine the consistency of such ac-*
24 *tivities funded with the criteria for selection of such*
25 *activities established pursuant to subsection (l)(2)(C).*

1 “(2) *REPLENISHMENT.*—If the affordable housing
2 board determines that an activity funded by an enter-
3 prise with amounts from the affordable housing fund
4 of the enterprise is not consistent with the criteria es-
5 tablished pursuant to subsection (l)(2)(C), the board
6 shall notify the Director and the Director shall re-
7 quire the enterprise to allocate to such affordable
8 housing fund (in addition to amounts allocated in
9 compliance with subsection (b)) an amount equal to
10 the sum of the amounts from the affordable housing
11 fund used and further committed for use for such ac-
12 tivity.

13 “(h) *CAPITAL REQUIREMENTS.*—The utilization or
14 commitment of amounts from the affordable housing fund
15 of an enterprise shall not be subject to the risk-based capital
16 requirements established pursuant to section 1361(a).

17 “(i) *REPORTING REQUIREMENT.*—Each enterprise
18 shall include, in the report required under section 309(m)
19 of the Federal National Mortgage Association Charter Act
20 or section 307(f) of the Federal Home Loan Mortgage Cor-
21 poration Act, as applicable, a description of the actions
22 taken by the enterprise to utilize or commit amounts allo-
23 cated under this section to the affordable housing fund of
24 the enterprise established under this section.

25 “(j) *AFFORDABLE HOUSING BOARD.*—

1 “(1) *APPOINTMENT.*—*The Director shall appoint*
2 *an affordable housing board of 7, 9, or 11 persons,*
3 *who shall include—*

4 “(A) *the Director, or the Director’s designee;*

5 “(B) *the Secretary of Housing and Urban*
6 *Development, or the Secretary’s designee;*

7 “(C) *the Secretary of Agriculture, or the*
8 *Secretary’s designee;*

9 “(D) *2 persons from for-profit organizations*
10 *or businesses actively involved in providing or*
11 *promoting affordable housing for extremely low-*
12 *and very low-income households; and*

13 “(E) *2 persons from nonprofit organiza-*
14 *tions actively involved in providing or pro-*
15 *moting affordable housing for extremely low- and*
16 *very low-income households.*

17 “(2) *TERMS.*—

18 “(A) *IN GENERAL.*—*Except as provided in*
19 *subparagraph (B), the term of each member of*
20 *the affordable housing board appointed pursuant*
21 *to paragraph (1) (but not including members*
22 *appointed pursuant to subparagraphs (A), (B),*
23 *and (C)) shall be 3 years.*

24 “(B) *INITIAL APPOINTEES.*—*The Director*
25 *shall appoint the initial members of the afford-*

1 *able housing board not later than the expiration*
2 *of the 60-day period beginning on the date of the*
3 *enactment of this Act. As designated by the Di-*
4 *rector at the time of appointment, of the mem-*
5 *bers of the affordable housing board first ap-*
6 *pointed pursuant to paragraph (1) (but not in-*
7 *cluding members appointed pursuant to sub-*
8 *paragraphs (A), (B), and (C))—*

9 *“(i) in the case of a board having 7*
10 *members—*

11 *“(I) one shall be appointed for a*
12 *term of one year; and*

13 *“(II) one shall be appointed for a*
14 *term of two years;*

15 *“(ii) in the case of a board having 9*
16 *members—*

17 *“(I) two shall be appointed for a*
18 *term of one year; and*

19 *“(II) two shall be appointed for a*
20 *term of two years; and*

21 *“(iii) in the case of a board having 11*
22 *members—*

23 *“(I) two shall be appointed for a*
24 *term of one year; and*

1 “(II) three shall be appointed for
2 a term of two years;

3 “(3) DUTIES.—The affordable housing board
4 shall meet not less than quarterly—

5 “(A) to determine extremely low- and very
6 low-income housing needs;

7 “(B) to advise the Director with respect
8 to—

9 “(i) establishment of the selection cri-
10 teria under subsection (l)(2)(C) that provide
11 for appropriate use of amounts from the af-
12 fordable housing funds of the enterprises to
13 meet such needs; and

14 “(ii) operation of, and changes to, the
15 program under this section appropriate to
16 meet such needs; and

17 “(C) to review the reports submitted by the
18 enterprises pursuant to subsection (g)(1) to de-
19 termine whether the activities funded using
20 amounts from the affordable housing funds of the
21 enterprises comply with the regulations issued
22 pursuant to subsection (l)(2)(C) and inform the
23 Director of such determinations, for purposes of
24 subsection (g)(2).

1 “(4) *EXPENSES AND PER DIEM.*—Members of the
2 board shall receive travel expenses, including per
3 diem in lieu of subsistence, in accordance with sec-
4 tions 5702 and 5703 of title 5, United States Code.

5 “(5) *ADVISORY COMMITTEE.*—The board shall be
6 considered an advisory committee for purposes of the
7 Federal Advisory Committee Act (5 U.S.C. App.).

8 “(6) *DURATION.*— The board shall have contin-
9 ued existence until terminated by law.

10 “(k) *DEFINITION.*—For purposes of this section, the
11 term ‘economically underserved area’ means an area that
12 predominantly includes census tracts for which—

13 “(1) at least 20 percent of the population is
14 below the poverty line (as such term is defined in sec-
15 tion 673(2) of the Omnibus Budget Reconciliation Act
16 of 1981 (42 U.S.C. 9902(2)), including any revision
17 required by such section), applicable to a family of
18 the size involved; or

19 “(2) median family income does not exceed the
20 greater of—

21 “(A) 80 percent of the median family in-
22 come for the metropolitan statistical area in
23 which such census tracts are located; or

1 “(B) 80 percent of the median family in-
2 come for the State in which such census tracts
3 are located.

4 “(l) REGULATIONS.—

5 “(1) IN GENERAL.—The Director shall issue reg-
6 ulations to carry out this section.

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

9 “(A) authority for the Director to audit,
10 provide for an audit, or otherwise verify an en-
11 terprise’s activities, to ensure compliance with
12 this section;

13 “(B) a requirement that the Director ensure
14 that the affordable housing fund of each enter-
15 prise is audited not less than annually to ensure
16 compliance with this section;

17 “(C) requirements for a process for applica-
18 tion to, and selection by, an enterprise for activi-
19 ties to be funded with amounts from the afford-
20 able housing fund, which shall provide that—

21 “(i) selection shall based upon specific
22 criteria, including a prioritization of fund-
23 ing based upon—

24 “(I) greatest impact;

25 “(II) geographic diversity;

1 “(III) ability to obligate amounts
2 and undertake activities so funded in a
3 timely manner;

4 “(IV) in the case of rental housing
5 projects under subsection (d)(1), the ex-
6 tent to which rents for units in the
7 project funded are affordable, especially
8 for extremely low-income families; and

9 “(V) in the case of rental housing
10 projects under subsection (d)(1), the ex-
11 tent of the duration for which such
12 rents will remain affordable; and

13 “(ii) an enterprise may not require for
14 such selection that an activity involve fi-
15 nancing or underwriting of any kind by the
16 enterprise (other than funding through the
17 affordable housing fund of the enterprise)
18 and may not give preference in such selec-
19 tion to activities that involve such financ-
20 ing; and

21 “(D) requirements to ensure that amounts
22 from the affordable housing funds of the enter-
23 prises used for rental housing under subsection
24 (d)(1) are used only for the benefit of extremely
25 low- and very-low income families.

1 “(3) *LIMITATION.*—Any regulations issued by the
2 *Director pursuant to this section shall be no more re-*
3 *strictive on the enterprises’ activities in connection*
4 *with the allocation of after-tax income under this sec-*
5 *tion than the regulations issued to implement the af-*
6 *fordable housing program of the Federal home loan*
7 *banks pursuant to section 10(j) of the Federal Home*
8 *Loan Bank Act (12 U.S.C. 1430(j)).”.*

9 **(b) CONTRIBUTIONS FOR 2006.**—

10 **(1) RESERVATION AND CONTRIBUTION.**—In 2006,
11 *each enterprise (as such term is defined in section*
12 *1303 of the Housing and Community Development*
13 *Act of 1992) shall reserve for contribution to the af-*
14 *fordable housing fund to be established by the enter-*
15 *prise pursuant to section 1337 of such Act (as amend-*
16 *ed by subsection (a) of this section), an amount equal*
17 *to 3.5 percent of the after-tax income of the enterprise*
18 *for 2005. Upon the establishment of such affordable*
19 *housing fund, each enterprise shall allocate to such*
20 *fund the amounts reserved under this subsection by*
21 *the enterprise.*

22 **(2) EXCEPTION TO DEADLINE FOR COMMIT-**
23 **MENT.**—Section 1337(e)(2) of the *Housing and Com-*
24 *munity Development Act of 1992 (as amended by sub-*
25 *section (a) of this section) shall not apply to amounts*

1 *allocated to the affordable housing fund of an enter-*
2 *prise pursuant to paragraph (1).*

3 (3) *AFTER-TAX INCOME.*—*For purposes of this*
4 *subsection, the term “after-tax income” has the mean-*
5 *ing provided in subsection (b)(3) of the new section*
6 *1337 to be inserted by the amendment made by sub-*
7 *section (a) of this section.*

8 (4) *EFFECTIVE DATE.*—*This subsection shall take*
9 *effect on the date of the enactment of this Act.*

10 **SEC. 129. CONSISTENCY WITH MISSION.**

11 *Subpart B of part 2 of subtitle A of title XIII of the*
12 *Housing and Community Development Act of 1992 (12*
13 *U.S.C. 4561 et seq.) is amended by adding after section*
14 *1337, as added by section 127 of this Act, the following new*
15 *section:*

16 **“SEC. 1338. CONSISTENCY WITH MISSION.**

17 *“This subpart may not be construed to authorize an*
18 *enterprise to engage in any program or activity that con-*
19 *travenes or is inconsistent with the Federal National Mort-*
20 *gage Association Charter Act or the Federal Home Loan*
21 *Mortgage Corporation Act.”.*

22 **SEC. 130. ENFORCEMENT.**

23 (a) *CEASE-AND-DESIST PROCEEDINGS.*—*Section 1341*
24 *of the Housing and Community Development Act of 1992*
25 *(12 U.S.C. 4581) is amended—*

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

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

6 “(1) *the enterprise has failed to meet any hous-*
7 *ing goal established under subpart B, following a*
8 *written notice and determination of such failure in*
9 *accordance with section 1336;*

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

14 “(3) *the enterprise has failed to submit the infor-*
15 *mation required under subsection (m) or (n) of sec-*
16 *tion 309 of the Federal National Mortgage Association*
17 *Charter Act, or subsection (e) or (f) of section 307 of*
18 *the Federal Home Loan Mortgage Corporation Act;*

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

22 “(5) *the enterprise has failed to submit a hous-*
23 *ing plan that complies with section 1336(c) within*
24 *the applicable period; or*

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

3 (2) in subsection (b)(2), by striking “requiring
4 the enterprise to” and all that follows through the end
5 of the paragraph and inserting the following: “requir-
6 ing the enterprise to—

7 “(A) comply with the goal or goals;

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

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

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

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

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

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

23 (4) by striking subsection (d).

24 (b) *AUTHORITY OF DIRECTOR TO ENFORCE NOTICES*
25 *AND ORDERS.—Section 1344 of the Housing and Commu-*

1 *nity Development Act of 1992 (12 U.S.C. 4584) is amended*
2 *by striking subsection (a) and inserting the following new*
3 *subsection:*

4 “(a) *ENFORCEMENT.*—*The Director may, in the dis-*
5 *cretion of the Director, apply to the United States District*
6 *Court for the District of Columbia, or the United States*
7 *district court within the jurisdiction of which the head-*
8 *quarters of the enterprise is located, for the enforcement of*
9 *any effective and outstanding notice or order issued under*
10 *section 1341 or 1345, or request that the Attorney General*
11 *of the United States bring such an action. Such court shall*
12 *have jurisdiction and power to order and require compli-*
13 *ance with such notice or order.”.*

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

17 (1) *by striking subsections (a) and (b) and in-*
18 *serting the following new subsections:*

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

22 “(1) *meet any housing goal established under*
23 *subpart B, following a written notice and determina-*
24 *tion of such failure in accordance with section*
25 *1336(b);*

1 “(2) submit a report under section 1314, fol-
2 lowing a notice of such failure, an opportunity for
3 comment by the enterprise, and a final determination
4 by the Director;

5 “(3) submit the information required under sub-
6 section (m) or (n) of section 309 of the Federal Na-
7 tional Mortgage Association Charter Act, or sub-
8 section (e) or (f) of section 307 of the Federal Home
9 Loan Mortgage Corporation Act;

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

12 “(5) submit a housing plan pursuant to section
13 1336(c) within the required period; or

14 “(6) comply with a housing plan for the enter-
15 prise under section 1336(c).

16 “(b) AMOUNT OF PENALTY.—The amount of the pen-
17 alty, as determined by the Director, may not exceed—

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

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

24 (2) in subsection (c)—

25 (A) in paragraph (1)—

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

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

5 (iii) by striking subparagraph (C);
6 and

7 (B) in paragraph (2), by inserting after the
8 period at the end the following: “In determining
9 the penalty under subsection (a)(1), the Director
10 shall give consideration to the length of time the
11 enterprise should reasonably take to achieve the
12 goal.”;

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

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

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

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

21 (5) by redesignating subsection (g) as subsection
22 (f).

23 (d) *ENFORCEMENT OF SUBPOENAS.*—Section 1348(c)
24 of the Housing and Community Development Act of 1992
25 (12 U.S.C. 4588(c)) is amended—

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

2 ***Subtitle C—Prompt Corrective***
3 ***Action***

4 ***SEC. 141. CAPITAL CLASSIFICATIONS.***

5 (a) *IN GENERAL.*—Section 1364 of the Housing and
6 Community Development Act of 1992 (12 U.S.C. 4614) is
7 amended—

8 (1) in the heading for subsection (a) by striking
9 “*In General*” and inserting “*Enterprises*”;

10 (2) in subsection (c)—

11 (A) by striking “*subsection (b)*” and insert-
12 ing “*subsection (c)*”;

13 (B) by striking “*enterprises*” and inserting
14 “*regulated entities*”; and

15 (C) by striking the last sentence;

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

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

21 “(b) *FEDERAL HOME LOAN BANKS.*—

22 “(1) *ESTABLISHMENT AND CRITERIA.*—For pur-
23 poses of this subtitle, the Director shall, by regula-
24 tion—

1 “(A) establish the capital classifications
2 specified under paragraph (2) for the Federal
3 home loan banks;

4 “(B) establish criteria for each such capital
5 classification based on the amount and types of
6 capital held by a bank and the risk-based, min-
7 imum, and critical capital levels for the banks
8 and taking due consideration of the capital clas-
9 sifications established under subsection (a) for
10 the enterprises, with such modifications as the
11 Director determines to be appropriate to reflect
12 the difference in operations between the banks
13 and the enterprises; and

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

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

18 “(A) adequately capitalized;

19 “(B) undercapitalized;

20 “(C) significantly undercapitalized; and

21 “(D) critically undercapitalized.

22 “(c) DISCRETIONARY CLASSIFICATION.—

23 “(1) GROUNDS FOR RECLASSIFICATION.—The
24 Director may reclassify a regulated entity under
25 paragraph (2) if—

1 “(A) at any time, the Director determines
2 in writing that the regulated entity is engaging
3 in conduct that could result in a rapid depletion
4 of core or total capital or, in the case of an en-
5 terprise, that the value of the property subject to
6 mortgages held or securitized by the enterprise
7 has decreased significantly;

8 “(B) after notice and an opportunity for
9 hearing, the Director determines that the regu-
10 lated entity is in an unsafe or unsound condi-
11 tion; or

12 “(C) pursuant to section 1371(b), the Direc-
13 tor deems the regulated entity to be engaging in
14 an unsafe or unsound practice.

15 “(2) RECLASSIFICATION.—In addition to any
16 other action authorized under this title, including the
17 reclassification of a regulated entity for any reason
18 not specified in this subsection, if the Director takes
19 any action described in paragraph (1) the Director
20 may classify a regulated entity—

21 “(A) as undercapitalized, if the regulated
22 entity is otherwise classified as adequately cap-
23 italized;

1 “(B) as significantly undercapitalized, if
2 the regulated entity is otherwise classified as
3 undercapitalized; and

4 “(C) as critically undercapitalized, if the
5 regulated entity is otherwise classified as signifi-
6 cantly undercapitalized.”; and

7 (5) by inserting after subsection (d) (as so redesi-
8 gnated by paragraph (3) of this subsection), the fol-
9 lowing new subsection:

10 “(e) *RESTRICTION ON CAPITAL DISTRIBUTIONS.*—

11 “(1) *IN GENERAL.*—A regulated entity shall
12 make no capital distribution if, after making the dis-
13 tribution, the regulated entity would be undercapital-
14 ized.

15 “(2) *EXCEPTION.*—Notwithstanding paragraph
16 (1), the Director may permit a regulated entity, to
17 the extent appropriate or applicable, to repurchase,
18 redeem, retire, or otherwise acquire shares or owner-
19 ship interests if the repurchase, redemption, retire-
20 ment, or other acquisition—

21 “(A) is made in connection with the
22 issuance of additional shares or obligations of the
23 regulated entity in at least an equivalent
24 amount; and

1 “(B) will reduce the financial obligations of
2 the regulated entity or otherwise improve the fi-
3 nancial condition of the entity.”.

4 (b) *REGULATIONS*.—Not later than the expiration of
5 the 180-day period beginning on the effective date under
6 section 185, the Director of the Federal Housing Finance
7 Agency shall issue regulations to carry out section 1364(b)
8 of the Housing and Community Development Act of 1992
9 (as added by paragraph (4) of this subsection), relating to
10 capital classifications for the Federal home loan banks.

11 **SEC. 142. SUPERVISORY ACTIONS APPLICABLE TO UNDER-**
12 **CAPITALIZED REGULATED ENTITIES.**

13 Section 1365 of the Housing and Community Develop-
14 ment Act of 1992 (12 U.S.C. 4615) is amended—

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

17 (2) in subsection (a)—

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

20 (B) by inserting before paragraph (2) the
21 following paragraph:

22 “(1) *REQUIRED MONITORING*.—The Director
23 shall—

1 “(A) closely monitor the condition of any
2 regulated entity that is classified as under-
3 capitalized;

4 “(B) closely monitor compliance with the
5 capital restoration plan, restrictions, and re-
6 quirements imposed under this section; and

7 “(C) periodically review the plan, restric-
8 tions, and requirements applicable to the under-
9 capitalized regulated entity to determine whether
10 the plan, restrictions, and requirements are
11 achieving the purpose of this section.”; and

12 (C) by inserting at the end the following
13 new paragraphs:

14 “(4) *RESTRICTION OF ASSET GROWTH.*—A regu-
15 lated entity that is classified as undercapitalized shall
16 not permit its average total assets (as such term is de-
17 fined in section 1316(b) during any calendar quarter
18 to exceed its average total assets during the preceding
19 calendar quarter unless—

20 “(A) the Director has accepted the capital
21 restoration plan of the regulated entity;

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

24 “(C) the ratio of total capital to assets for
25 the regulated entity increases during the cal-

1 *endar quarter at a rate sufficient to enable the*
2 *entity to become adequately capitalized within a*
3 *reasonable time.*

4 “(5) *PRIOR APPROVAL OF ACQUISITIONS, NEW*
5 *PROGRAMS, AND NEW BUSINESS ACTIVITIES.—A regu-*
6 *lated entity that is classified as undercapitalized shall*
7 *not, directly or indirectly, acquire any interest in*
8 *any entity or engage in any new program or new*
9 *business activity unless—*

10 “(A) *the Director has accepted the capital*
11 *restoration plan of the regulated entity, the enti-*
12 *ty is implementing the plan, and the Director*
13 *determines that the proposed action is consistent*
14 *with and will further the achievement of the*
15 *plan; or*

16 “(B) *the Director determines that the pro-*
17 *posed action will further the purpose of this sec-*
18 *tion.”;*

19 (3) *in the subsection heading for subsection (b),*
20 *by striking “FROM UNDERCAPITALIZED TO SIGNIFI-*
21 *CANTLY UNDERCAPITALIZED”;* and

22 (4) *by striking subsection (c) and inserting the*
23 *following new subsection:*

24 “(c) *OTHER DISCRETIONARY SAFEGUARDS.—The Di-*
25 *rector may take, with respect to a regulated entity that is*

1 *classified as undercapitalized, any of the actions authorized*
 2 *to be taken under section 1366 with respect to a regulated*
 3 *entity that is classified as significantly undercapitalized,*
 4 *if the Director determines that such actions are necessary*
 5 *to carry out the purpose of this subtitle.”.*

6 **SEC. 143. SUPERVISORY ACTIONS APPLICABLE TO SIGNIFI-**
 7 **CANTLY UNDERCAPITALIZED REGULATED EN-**
 8 **TITIES.**

9 *Section 1366 of the Housing and Community Develop-*
 10 *ment Act of 1992 (12 U.S.C. 4616) is amended—*

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

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

15 *(3) in subsection (b)—*

16 *(A) in the subsection heading, by striking*
 17 *“Discretionary Supervisory Actions” and insert-*
 18 *ing “Specific Actions”;*

19 *(B) in the matter preceding paragraph (1),*
 20 *by striking “may, at any time, take any” and*
 21 *inserting “shall carry out this section by taking,*
 22 *at any time, one or more”;*

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

1 (D) by inserting after paragraph (4) the fol-
2 lowing new paragraph:

3 “(5) *IMPROVEMENT OF MANAGEMENT.*—Take one
4 or more of the following actions:

5 “(A) *NEW ELECTION OF BOARD.*—Order a
6 new election for the board of directors of the reg-
7 ulated entity.

8 “(B) *DISMISSAL OF DIRECTORS OR EXECU-*
9 *TIVE OFFICERS.*—Require the regulated entity to
10 dismiss from office any director or executive offi-
11 cer who had held office for more than 180 days
12 immediately before the entity became under-
13 capitalized. Dismissal under this subparagraph
14 shall not be construed to be a removal pursuant
15 to the Director’s enforcement powers provided in
16 section 1377.

17 “(C) *EMPLOY QUALIFIED EXECUTIVE OFFI-*
18 *CERS.*—Require the regulated entity to employ
19 qualified executive officers (who, if the Director
20 so specifies, shall be subject to approval by the
21 Director).”; and

22 (E) by inserting at the end the following
23 new paragraph:

24 “(8) *OTHER ACTION.*—Require the regulated en-
25 tity to take any other action that the Director deter-

1 *mines will better carry out the purpose of this section*
2 *than any of the actions specified in this paragraph.”;*

3 *(4) by redesignating subsection (c) as subsection*
4 *(d); and*

5 *(5) by inserting after subsection (b) the following*
6 *new subsection:*

7 *“(c) RESTRICTION ON COMPENSATION OF EXECUTIVE*
8 *OFFICERS.—A regulated entity that is classified as signifi-*
9 *cantly undercapitalized may not, without prior written ap-*
10 *proval by the Director—*

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

12 *“(2) provide compensation to any executive offi-*
13 *cer at a rate exceeding that officer’s average rate of*
14 *compensation (excluding bonuses, stock options, and*
15 *profit sharing) during the 12 calendar months pre-*
16 *ceding the calendar month in which the regulated en-*
17 *tity became undercapitalized.”.*

18 **SEC. 144. AUTHORITY OVER CRITICALLY UNDERCAPITAL-**
19 **IZED REGULATED ENTITIES.**

20 *(a) IN GENERAL.—Section 1367 of the Housing and*
21 *Community Development Act of 1992 (12 U.S.C. 4617) is*
22 *amended to read as follows:*

1 **“SEC. 1367. AUTHORITY OVER CRITICALLY UNDERCAPITAL-**
2 **IZED REGULATED ENTITIES.**

3 *“(a) APPOINTMENT OF AGENCY AS CONSERVATOR OR*
4 *RECEIVER.—*

5 *“(1) IN GENERAL.—Notwithstanding any other*
6 *provision of Federal or State law, if any of the*
7 *grounds under paragraph (3) exist, at the discretion*
8 *of the Director, the Director may establish a con-*
9 *servatorship or receivership, as appropriate, for the*
10 *purpose of reorganizing, rehabilitating, or winding*
11 *up the affairs of a regulated entity.*

12 *“(2) APPOINTMENT.—In any conservatorship or*
13 *receivership established under this section, the Direc-*
14 *tor shall appoint the Agency as conservator or re-*
15 *ceiver.*

16 *“(3) GROUNDS FOR APPOINTMENT.—The grounds*
17 *for appointing a conservator or receiver for a regu-*
18 *lated entity are as follows:*

19 *“(A) ASSETS INSUFFICIENT FOR OBLIGA-*
20 *TIONS.—The assets of the regulated entity are*
21 *less than the obligations of the regulated entity*
22 *to its creditors and others.*

23 *“(B) SUBSTANTIAL DISSIPATION.—Substan-*
24 *tial dissipation of assets or earnings due to—*

25 *“(i) any violation of any provision of*
26 *Federal or State law; or*

1 “(ii) *any unsafe or unsound practice.*

2 “(C) *UNSAFE OR UNSOUND CONDITION.—An*
3 *unsafe or unsound condition to transact busi-*
4 *ness.*

5 “(D) *CEASE-AND-DESIST ORDERS.—Any*
6 *willful violation of a cease-and-desist order that*
7 *has become final.*

8 “(E) *CONCEALMENT.—Any concealment of*
9 *the books, papers, records, or assets of the regu-*
10 *lated entity, or any refusal to submit the books,*
11 *papers, records, or affairs of the regulated entity,*
12 *for inspection to any examiner or to any lawful*
13 *agent of the Director.*

14 “(F) *INABILITY TO MEET OBLIGATIONS.—*
15 *The regulated entity is likely to be unable to pay*
16 *its obligations or meet the demands of its credi-*
17 *tors in the normal course of business.*

18 “(G) *LOSSES.—The regulated entity has in-*
19 *curred or is likely to incur losses that will de-*
20 *plete all or substantially all of its capital, and*
21 *there is no reasonable prospect for the regulated*
22 *entity to become adequately capitalized (as de-*
23 *finied in section 1364(a)(1)).*

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

4 “(i) cause insolvency or substantial
5 dissipation of assets or earnings; or

6 “(ii) weaken the condition of the regu-
7 lated entity.

8 “(I) CONSENT.—The regulated entity, by
9 resolution of its board of directors or its share-
10 holders or members, consents to the appointment.

11 “(J) UNDERCAPITALIZATION.—The regu-
12 lated entity is undercapitalized or significantly
13 undercapitalized (as defined in section
14 1364(a)(3) or in regulations issued pursuant to
15 section 1364(b), as applicable), and—

16 “(i) has no reasonable prospect of be-
17 coming adequately capitalized;

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

20 “(I) section 1365(a)(1) with re-
21 spect to an undercapitalized regulated
22 entity; or

23 “(II) section 1366(a)(1) with re-
24 spect to a significantly undercapital-
25 ized regulated entity;

1 “(iii) fails to submit a capital restora-
2 tion plan acceptable to the Agency within
3 the time prescribed under section 1369C; or

4 “(iv) materially fails to implement a
5 capital restoration plan submitted and ac-
6 cepted under section 1369C.

7 “(K) *CRITICAL UNDERCAPITALIZATION.*—
8 *The regulated entity is critically undercapital-*
9 *ized, as defined in section 1364(a)(4) or in regu-*
10 *lations issued pursuant to section 1364(b), as*
11 *applicable.*

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

18 “(4) *JUDICIAL REVIEW.*—

19 “(A) *IN GENERAL.*—*If the Agency is ap-*
20 *pointed conservator or receiver under this sec-*
21 *tion, the regulated entity may, within 30 days of*
22 *such appointment, bring an action in the United*
23 *States District Court for the judicial district in*
24 *which the principal place of business of such reg-*
25 *ulated entity is located, or in the United States*

1 *District Court for the District of Columbia, for*
2 *an order requiring the Agency to remove itself as*
3 *conservator or receiver.*

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

9 “(5) *DIRECTORS NOT LIABLE FOR ACQUIESCING*
10 *IN APPOINTMENT OF CONSERVATOR OR RECEIVER.*—
11 *The members of the board of directors of a regulated*
12 *entity shall not be liable to the shareholders or credi-*
13 *tors of the regulated entity for acquiescing in or con-*
14 *senting in good faith to the appointment of the Agen-*
15 *cy as conservator or receiver for that regulated entity.*

16 “(6) *AGENCY NOT SUBJECT TO ANY OTHER FED-*
17 *ERAL AGENCY.*—*When acting as conservator or re-*
18 *ceiver, the Agency shall not be subject to the direction*
19 *or supervision of any other agency of the United*
20 *States or any State in the exercise of the rights, pow-*
21 *ers, and privileges of the Agency.*

22 “(b) *POWERS AND DUTIES OF THE AGENCY AS CON-*
23 *SERVATOR OR RECEIVER.*—

24 “(1) *RULEMAKING AUTHORITY OF THE AGEN-*
25 *CY.*—*The Agency may prescribe such regulations as*

1 *the Agency determines to be appropriate regarding*
2 *the conduct of conservatorships or receiverships.*

3 “(2) *GENERAL POWERS.—*

4 “(A) *SUCCESSOR TO REGULATED ENTITY.—*

5 *The Agency shall, as conservator or receiver, and*
6 *by operation of law, immediately succeed to—*

7 “(i) *all rights, titles, powers, and*
8 *privileges of the regulated entity, and of*
9 *any stockholder, officer, or director of such*
10 *regulated entity with respect to the regu-*
11 *lated entity and the assets of the regulated*
12 *entity; and*

13 “(ii) *title to the books, records, and as-*
14 *sets of any other legal custodian of such reg-*
15 *ulated entity.*

16 “(B) *OPERATE THE REGULATED ENTITY.—*

17 *The Agency may, as conservator or receiver—*

18 “(i) *take over the assets of and operate*
19 *the regulated entity with all the powers of*
20 *the shareholders, the directors, and the offi-*
21 *cers of the regulated entity and conduct all*
22 *business of the regulated entity;*

23 “(ii) *collect all obligations and money*
24 *due the regulated entity;*

1 “(iii) perform all functions of the regu-
2 lated entity in the name of the regulated en-
3 tity which are consistent with the appoint-
4 ment as conservator or receiver; and

5 “(iv) preserve and conserve the assets
6 and property of such regulated entity.

7 “(C) *FUNCTIONS OF OFFICERS, DIRECTORS,*
8 *AND SHAREHOLDERS OF A REGULATED ENTI-*
9 *TY.—The Agency may, by regulation or order,*
10 *provide for the exercise of any function by any*
11 *stockholder, director, or officer of any regulated*
12 *entity for which the Agency has been named con-*
13 *servator or receiver.*

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

17 “(i) necessary to put the regulated en-
18 tity in a sound and solvent condition; and

19 “(ii) appropriate to carry on the busi-
20 ness of the regulated entity and preserve
21 and conserve the assets and property of the
22 regulated entity.

23 “(E) *ADDITIONAL POWERS AS RECEIVER.—*
24 *The Agency may, as receiver, place the regulated*
25 *entity in liquidation and proceed to realize upon*

1 *the assets of the regulated entity, having due re-*
2 *gard to the conditions of the housing finance*
3 *market.*

4 “(F) ORGANIZATION OF NEW REGULATED
5 ENTITIES.—*The Agency may, as receiver, orga-*
6 *nize a successor regulated entity that will oper-*
7 *ate pursuant to subsection (i).*

8 “(G) TRANSFER OF ASSETS AND LIABIL-
9 ITIES.—*The Agency may, as conservator or re-*
10 *ceiver, transfer any asset or liability of the regu-*
11 *lated entity in default without any approval, as-*
12 *signment, or consent with respect to such trans-*
13 *fer. Any Federal home loan bank may, with the*
14 *approval of the Agency, acquire the assets of any*
15 *Bank in conservatorship or receivership, and as-*
16 *sume the liabilities of such Bank*

17 “(H) PAYMENT OF VALID OBLIGATIONS.—
18 *The Agency, as conservator or receiver, shall, to*
19 *the extent of proceeds realized from the perform-*
20 *ance of contracts or sale of the assets of a regu-*
21 *lated entity, pay all valid obligations of the regu-*
22 *lated entity in accordance with the prescrip-*
23 *tions and limitations of this section.*

24 “(I) SUBPOENA AUTHORITY.—

25 “(i) IN GENERAL.—

1 “(I) *IN GENERAL.*—*The Agency*
2 *may, as conservator or receiver, and*
3 *for purposes of carrying out any*
4 *power, authority, or duty with respect*
5 *to a regulated entity (including deter-*
6 *mining any claim against the regu-*
7 *lated entity and determining and real-*
8 *izing upon any asset of any person in*
9 *the course of collecting money due the*
10 *regulated entity), exercise any power*
11 *established under section 1348.*

12 “(II) *APPLICABILITY OF LAW.*—
13 *The provisions of section 1348 shall*
14 *apply with respect to the exercise of*
15 *any power exercised under this sub-*
16 *paragraph in the same manner as such*
17 *provisions apply under that section.*

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

23 “(iii) *RULE OF CONSTRUCTION.*—*This*
24 *subsection shall not be construed to limit*
25 *any rights that the Agency, in any capac-*

1 *ity, might otherwise have under section*
2 *1317 or 1379D.*

3 “(J) *CONTRACTING FOR SERVICES.—The*
4 *Agency may, as conservator or receiver, provide*
5 *by contract for the carrying out of any of its*
6 *functions, activities, actions, or duties as conser-*
7 *vator or receiver.*

8 “(K) *INCIDENTAL POWERS.—The Agency*
9 *may, as conservator or receiver—*

10 *“(i) exercise all powers and authorities*
11 *specifically granted to conservators or re-*
12 *ceivers, respectively, under this section, and*
13 *such incidental powers as shall be necessary*
14 *to carry out such powers; and*

15 *“(ii) take any action authorized by*
16 *this section, which the Agency determines is*
17 *in the best interests of the regulated entity*
18 *or the Agency.*

19 “(3) *AUTHORITY OF RECEIVER TO DETERMINE*
20 *CLAIMS.—*

21 “(A) *IN GENERAL.—The Agency may, as re-*
22 *ceiver, determine claims in accordance with the*
23 *requirements of this subsection and any regula-*
24 *tions prescribed under paragraph (4).*

1 “(B) *NOTICE REQUIREMENTS.*—*The re-*
2 *ceiver, in any case involving the liquidation or*
3 *winding up of the affairs of a closed regulated*
4 *entity, shall—*

5 “(i) *promptly publish a notice to the*
6 *creditors of the regulated entity to present*
7 *their claims, together with proof, to the re-*
8 *ceiver by a date specified in the notice*
9 *which shall be not less than 90 days after*
10 *the publication of such notice; and*

11 “(ii) *republish such notice approxi-*
12 *mately 1 month and 2 months, respectively,*
13 *after the publication under clause (i).*

14 “(C) *MAILING REQUIRED.*—*The receiver*
15 *shall mail a notice similar to the notice pub-*
16 *lished under subparagraph (B)(i) at the time of*
17 *such publication to any creditor shown on the*
18 *books of the regulated entity—*

19 “(i) *at the last address of the creditor*
20 *appearing in such books; or*

21 “(ii) *upon discovery of the name and*
22 *address of a claimant not appearing on the*
23 *books of the regulated entity within 30 days*
24 *after the discovery of such name and ad-*
25 *dress.*

1 “(4) *RULEMAKING AUTHORITY RELATING TO DE-*
2 *TERMINATION OF CLAIMS.*—Subject to subsection (c),
3 *the Director may prescribe regulations regarding the*
4 *allowance or disallowance of claims by the receiver*
5 *and providing for administrative determination of*
6 *claims and review of such determination.*

7 “(5) *PROCEDURES FOR DETERMINATION OF*
8 *CLAIMS.*—

9 “(A) *DETERMINATION PERIOD.*—

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

18 “(ii) *EXTENSION OF TIME.*—The pe-
19 *riod described in clause (i) may be extended*
20 *by a written agreement between the claim-*
21 *ant and the Agency.*

22 “(iii) *MAILING OF NOTICE SUFFI-*
23 *CIENT.*—The notification requirements of
24 *clause (i) shall be deemed to be satisfied if*
25 *the notice of any determination with respect*

1 to any claim is mailed to the last address
2 of the claimant which appears—

3 “(I) on the books of the regulated
4 entity;

5 “(II) in the claim filed by the
6 claimant; or

7 “(III) in documents submitted in
8 proof of the claim.

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

13 “(I) a statement of each reason for
14 the disallowance; and

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

19 “(B) ALLOWANCE OF PROVEN CLAIM.—The
20 receiver shall allow any claim received on or be-
21 fore the date specified in the notice published
22 under paragraph (3)(B)(i), or the date specified
23 in the notice required under paragraph (3)(C),
24 which is proved to the satisfaction of the receiver.

1 “(C) *DISALLOWANCE OF CLAIMS FILED*
2 *AFTER END OF FILING PERIOD.*—*Claims filed*
3 *after the date specified in the notice published*
4 *under paragraph (3)(B)(i), or the date specified*
5 *under paragraph (3)(C), shall be disallowed and*
6 *such disallowance shall be final.*

7 “(D) *AUTHORITY TO DISALLOW CLAIMS.*—

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

13 “(ii) *PAYMENTS TO LESS THAN FULLY*
14 *SECURED CREDITORS.*—*In the case of a*
15 *claim of a creditor against a regulated enti-*
16 *ty which is secured by any property or*
17 *other asset of such regulated entity, the re-*
18 *ceiver—*

19 “(I) *may treat the portion of such*
20 *claim which exceeds an amount equal*
21 *to the fair market value of such prop-*
22 *erty or other asset as an unsecured*
23 *claim against the regulated entity; and*

24 “(II) *may not make any payment*
25 *with respect to such unsecured portion*

1 *of the claim other than in connection*
2 *with the disposition of all claims of*
3 *unsecured creditors of the regulated en-*
4 *tity.*

5 “(iii) *EXCEPTIONS.—No provision of*
6 *this paragraph shall apply with respect to*
7 *any extension of credit from any Federal*
8 *Reserve Bank, Federal home loan bank, or*
9 *the Treasury of the United States.*

10 “(E) *NO JUDICIAL REVIEW OF DETERMINA-*
11 *TION PURSUANT TO SUBPARAGRAPH (D).—No*
12 *court may review the determination of the Agen-*
13 *cy under subparagraph (D) to disallow a claim.*
14 *This subparagraph shall not effect the authority*
15 *of a claimant to obtain de novo judicial review*
16 *of a claim pursuant to paragraph (6).*

17 “(F) *LEGAL EFFECT OF FILING.—*

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

23 “(ii) *NO PREJUDICE TO OTHER AC-*
24 *TIONS.—Subject to paragraph (10), the fil-*
25 *ing of a claim with the receiver shall not*

1 *prejudice any right of the claimant to con-*
2 *tinue any action which was filed before the*
3 *date of the appointment of the receiver, sub-*
4 *ject to the determination of claims by the*
5 *receiver.*

6 “(6) *PROVISION FOR JUDICIAL DETERMINATION*
7 *OF CLAIMS.—*

8 “(A) *IN GENERAL.—The claimant may file*
9 *suit on a claim (or continue an action com-*
10 *menced before the appointment of the receiver) in*
11 *the district or territorial court of the United*
12 *States for the district within which the principal*
13 *place of business of the regulated entity is located*
14 *or the United States District Court for the Dis-*
15 *trict of Columbia (and such court shall have ju-*
16 *risdiction to hear such claim), before the end of*
17 *the 60-day period beginning on the earlier of—*

18 “(i) *the end of the period described in*
19 *paragraph (5)(A)(i) with respect to any*
20 *claim against a regulated entity for which*
21 *the Agency is receiver; or*

22 “(ii) *the date of any notice of disallow-*
23 *ance of such claim pursuant to paragraph*
24 *(5)(A)(i).*

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

11 “(7) *REVIEW OF CLAIMS.*—

12 “(A) *OTHER REVIEW PROCEDURES.*—

13 “(i) *IN GENERAL.*—The Agency shall
14 establish such alternative dispute resolution
15 processes as may be appropriate for the res-
16 olution of claims filed under paragraph
17 (5)(A)(i).

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

22 “(iii) *VOLUNTARY BINDING OR NON-*
23 *BINDING PROCEDURES.*—The Agency may
24 establish both binding and nonbinding proc-
25 esses, which may be conducted by any gov-

1 *ernment or private party. All parties, in-*
2 *cluding the claimant and the Agency, must*
3 *agree to the use of the process in a par-*
4 *ticular case.*

5 *“(B) CONSIDERATION OF INCENTIVES.—The*
6 *Agency shall seek to develop incentives for claim-*
7 *ants to participate in the alternative dispute res-*
8 *olution process.*

9 *“(8) EXPEDITED DETERMINATION OF CLAIMS.—*

10 *“(A) ESTABLISHMENT REQUIRED.—The*
11 *Agency shall establish a procedure for expedited*
12 *relief outside of the routine claims process estab-*
13 *lished under paragraph (5) for claimants who—*

14 *“(i) allege the existence of legally valid*
15 *and enforceable or perfected security inter-*
16 *ests in assets of any regulated entity for*
17 *which the Agency has been appointed re-*
18 *ceiver; and*

19 *“(ii) allege that irreparable injury will*
20 *occur if the routine claims procedure is fol-*
21 *lowed.*

22 *“(B) DETERMINATION PERIOD.—Before the*
23 *end of the 90-day period beginning on the date*
24 *any claim is filed in accordance with the proce-*

1 *dures established under subparagraph (A), the*
2 *Director shall—*

3 *“(i) determine—*

4 *“(I) whether to allow or disallow*
5 *such claim; or*

6 *“(II) whether such claim should*
7 *be determined pursuant to the proce-*
8 *dures established under paragraph (5);*
9 *and*

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

16 *“(C) PERIOD FOR FILING OR RENEWING*
17 *SUIT.—Any claimant who files a request for ex-*
18 *pedited relief shall be permitted to file a suit, or*
19 *to continue a suit filed before the appointment of*
20 *the receiver, seeking a determination of the rights*
21 *of the claimant with respect to such security in-*
22 *terest after the earlier of—*

23 *“(i) the end of the 90-day period begin-*
24 *ning on the date of the filing of a request*
25 *for expedited relief; or*

1 “(ii) *the date the Agency denies the*
2 *claim.*

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

15 “(E) *LEGAL EFFECT OF FILING.—*

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

21 “(ii) *NO PREJUDICE TO OTHER AC-*
22 *TIONS.—Subject to paragraph (10), the fil-*
23 *ing of a claim with the receiver shall not*
24 *prejudice any right of the claimant to con-*
25 *tinue any action that was filed before the*

1 *appointment of the receiver, subject to the*
2 *determination of claims by the receiver.*

3 “(9) *PAYMENT OF CLAIMS.—*

4 “(A) *IN GENERAL.—The receiver may, in*
5 *the discretion of the receiver, and to the extent*
6 *funds are available from the assets of the regu-*
7 *lated entity, pay creditor claims, in such man-*
8 *ner and amounts as are authorized under this*
9 *section, which are—*

10 “(i) *allowed by the receiver;*

11 “(ii) *approved by the Agency pursuant*
12 *to a final determination pursuant to para-*
13 *graph (7) or (8); or*

14 “(iii) *determined by the final judgment*
15 *of any court of competent jurisdiction.*

16 “(B) *AGREEMENTS AGAINST THE INTEREST*
17 *OF THE AGENCY.—No agreement that tends to*
18 *diminish or defeat the interest of the Agency in*
19 *any asset acquired by the Agency as receiver*
20 *under this section shall be valid against the*
21 *Agency unless such agreement is in writing, and*
22 *executed by an authorized official of the regu-*
23 *lated entity, except that such requirements for*
24 *qualified financial contracts shall be applied in*
25 *a manner consistent with reasonable business*

1 *trading practices in the financial contracts mar-*
2 *ket.*

3 “(C) *PAYMENT OF DIVIDENDS ON CLAIMS.—*

4 *The receiver may, in the sole discretion of the re-*
5 *ceiver, pay from the assets of the regulated entity*
6 *dividends on proved claims at any time, and no*
7 *liability shall attach to the Agency, by reason of*
8 *any such payment, for failure to pay dividends*
9 *to a claimant whose claim is not proved at the*
10 *time of any such payment.*

11 “(D) *RULEMAKING AUTHORITY OF THE DI-*

12 *RECTOR.—The Director may prescribe such*
13 *rules, including definitions of terms, as the Di-*
14 *rector deems appropriate to establish a single*
15 *uniform interest rate for, or to make payments*
16 *of post-insolvency interest to creditors holding*
17 *proven claims against the receivership estates of*
18 *regulated entities following satisfaction by the re-*
19 *ceiver of the principal amount of all creditor*
20 *claims.*

21 “(10) *SUSPENSION OF LEGAL ACTIONS.—*

22 “(A) *IN GENERAL.—After the appointment*
23 *of a conservator or receiver for a regulated enti-*
24 *ty, the conservator or receiver may, in any judi-*
25 *cial action or proceeding to which such regulated*

1 entity is or becomes a party, request a stay for
2 a period not to exceed—

3 “(i) 45 days, in the case of any conser-
4 vator; and

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

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

14 “(11) ADDITIONAL RIGHTS AND DUTIES.—

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

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

24 “(i) have all the rights and remedies
25 available to the regulated entity (before the

1 *appointment of such conservator or receiver)*
2 *and the Agency, including removal to Fed-*
3 *eral court and all appellate rights; and*

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

6 “(C) *NO ATTACHMENT OR EXECUTION.—No*
7 *attachment or execution may issue by any court*
8 *upon assets in the possession of the receiver.*

9 “(D) *LIMITATION ON JUDICIAL REVIEW.—*
10 *Except as otherwise provided in this subsection,*
11 *no court shall have jurisdiction over—*

12 “(i) *any claim or action for payment*
13 *from, or any action seeking a determination*
14 *of rights with respect to, the assets of any*
15 *regulated entity for which the Agency has*
16 *been appointed receiver; or*

17 “(ii) *any claim relating to any act or*
18 *omission of such regulated entity or the*
19 *Agency as receiver.*

20 “(E) *DISPOSITION OF ASSETS.—In exer-*
21 *cising any right, power, privilege, or authority*
22 *as conservator or receiver in connection with any*
23 *sale or disposition of assets of a regulated entity*
24 *for which the Agency has been appointed conser-*
25 *vator or receiver, the Agency shall conduct its*

1 *operations in a manner which maintains sta-*
2 *bility in the housing finance markets and, to the*
3 *extent consistent with that goal—*

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

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

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

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

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

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

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

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

1 “(ii) in the case of any tort claim, the
2 longer of—

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

5 “(II) the period applicable under
6 State law.

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

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

14 “(ii) the date on which the cause of ac-
15 tion accrues.

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

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

1 *of the statute of limitation applicable under*
2 *State law.*

3 “(B) *CLAIMS DESCRIBED.*—*A tort claim re-*
4 *ferred to under subparagraph (A) is a claim*
5 *arising from fraud, intentional misconduct re-*
6 *sulting in unjust enrichment, or intentional mis-*
7 *conduct resulting in substantial loss to the regu-*
8 *lated entity.*

9 “(14) *ACCOUNTING AND RECORDKEEPING RE-*
10 *QUIREMENTS.*—

11 “(A) *IN GENERAL.*—*The Agency as conser-*
12 *vator or receiver shall, consistent with the ac-*
13 *counting and reporting practices and procedures*
14 *established by the Agency, maintain a full ac-*
15 *counting of each conservatorship and receiver-*
16 *ship or other disposition of a regulated entity in*
17 *default.*

18 “(B) *ANNUAL ACCOUNTING OR REPORT.*—
19 *With respect to each conservatorship or receiver-*
20 *ship, the Agency shall make an annual account-*
21 *ing or report available to the Board, the Comp-*
22 *troller General of the United States, the Com-*
23 *mittee on Banking, Housing, and Urban Affairs*
24 *of the Senate, and the Committee on Financial*
25 *Services of the House of Representatives.*

1 “(C) *AVAILABILITY OF REPORTS.*—Any re-
2 port prepared under subparagraph (B) shall be
3 made available by the Agency upon request to
4 any shareholder of a regulated entity or any
5 member of the public.

6 “(D) *RECORDKEEPING REQUIREMENT.*—
7 After the end of the 6-year period beginning on
8 the date that the conservatorship or receivership
9 is terminated by the Director, the Agency may
10 destroy any records of such regulated entity
11 which the Agency, in the discretion of the Agen-
12 cy, determines to be unnecessary unless directed
13 not to do so by a court of competent jurisdiction
14 or governmental agency, or prohibited by law.

15 “(15) *FRAUDULENT TRANSFERS.*—

16 “(A) *IN GENERAL.*—The Agency, as conser-
17 vator or receiver, may avoid a transfer of any
18 interest of a regulated entity-affiliated party, or
19 any person who the conservator or receiver deter-
20 mines is a debtor of the regulated entity, in
21 property, or any obligation incurred by such
22 party or person, that was made within 5 years
23 of the date on which the Agency was appointed
24 conservator or receiver, if such party or person
25 voluntarily or involuntarily made such transfer

1 *or incurred such liability with the intent to*
2 *hinder, delay, or defraud the regulated entity,*
3 *the Agency, the conservator, or receiver.*

4 “(B) *RIGHT OF RECOVERY.*—*To the extent a*
5 *transfer is avoided under subparagraph (A), the*
6 *conservator or receiver may recover, for the ben-*
7 *efit of the regulated entity, the property trans-*
8 *ferred, or, if a court so orders, the value of such*
9 *property (at the time of such transfer) from—*

10 “(i) *the initial transferee of such trans-*
11 *fer or the regulated entity-affiliated party*
12 *or person for whose benefit such transfer*
13 *was made; or*

14 “(ii) *any immediate or mediate trans-*
15 *feree of any such initial transferee.*

16 “(C) *RIGHTS OF TRANSFEREE OR OBLI-*
17 *GEE.*—*The conservator or receiver may not re-*
18 *cover under subparagraph (B) from—*

19 “(i) *any transferee that takes for value,*
20 *including satisfaction or securing of a*
21 *present or antecedent debt, in good faith; or*

22 “(ii) *any immediate or mediate good*
23 *faith transferee of such transferee.*

24 “(D) *RIGHTS UNDER THIS PARAGRAPH.*—
25 *The rights under this paragraph of the conser-*

1 vator or receiver described under subparagraph
2 (A) shall be superior to any rights of a trustee
3 or any other party (other than any party which
4 is a Federal agency) under title 11, United
5 States Code.

6 “(16) *ATTACHMENT OF ASSETS AND OTHER IN-*
7 *JUNCTIVE RELIEF.*—Subject to paragraph (17), any
8 court of competent jurisdiction may, at the request of
9 the conservator or receiver, issue an order in accord-
10 ance with Rule 65 of the Federal Rules of Civil Proce-
11 dure, including an order placing the assets of any
12 person designated by the Agency or such conservator
13 under the control of the court, and appointing a
14 trustee to hold such assets.

15 “(17) *STANDARDS OF PROOF.*—Rule 65 of the
16 Federal Rules of Civil Procedure shall apply with re-
17 spect to any proceeding under paragraph (16) with-
18 out regard to the requirement of such rule that the ap-
19 plicant show that the injury, loss, or damage is irrep-
20 arable and immediate.

21 “(18) *TREATMENT OF CLAIMS ARISING FROM*
22 *BREACH OF CONTRACTS EXECUTED BY THE RECEIVER*
23 *OR CONSERVATOR.*—

24 “(A) *IN GENERAL.*—Notwithstanding any
25 other provision of this subsection, any final and

1 *unappealable judgment for monetary damages*
2 *entered against a receiver or conservator for the*
3 *breach of an agreement executed or approved in*
4 *writing by such receiver or conservator after the*
5 *date of its appointment, shall be paid as an ad-*
6 *ministrative expense of the receiver or conser-*
7 *vator.*

8 *“(B) NO LIMITATION OF POWER.—Nothing*
9 *in this paragraph shall be construed to limit the*
10 *power of a receiver or conservator to exercise any*
11 *rights under contract or law, including to termi-*
12 *nate, breach, cancel, or otherwise discontinue*
13 *such agreement.*

14 *“(19) GENERAL EXCEPTIONS.—*

15 *“(A) LIMITATIONS.—The rights of a conser-*
16 *vator or receiver appointed under this section*
17 *shall be subject to the limitations on the powers*
18 *of a receiver under sections 402 through 407 of*
19 *the Federal Deposit Insurance Corporation Im-*
20 *provement Act of 1991 (12 U.S.C. 4402 through*
21 *4407).*

22 *“(B) MORTGAGES HELD IN TRUST.—*

23 *“(i) IN GENERAL.—Any mortgage, pool*
24 *of mortgages, or interest in a pool of mort-*
25 *gages, held in trust, custodial, or agency ca-*

1 *capacity by a regulated entity for the benefit*
2 *of persons other than the regulated entity*
3 *shall not be available to satisfy the claims*
4 *of creditors generally.*

5 “(ii) *HOLDING OF MORTGAGES.—Any*
6 *mortgage, pool of mortgages, or interest in*
7 *a pool of mortgages, described under clause*
8 *(i) shall be held by the conservator or re-*
9 *ceiver appointed under this section for the*
10 *beneficial owners of such mortgage, pool of*
11 *mortgages, or interest in a pool of mort-*
12 *gages in accordance with the terms of the*
13 *agreement creating such trust, custodial, or*
14 *other agency arrangement.*

15 “(iii) *LIABILITY OF RECEIVER.—The*
16 *liability of a receiver appointed under this*
17 *section for damages shall, in the case of any*
18 *contingent or unliquidated claim relating to*
19 *the mortgages held in trust, be estimated in*
20 *accordance set forth in the regulations of the*
21 *Director.*

22 “(c) *PRIORITY OF EXPENSES AND UNSECURED*
23 *CLAIMS.—*

24 “(1) *IN GENERAL.—Unsecured claims against a*
25 *regulated entity, or a receiver, that are proven to the*

1 *satisfaction of the receiver shall have priority in the*
2 *following order:*

3 “(A) *Administrative expenses of the re-*
4 *ceiver.*

5 “(B) *Any other general or senior liability of*
6 *the regulated entity and claims of other Federal*
7 *home loan banks arising from their payment ob-*
8 *ligations (including joint and several payment*
9 *obligations).*

10 “(C) *Any obligation subordinated to general*
11 *creditors.*

12 “(D) *Any obligation to shareholders or*
13 *members arising as a result of their status as*
14 *shareholder or members.*

15 “(2) *CREDITORS SIMILARLY SITUATED.—All*
16 *creditors that are similarly situated under paragraph*
17 *(1) shall be treated in a similar manner, except that*
18 *the Agency may make such other payments to credi-*
19 *tors necessary to maximize the present value return*
20 *from the sale or disposition or such regulated entity’s*
21 *assets or to minimize the amount of any loss realized*
22 *in the resolution of cases so long as all creditors simi-*
23 *larly situated receive not less than the amount pro-*
24 *vided under subsection (e)(2).*

1 “(3) *DEFINITION.*—*The term ‘administrative ex-*
2 *penditures of the receiver’ shall include the actual, nec-*
3 *essary costs and expenses incurred by the receiver in*
4 *preserving the assets of the regulated entity or liqui-*
5 *dating or otherwise resolving the affairs of the regu-*
6 *lated entity. Such expenses shall include obligations*
7 *that are incurred by the receiver after appointment as*
8 *receiver that the Director determines are necessary*
9 *and appropriate to facilitate the smooth and orderly*
10 *liquidation or other resolution of the regulated entity.*

11 “(d) *PROVISIONS RELATING TO CONTRACTS ENTERED*
12 *INTO BEFORE APPOINTMENT OF CONSERVATOR OR RE-*
13 *CEIVER.*—

14 “(1) *AUTHORITY TO REPUDIATE CONTRACTS.*—
15 *In addition to any other rights a conservator or re-*
16 *ceiver may have, the conservator or receiver for any*
17 *regulated entity may disaffirm or repudiate any con-*
18 *tract or lease—*

19 “(A) *to which such regulated entity is a*
20 *party;*

21 “(B) *the performance of which the conser-*
22 *vator or receiver, in its sole discretion, deter-*
23 *mines to be burdensome; and*

24 “(C) *the disaffirmance or repudiation of*
25 *which the conservator or receiver determines, in*

1 *its sole discretion, will promote the orderly ad-*
2 *ministration of the affairs of the regulated enti-*
3 *ty.*

4 “(2) *TIMING OF REPUDIATION.*—*The conservator*
5 *or receiver shall determine whether or not to exercise*
6 *the rights of repudiation under this subsection within*
7 *a reasonable period following such appointment.*

8 “(3) *CLAIMS FOR DAMAGES FOR REPUDIATION.*—

9 “(A) *IN GENERAL.*—*Except as otherwise*
10 *provided under subparagraph (C) and para-*
11 *graphs (4), (5), and (6), the liability of the con-*
12 *servator or receiver for the disaffirmance or re-*
13 *pu diation of any contract pursuant to para-*
14 *graph (1) shall be—*

15 “(i) *limited to actual direct compen-*
16 *satory damages; and*

17 “(ii) *determined as of—*

18 “(I) *the date of the appointment*
19 *of the conservator or receiver; or*

20 “(II) *in the case of any contract*
21 *or agreement referred to in paragraph*
22 *(8), the date of the disaffirmance or re-*
23 *pu diation of such contract or agree-*
24 *ment.*

1 “(B) *NO LIABILITY FOR OTHER DAMAGES.*—
2 *For purposes of subparagraph (A), the term ‘ac-*
3 *tual direct compensatory damages’ shall not in-*
4 *clude—*

5 “(i) *punitive or exemplary damages;*

6 “(ii) *damages for lost profits or oppor-*
7 *tunity; or*

8 “(iii) *damages for pain and suffering.*

9 “(C) *MEASURE OF DAMAGES FOR REPUDI-*
10 *ATION OF FINANCIAL CONTRACTS.*—*In the case of*
11 *any qualified financial contract or agreement to*
12 *which paragraph (8) applies, compensatory*
13 *damages shall be—*

14 “(i) *deemed to include normal and rea-*
15 *sonable costs of cover or other reasonable*
16 *measures of damages utilized in the indus-*
17 *tries for such contract and agreement*
18 *claims; and*

19 “(ii) *paid in accordance with this sub-*
20 *section and subsection (e), except as other-*
21 *wise specifically provided in this section.*

22 “(4) *LEASES UNDER WHICH THE REGULATED*
23 *ENTITY IS THE LESSEE.*—

24 “(A) *IN GENERAL.*—*If the conservator or re-*
25 *ceiver disaffirms or repudiates a lease under*

1 *which the regulated entity was the lessee, the con-*
2 *servator or receiver shall not be liable for any*
3 *damages (other than damages determined under*
4 *subparagraph (B)) for the disaffirmance or repu-*
5 *diation of such lease.*

6 “(B) *PAYMENTS OF RENT.*—*Notwith-*
7 *standing subparagraph (A), the lessor under a*
8 *lease to which that subparagraph applies shall—*

9 “(i) *be entitled to the contractual rent*
10 *accruing before the later of the date—*

11 “(I) *the notice of disaffirmance or*
12 *repudiation is mailed; or*

13 “(II) *the disaffirmance or repudi-*
14 *ation becomes effective, unless the lessor*
15 *is in default or breach of the terms of*
16 *the lease;*

17 “(ii) *have no claim for damages under*
18 *any acceleration clause or other penalty*
19 *provision in the lease; and*

20 “(iii) *have a claim for any unpaid*
21 *rent, subject to all appropriate offsets and*
22 *defenses, due as of the date of the appoint-*
23 *ment, which shall be paid in accordance*
24 *with this subsection and subsection (e).*

1 “(5) *LEASES UNDER WHICH THE REGULATED*
2 *ENTITY IS THE LESSOR.—*

3 “(A) *IN GENERAL.—If the conservator or re-*
4 *ceiver repudiates an unexpired written lease of*
5 *real property of the regulated entity under which*
6 *the regulated entity is the lessor and the lessee is*
7 *not, as of the date of such repudiation, in de-*
8 *fault, the lessee under such lease may either—*

9 “(i) *treat the lease as terminated by*
10 *such repudiation; or*

11 “(ii) *remain in possession of the lease-*
12 *hold interest for the balance of the term of*
13 *the lease, unless the lessee defaults under the*
14 *terms of the lease after the date of such re-*
15 *pu diation.*

16 “(B) *PROVISIONS APPLICABLE TO LESSEE*
17 *REMAINING IN POSSESSION.—If any lessee under*
18 *a lease described under subparagraph (A) re-*
19 *mains in possession of a leasehold interest under*
20 *clause (ii) of such subparagraph—*

21 “(i) *the lessee—*

22 “(I) *shall continue to pay the con-*
23 *tractual rent pursuant to the terms of*
24 *the lease after the date of the repudi-*
25 *ation of such lease; and*

1 “(II) may offset against any rent
2 payment which accrues after the date
3 of the repudiation of the lease, and any
4 damages which accrue after such date
5 due to the nonperformance of any obli-
6 gation of the regulated entity under the
7 lease after such date; and

8 “(ii) the conservator or receiver shall
9 not be liable to the lessee for any damages
10 arising after such date as a result of the re-
11 pudiation other than the amount of any off-
12 set allowed under clause (i)(II).

13 “(6) *CONTRACTS FOR THE SALE OF REAL PROP-*
14 *ERTY.—*

15 “(A) *IN GENERAL.—*If the conservator or re-
16 ceiver repudiates any contract for the sale of real
17 property and the purchaser of such real property
18 under such contract is in possession, and is not,
19 as of the date of such repudiation, in default,
20 such purchaser may either—

21 “(i) treat the contract as terminated by
22 such repudiation; or

23 “(ii) remain in possession of such real
24 property.

1 “(B) *PROVISIONS APPLICABLE TO PUR-*
2 *CHASER REMAINING IN POSSESSION.—If any*
3 *purchaser of real property under any contract*
4 *described under subparagraph (A) remains in*
5 *possession of such property under clause (i) of*
6 *such subparagraph—*

7 “(i) *the purchaser—*

8 “(I) *shall continue to make all*
9 *payments due under the contract after*
10 *the date of the repudiation of the con-*
11 *tract; and*

12 “(II) *may offset against any such*
13 *payments any damages which accrue*
14 *after such date due to the nonperform-*
15 *ance (after such date) of any obligation*
16 *of the regulated entity under the con-*
17 *tract; and*

18 “(ii) *the conservator or receiver shall—*

19 “(I) *not be liable to the purchaser*
20 *for any damages arising after such*
21 *date as a result of the repudiation*
22 *other than the amount of any offset al-*
23 *lowed under clause (i)(II);*

1 “(II) deliver title to the purchaser
2 in accordance with the provisions of
3 the contract; and

4 “(III) have no obligation under
5 the contract other than the performance
6 required under subclause (II).

7 “(C) ASSIGNMENT AND SALE ALLOWED.—

8 “(i) IN GENERAL.—No provision of
9 this paragraph shall be construed as lim-
10 iting the right of the conservator or receiver
11 to assign the contract described under sub-
12 paragraph (A), and sell the property subject
13 to the contract and the provisions of this
14 paragraph.

15 “(ii) NO LIABILITY AFTER ASSIGNMENT
16 AND SALE.—If an assignment and sale de-
17 scribed under clause (i) is consummated, the
18 conservator or receiver shall have no further
19 liability under the contract described under
20 subparagraph (A), or with respect to the
21 real property which was the subject of such
22 contract.

23 “(7) PROVISIONS APPLICABLE TO SERVICE CON-
24 TRACTS.—

1 “(A) *SERVICES PERFORMED BEFORE AP-*
2 *POINTMENT.—In the case of any contract for*
3 *services between any person and any regulated*
4 *entity for which the Agency has been appointed*
5 *conservator or receiver, any claim of such person*
6 *for services performed before the appointment of*
7 *the conservator or the receiver shall be—*

8 “(i) *a claim to be paid in accordance*
9 *with subsections (b) and (e); and*

10 “(ii) *deemed to have arisen as of the*
11 *date the conservator or receiver was ap-*
12 *pointed.*

13 “(B) *SERVICES PERFORMED AFTER AP-*
14 *POINTMENT AND PRIOR TO REPUDIATION.—If, in*
15 *the case of any contract for services described*
16 *under subparagraph (A), the conservator or re-*
17 *ceiver accepts performance by the other person*
18 *before the conservator or receiver makes any de-*
19 *termination to exercise the right of repudiation*
20 *of such contract under this section—*

21 “(i) *the other party shall be paid*
22 *under the terms of the contract for the serv-*
23 *ices performed; and*

1 “(i) the amount of such payment shall
2 be treated as an administrative expense of
3 the conservatorship or receivership.

4 “(C) ACCEPTANCE OF PERFORMANCE NO
5 BAR TO SUBSEQUENT REPUDIATION.—The ac-
6 ceptance by any conservator or receiver of serv-
7 ices referred to under subparagraph (B) in con-
8 nection with a contract described in such sub-
9 paragraph shall not affect the right of the conser-
10 vator or receiver to repudiate such contract
11 under this section at any time after such per-
12 formance.

13 “(8) CERTAIN QUALIFIED FINANCIAL CON-
14 TRACTS.—

15 “(A) RIGHTS OF PARTIES TO CONTRACTS.—
16 Subject to paragraphs (9) and (10) and notwith-
17 standing any other provision of this Act, any
18 other Federal law, or the law of any State, no
19 person shall be stayed or prohibited from exer-
20 cising—

21 “(i) any right such person has to cause
22 the termination, liquidation, or acceleration
23 of any qualified financial contract with a
24 regulated entity that arises upon the ap-
25 pointment of the Agency as receiver for such

1 *regulated entity at any time after such ap-*
2 *pointment;*

3 “(ii) *any right under any security*
4 *agreement or arrangement or other credit*
5 *enhancement relating to one or more quali-*
6 *fied financial contracts described in clause*
7 *(i); or*

8 “(iii) *any right to offset or net out any*
9 *termination value, payment amount, or*
10 *other transfer obligation arising under or in*
11 *connection with 1 or more contracts and*
12 *agreements described in clause (i), includ-*
13 *ing any master agreement for such con-*
14 *tracts or agreements.*

15 “(B) *APPLICABILITY OF OTHER PROVI-*
16 *SIONS.—Paragraph (10) of subsection (b) shall*
17 *apply in the case of any judicial action or pro-*
18 *ceeding brought against any receiver referred to*
19 *under subparagraph (A), or the regulated entity*
20 *for which such receiver was appointed, by any*
21 *party to a contract or agreement described under*
22 *subparagraph (A)(i) with such regulated entity.*

23 “(C) *CERTAIN TRANSFERS NOT AVOID-*
24 *ABLE.—*

1 “(i) *IN GENERAL.*—*Notwithstanding*
2 *paragraph (11) or any other Federal or*
3 *State laws relating to the avoidance of pref-*
4 *erential or fraudulent transfers, the Agency,*
5 *whether acting as such or as conservator or*
6 *receiver of a regulated entity, may not*
7 *avoid any transfer of money or other prop-*
8 *erty in connection with any qualified finan-*
9 *cial contract with a regulated entity.*

10 “(ii) *EXCEPTION FOR CERTAIN TRANS-*
11 *FERS.*—*Clause (i) shall not apply to any*
12 *transfer of money or other property in con-*
13 *nection with any qualified financial con-*
14 *tract with a regulated entity if the Agency*
15 *determines that the transferee had actual*
16 *intent to hinder, delay, or defraud such reg-*
17 *ulated entity, the creditors of such regulated*
18 *entity, or any conservator or receiver ap-*
19 *pointed for such regulated entity.*

20 “(D) *CERTAIN CONTRACTS AND AGREE-*
21 *MENTS DEFINED.*—*In this subsection:*

22 “(i) *QUALIFIED FINANCIAL CON-*
23 *TRACT.*—*The term ‘qualified financial con-*
24 *tract’ means any securities contract, com-*
25 *modity contract, forward contract, repur-*

1 *chase agreement, swap agreement, and any*
2 *similar agreement that the Agency deter-*
3 *mines by regulation, resolution, or order to*
4 *be a qualified financial contract for pur-*
5 *poses of this paragraph.*

6 “(ii) *SECURITIES CONTRACT.*—*The*
7 *term ‘securities contract’—*

8 *“(I) means a contract for the pur-*
9 *chase, sale, or loan of a security, a cer-*
10 *tificate of deposit, a mortgage loan, or*
11 *any interest in a mortgage loan, a*
12 *group or index of securities, certificates*
13 *of deposit, or mortgage loans or inter-*
14 *ests therein (including any interest*
15 *therein or based on the value thereof)*
16 *or any option on any of the foregoing,*
17 *including any option to purchase or*
18 *sell any such security, certificate of de-*
19 *posit, mortgage loan, interest, group or*
20 *index, or option, and including any re-*
21 *purchase or reverse repurchase trans-*
22 *action on any such security, certificate*
23 *of deposit, mortgage loan, interest,*
24 *group or index, or option;*

1 “(II) does not include any pur-
2 chase, sale, or repurchase obligation
3 under a participation in a commercial
4 mortgage loan unless the Agency deter-
5 mines by regulation, resolution, or
6 order to include any such agreement
7 within the meaning of such term;

8 “(III) means any option entered
9 into on a national securities exchange
10 relating to foreign currencies;

11 “(IV) means the guarantee by or
12 to any securities clearing agency of
13 any settlement of cash, securities, cer-
14 tificates of deposit, mortgage loans or
15 interests therein, group or index of se-
16 curities, certificates of deposit, or mort-
17 gage loans or interests therein (includ-
18 ing any interest therein or based on
19 the value thereof) or option on any of
20 the foregoing, including any option to
21 purchase or sell any such security, cer-
22 tificate of deposit, mortgage loan, in-
23 terest, group or index, or option;

24 “(V) means any margin loan;

1 “(VI) means any other agreement
2 or transaction that is similar to any
3 agreement or transaction referred to in
4 this clause;

5 “(VII) means any combination of
6 the agreements or transactions referred
7 to in this clause;

8 “(VIII) means any option to enter
9 into any agreement or transaction re-
10 ferred to in this clause;

11 “(IX) means a master agreement
12 that provides for an agreement or
13 transaction referred to in subclause (I),
14 (III), (IV), (V), (VI), (VII), or (VIII),
15 together with all supplements to any
16 such master agreement, without regard
17 to whether the master agreement pro-
18 vides for an agreement or transaction
19 that is not a securities contract under
20 this clause, except that the master
21 agreement shall be considered to be a
22 securities contract under this clause
23 only with respect to each agreement or
24 transaction under the master agree-
25 ment that is referred to in subclause

1 (I), (III), (IV), (V), (VI), (VII), or
2 (VIII); and

3 “(X) means any security agree-
4 ment or arrangement or other credit
5 enhancement related to any agreement
6 or transaction referred to in this
7 clause, including any guarantee or re-
8 imbursement obligation in connection
9 with any agreement or transaction re-
10 ferred to in this clause.

11 “(iii) COMMODITY CONTRACT.—The
12 term ‘commodity contract’ means—

13 “(I) with respect to a futures com-
14 mission merchant, a contract for the
15 purchase or sale of a commodity for fu-
16 ture delivery on, or subject to the rules
17 of, a contract market or board of trade;

18 “(II) with respect to a foreign fu-
19 tures commission merchant, a foreign
20 future;

21 “(III) with respect to a leverage
22 transaction merchant, a leverage trans-
23 action;

24 “(IV) with respect to a clearing
25 organization, a contract for the pur-

1 *chase or sale of a commodity for future*
2 *delivery on, or subject to the rules of,*
3 *a contract market or board of trade*
4 *that is cleared by such clearing organi-*
5 *zation, or commodity option traded on,*
6 *or subject to the rules of, a contract*
7 *market or board of trade that is*
8 *cleared by such clearing organization;*

9 *“(V) with respect to a commodity*
10 *options dealer, a commodity option;*

11 *“(VI) any other agreement or*
12 *transaction that is similar to any*
13 *agreement or transaction referred to in*
14 *this clause;*

15 *“(VII) any combination of the*
16 *agreements or transactions referred to*
17 *in this clause;*

18 *“(VIII) any option to enter into*
19 *any agreement or transaction referred*
20 *to in this clause;*

21 *“(IX) a master agreement that*
22 *provides for an agreement or trans-*
23 *action referred to in subclause (I), (II),*
24 *(III), (IV), (V), (VI), (VII), or (VIII),*
25 *together with all supplements to any*

1 *such master agreement, without regard*
2 *to whether the master agreement pro-*
3 *vides for an agreement or transaction*
4 *that is not a commodity contract*
5 *under this clause, except that the mas-*
6 *ter agreement shall be considered to be*
7 *a commodity contract under this clause*
8 *only with respect to each agreement or*
9 *transaction under the master agree-*
10 *ment that is referred to in subclause*
11 *(I), (II), (III), (IV), (V), (VI), (VII), or*
12 *(VIII); or*

13 *“(X) any security agreement or*
14 *arrangement or other credit enhance-*
15 *ment related to any agreement or*
16 *transaction referred to in this clause,*
17 *including any guarantee or reimburse-*
18 *ment obligation in connection with*
19 *any agreement or transaction referred*
20 *to in this clause.*

21 *“(iv) FORWARD CONTRACT.—The term*
22 *‘forward contract’ means—*

23 *“(I) a contract (other than a com-*
24 *modity contract) for the purchase, sale,*
25 *or transfer of a commodity or any*

1 *similar good, article, service, right, or*
2 *interest which is presently or in the fu-*
3 *ture becomes the subject of dealing in*
4 *the forward contract trade, or product*
5 *or byproduct thereof, with a maturity*
6 *date more than 2 days after the date*
7 *the contract is entered into, including,*
8 *a repurchase transaction, reverse re-*
9 *purchase transaction, consignment,*
10 *lease, swap, hedge transaction, deposit,*
11 *loan, option, allocated transaction,*
12 *unallocated transaction, or any other*
13 *similar agreement;*

14 “(II) *any combination of agree-*
15 *ments or transactions referred to in*
16 *subclauses (I) and (III);*

17 “(III) *any option to enter into*
18 *any agreement or transaction referred*
19 *to in subclause (I) or (II);*

20 “(IV) *a master agreement that*
21 *provides for an agreement or trans-*
22 *action referred to in subclauses (I),*
23 *(II), or (III), together with all supple-*
24 *ments to any such master agreement,*
25 *without regard to whether the master*

1 *agreement provides for an agreement*
2 *or transaction that is not a forward*
3 *contract under this clause, except that*
4 *the master agreement shall be consid-*
5 *ered to be a forward contract under*
6 *this clause only with respect to each*
7 *agreement or transaction under the*
8 *master agreement that is referred to in*
9 *subclause (I), (II), or (III); or*

10 “(V) *any security agreement or*
11 *arrangement or other credit enhance-*
12 *ment related to any agreement or*
13 *transaction referred to in subclause (I),*
14 *(II), (III), or (IV), including any*
15 *guarantee or reimbursement obligation*
16 *in connection with any agreement or*
17 *transaction referred to in any such*
18 *subclause.*

19 “(v) *REPURCHASE AGREEMENT.—The*
20 *term ‘repurchase agreement’ (which defini-*
21 *tion also applies to a reverse repurchase*
22 *agreement)—*

23 “(I) *means an agreement, includ-*
24 *ing related terms, which provides for*
25 *the transfer of one or more certificates*

1 *of deposit, mortgage-related securities*
2 *(as such term is defined in the Securi-*
3 *ties Exchange Act of 1934), mortgage*
4 *loans, interests in mortgage-related se-*
5 *curities or mortgage loans, eligible*
6 *bankers' acceptances, qualified foreign*
7 *government securities or securities that*
8 *are direct obligations of, or that are*
9 *fully guaranteed by, the United States*
10 *or any agency of the United States*
11 *against the transfer of funds by the*
12 *transferee of such certificates of de-*
13 *posit, eligible bankers' acceptances, se-*
14 *curities, mortgage loans, or interests*
15 *with a simultaneous agreement by such*
16 *transferee to transfer to the transferor*
17 *thereof certificates of deposit, eligible*
18 *bankers' acceptances, securities, mort-*
19 *gage loans, or interests as described*
20 *above, at a date certain not later than*
21 *1 year after such transfers or on de-*
22 *mand, against the transfer of funds, or*
23 *any other similar agreement;*

24 *“(II) does not include any repur-*
25 *chase obligation under a participation*

1 *in a commercial mortgage loan unless*
2 *the Agency determines by regulation,*
3 *resolution, or order to include any such*
4 *participation within the meaning of*
5 *such term;*

6 *“(III) means any combination of*
7 *agreements or transactions referred to*
8 *in subclauses (I) and (IV);*

9 *“(IV) means any option to enter*
10 *into any agreement or transaction re-*
11 *ferred to in subclause (I) or (III);*

12 *“(V) means a master agreement*
13 *that provides for an agreement or*
14 *transaction referred to in subclause (I),*
15 *(III), or (IV), together with all supple-*
16 *ments to any such master agreement,*
17 *without regard to whether the master*
18 *agreement provides for an agreement*
19 *or transaction that is not a repurchase*
20 *agreement under this clause, except*
21 *that the master agreement shall be con-*
22 *sidered to be a repurchase agreement*
23 *under this subclause only with respect*
24 *to each agreement or transaction under*

1 *the master agreement that is referred to*
2 *in subclause (I), (III), or (IV); and*

3 “(VI) means any security agree-
4 ment or arrangement or other credit
5 enhancement related to any agreement
6 or transaction referred to in subclause
7 (I), (III), (IV), or (V), including any
8 guarantee or reimbursement obligation
9 in connection with any agreement or
10 transaction referred to in any such
11 subclause.

12 *For purposes of this clause, the term ‘quali-*
13 *fied foreign government security’ means a*
14 *security that is a direct obligation of, or*
15 *that is fully guaranteed by, the central gov-*
16 *ernment of a member of the Organization*
17 *for Economic Cooperation and Development*
18 *(as determined by regulation or order*
19 *adopted by the appropriate Federal banking*
20 *authority).*

21 “(vi) SWAP AGREEMENT.—*The term*
22 *‘swap agreement’ means—*

23 “(I) any agreement, including the
24 terms and conditions incorporated by
25 reference in any such agreement, which

1 *is an interest rate swap, option, future,*
2 *or forward agreement, including a rate*
3 *floor, rate cap, rate collar, cross-cur-*
4 *rency rate swap, and basis swap; a*
5 *spot, same day-tomorrow, tomorrow-*
6 *next, forward, or other foreign ex-*
7 *change or precious metals agreement; a*
8 *currency swap, option, future, or for-*
9 *ward agreement; an equity index or eq-*
10 *uity swap, option, future, or forward*
11 *agreement; a debt index or debt swap,*
12 *option, future, or forward agreement; a*
13 *total return, credit spread or credit*
14 *swap, option, future, or forward agree-*
15 *ment; a commodity index or com-*
16 *modity swap, option, future, or for-*
17 *ward agreement; or a weather swap,*
18 *weather derivative, or weather option;*

19 *“(II) any agreement or trans-*
20 *action that is similar to any other*
21 *agreement or transaction referred to in*
22 *this clause and that is of a type that*
23 *has been, is presently, or in the future*
24 *becomes, the subject of recurrent deal-*
25 *ings in the swap markets (including*

1 *terms and conditions incorporated by*
2 *reference in such agreement) and that*
3 *is a forward, swap, future, or option*
4 *on one or more rates, currencies, com-*
5 *modities, equity securities or other eq-*
6 *uity instruments, debt securities or*
7 *other debt instruments, quantitative*
8 *measures associated with an occur-*
9 *rence, extent of an occurrence, or con-*
10 *tingency associated with a financial,*
11 *commercial, or economic consequence,*
12 *or economic or financial indices or*
13 *measures of economic or financial risk*
14 *or value;*

15 *“(III) any combination of agree-*
16 *ments or transactions referred to in*
17 *this clause;*

18 *“(IV) any option to enter into*
19 *any agreement or transaction referred*
20 *to in this clause;*

21 *“(V) a master agreement that pro-*
22 *vides for an agreement or transaction*
23 *referred to in subclause (I), (II), (III),*
24 *or (IV), together with all supplements*
25 *to any such master agreement, without*

1 *regard to whether the master agreement*
2 *contains an agreement or transaction*
3 *that is not a swap agreement under*
4 *this clause, except that the master*
5 *agreement shall be considered to be a*
6 *swap agreement under this clause only*
7 *with respect to each agreement or*
8 *transaction under the master agree-*
9 *ment that is referred to in subclause*
10 *(I), (II), (III), or (IV); and*

11 “(VI) *any security agreement or*
12 *arrangement or other credit enhance-*
13 *ment related to any agreements or*
14 *transactions referred to in subclause*
15 *(I), (II), (III), (IV), or (V), including*
16 *any guarantee or reimbursement obli-*
17 *gation in connection with any agree-*
18 *ment or transaction referred to in any*
19 *such subclause.*

20 *Such term is applicable for purposes of this*
21 *subsection only and shall not be construed*
22 *or applied so as to challenge or affect the*
23 *characterization, definition, or treatment of*
24 *any swap agreement under any other stat-*
25 *ute, regulation, or rule, including the Secu-*

1 *urities Act of 1933, the Securities Exchange*
2 *Act of 1934, the Public Utility Holding*
3 *Company Act of 1935, the Trust Indenture*
4 *Act of 1939, the Investment Company Act of*
5 *1940, the Investment Advisers Act of 1940,*
6 *the Securities Investor Protection Act of*
7 *1970, the Commodity Exchange Act, the*
8 *Gramm-Leach-Bliley Act, and the Legal*
9 *Certainty for Bank Products Act of 2000.*

10 “(vii) *TREATMENT OF MASTER AGREE-*
11 *MENT AS ONE AGREEMENT.—Any master*
12 *agreement for any contract or agreement de-*
13 *scribed in any preceding clause of this sub-*
14 *paragraph (or any master agreement for*
15 *such master agreement or agreements), to-*
16 *gether with all supplements to such master*
17 *agreement, shall be treated as a single*
18 *agreement and a single qualified financial*
19 *contract. If a master agreement contains*
20 *provisions relating to agreements or trans-*
21 *actions that are not themselves qualified fi-*
22 *nancial contracts, the master agreement*
23 *shall be deemed to be a qualified financial*
24 *contract only with respect to those trans-*

1 actions that are themselves qualified finan-
2 cial contracts.

3 “(viii) *TRANSFER*.—The term ‘trans-
4 fer’ means every mode, direct or indirect,
5 absolute or conditional, voluntary or invol-
6 untary, of disposing of or parting with
7 property or with an interest in property,
8 including retention of title as a security in-
9 terest and foreclosure of the regulated enti-
10 ty’s equity of redemption.

11 “(E) *CERTAIN PROTECTIONS IN EVENT OF*
12 *APPOINTMENT OF CONSERVATOR*.—Notwith-
13 standing any other provision of this Act (other
14 than paragraph (13) of this subsection), any
15 other Federal law, or the law of any State, no
16 person shall be stayed or prohibited from exer-
17 cising—

18 “(i) any right such person has to cause
19 the termination, liquidation, or acceleration
20 of any qualified financial contract with a
21 regulated entity in a conservatorship based
22 upon a default under such financial con-
23 tract which is enforceable under applicable
24 noninsolvency law;

1 “(ii) any right under any security
2 agreement or arrangement or other credit
3 enhancement relating to one or more such
4 qualified financial contracts; or

5 “(iii) any right to offset or net out any
6 termination values, payment amounts, or
7 other transfer obligations arising under or
8 in connection with such qualified financial
9 contracts.

10 “(F) CLARIFICATION.—No provision of law
11 shall be construed as limiting the right or power
12 of the Agency, or authorizing any court or agen-
13 cy to limit or delay, in any manner, the right
14 or power of the Agency to transfer any qualified
15 financial contract in accordance with para-
16 graphs (9) and (10) of this subsection or to dis-
17 affirm or repudiate any such contract in accord-
18 ance with subsection (d)(1) of this section.

19 “(G) WALKAWAY CLAUSES NOT EFFEC-
20 TIVE.—

21 “(i) IN GENERAL.—Notwithstanding
22 the provisions of subparagraphs (A) and
23 (E), and sections 403 and 404 of the Fed-
24 eral Deposit Insurance Corporation Im-
25 provement Act of 1991, no walkaway clause

1 *shall be enforceable in a qualified financial*
2 *contract of a regulated entity in default.*

3 “(ii) *WALKAWAY CLAUSE DEFINED.*—

4 *For purposes of this subparagraph, the term*
5 *‘walkaway clause’ means a provision in a*
6 *qualified financial contract that, after cal-*
7 *culatation of a value of a party’s position or*
8 *an amount due to or from 1 of the parties*
9 *in accordance with its terms upon termi-*
10 *nation, liquidation, or acceleration of the*
11 *qualified financial contract, either does not*
12 *create a payment obligation of a party or*
13 *extinguishes a payment obligation of a*
14 *party in whole or in part solely because of*
15 *such party’s status as a nondefaulting*
16 *party.*

17 “(9) *TRANSFER OF QUALIFIED FINANCIAL CON-*
18 *TRACTS.*—*In making any transfer of assets or liabil-*
19 *ities of a regulated entity in default which includes*
20 *any qualified financial contract, the conservator or*
21 *receiver for such regulated entity shall either—*

22 “(A) *transfer to 1 person—*

23 “(i) *all qualified financial contracts*
24 *between any person (or any affiliate of such*
25 *person) and the regulated entity in default;*

1 “(ii) all claims of such person (or any
2 affiliate of such person) against such regu-
3 lated entity under any such contract (other
4 than any claim which, under the terms of
5 any such contract, is subordinated to the
6 claims of general unsecured creditors of such
7 regulated entity);

8 “(iii) all claims of such regulated enti-
9 ty against such person (or any affiliate of
10 such person) under any such contract; and

11 “(iv) all property securing or any
12 other credit enhancement for any contract
13 described in clause (i) or any claim de-
14 scribed in clause (ii) or (iii) under any
15 such contract; or

16 “(B) transfer none of the financial con-
17 tracts, claims, or property referred to under sub-
18 paragraph (A) (with respect to such person and
19 any affiliate of such person).

20 “(10) NOTIFICATION OF TRANSFER.—

21 “(A) IN GENERAL.—If—

22 “(i) the conservator or receiver for a
23 regulated entity in default makes any trans-
24 fer of the assets and liabilities of such regu-
25 lated entity, and

1 “(ii) *the transfer includes any quali-*
2 *fied financial contract,*
3 *the conservator or receiver shall notify any per-*
4 *son who is a party to any such contract of such*
5 *transfer by 5:00 p.m. (eastern time) on the busi-*
6 *ness day following the date of the appointment*
7 *of the receiver in the case of a receivership, or the*
8 *business day following such transfer in the case*
9 *of a conservatorship.*

10 “(B) *CERTAIN RIGHTS NOT ENFORCE-*
11 *ABLE.—*

12 “(i) *RECEIVERSHIP.—A person who is*
13 *a party to a qualified financial contract*
14 *with a regulated entity may not exercise*
15 *any right that such person has to terminate,*
16 *liquidate, or net such contract under para-*
17 *graph (8)(A) of this subsection or section*
18 *403 or 404 of the Federal Deposit Insurance*
19 *Corporation Improvement Act of 1991, sole-*
20 *ly by reason of or incidental to the appoint-*
21 *ment of a receiver for the regulated entity*
22 *(or the insolvency or financial condition of*
23 *the regulated entity for which the receiver*
24 *has been appointed)—*

1 “(I) until 5:00 p.m. (eastern time)
2 on the business day following the date
3 of the appointment of the receiver; or

4 “(II) after the person has received
5 notice that the contract has been trans-
6 ferred pursuant to paragraph (9)(A).

7 “(ii) CONSERVATORSHIP.—A person
8 who is a party to a qualified financial con-
9 tract with a regulated entity may not exer-
10 cise any right that such person has to ter-
11 minate, liquidate, or net such contract
12 under paragraph (8)(E) of this subsection
13 or section 403 or 404 of the Federal Deposit
14 Insurance Corporation Improvement Act of
15 1991, solely by reason of or incidental to the
16 appointment of a conservator for the regu-
17 lated entity (or the insolvency or financial
18 condition of the regulated entity for which
19 the conservator has been appointed).

20 “(iii) NOTICE.—For purposes of this
21 paragraph, the Agency as receiver or conser-
22 vator of a regulated entity shall be deemed
23 to have notified a person who is a party to
24 a qualified financial contract with such reg-
25 ulated entity if the Agency has taken steps

1 *reasonably calculated to provide notice to*
2 *such person by the time specified in sub-*
3 *paragraph (A).*

4 “(C) *BUSINESS DAY DEFINED.*—*For pur-*
5 *poses of this paragraph, the term ‘business day’*
6 *means any day other than any Saturday, Sun-*
7 *day, or any day on which either the New York*
8 *Stock Exchange or the Federal Reserve Bank of*
9 *New York is closed.*

10 “(11) *DISAFFIRMANCE OR REPUDIATION OF*
11 *QUALIFIED FINANCIAL CONTRACTS.*—*In exercising the*
12 *rights of disaffirmance or repudiation of a conser-*
13 *vator or receiver with respect to any qualified finan-*
14 *cial contract to which a regulated entity is a party,*
15 *the conservator or receiver for such institution shall*
16 *either—*

17 “(A) *disaffirm or repudiate all qualified fi-*
18 *nancial contracts between—*

19 “(i) *any person or any affiliate of such*
20 *person; and*

21 “(ii) *the regulated entity in default; or*

22 “(B) *disaffirm or repudiate none of the*
23 *qualified financial contracts referred to in sub-*
24 *paragraph (A) (with respect to such person or*
25 *any affiliate of such person).*

1 “(12) *CERTAIN SECURITY INTERESTS NOT AVOID-*
2 *ABLE.*—No provision of this subsection shall be con-
3 *strued as permitting the avoidance of any legally en-*
4 *forceable or perfected security interest in any of the*
5 *assets of any regulated entity, except where such an*
6 *interest is taken in contemplation of the insolvency of*
7 *the regulated entity, or with the intent to hinder,*
8 *delay, or defraud the regulated entity or the creditors*
9 *of such regulated entity.*

10 “(13) *AUTHORITY TO ENFORCE CONTRACTS.*—

11 “(A) *IN GENERAL.*—Notwithstanding any
12 *provision of a contract providing for termi-*
13 *nation, default, acceleration, or exercise of rights*
14 *upon, or solely by reason of, insolvency or the*
15 *appointment of a conservator or receiver, the*
16 *conservator or receiver may enforce any contract*
17 *or regulated entity bond entered into by the regu-*
18 *lated entity.*

19 “(B) *CERTAIN RIGHTS NOT AFFECTED.*—No
20 *provision of this paragraph may be construed as*
21 *impairing or affecting any right of the conser-*
22 *vator or receiver to enforce or recover under a di-*
23 *rector’s or officer’s liability insurance contract or*
24 *surety bond under other applicable law.*

25 “(C) *CONSENT REQUIREMENT.*—

1 “(i) *IN GENERAL.*—*Except as otherwise*
2 *provided under this section, no person may*
3 *exercise any right or power to terminate,*
4 *accelerate, or declare a default under any*
5 *contract to which a regulated entity is a*
6 *party, or to obtain possession of or exercise*
7 *control over any property of the regulated*
8 *entity, or affect any contractual rights of*
9 *the regulated entity, without the consent of*
10 *the conservator or receiver, as appropriate,*
11 *for a period of—*

12 “(I) *45 days after the date of ap-*
13 *pointment of a conservator; or*

14 “(II) *90 days after the date of ap-*
15 *pointment of a receiver.*

16 “(ii) *EXCEPTIONS.*—*This paragraph*
17 *shall—*

18 “(I) *not apply to a director’s or*
19 *officer’s liability insurance contract;*

20 “(II) *not apply to the rights of*
21 *parties to any qualified financial con-*
22 *tracts under subsection (d)(8); and*

23 “(III) *not be construed as permit-*
24 *ting the conservator or receiver to fail*

1 to comply with otherwise enforceable
2 provisions of such contracts.

3 “(14) SAVINGS CLAUSE.—The meanings of terms
4 used in this subsection are applicable for purposes of
5 this subsection only, and shall not be construed or ap-
6 plied so as to challenge or affect the characterization,
7 definition, or treatment of any similar terms under
8 any other statute, regulation, or rule, including the
9 Gramm-Leach-Bliley Act, the Legal Certainty for
10 Bank Products Act of 2000, the securities laws (as
11 that term is defined in section 3(a)(47) of the Securi-
12 ties Exchange Act of 1934), and the Commodity Ex-
13 change Act

14 “(15) EXCEPTION FOR FEDERAL RESERVE AND
15 FEDERAL HOME LOAN BANKS.—No provision of this
16 subsection shall apply with respect to—

17 “(A) any extension of credit from any Fed-
18 eral home loan bank or Federal Reserve Bank to
19 any regulated entity; or

20 “(B) any security interest in the assets of
21 the regulated entity securing any such extension
22 of credit.

23 “(e) VALUATION OF CLAIMS IN DEFAULT.—

24 “(1) IN GENERAL.—Notwithstanding any other
25 provision of Federal law or the law of any State, and

1 *regardless of the method which the Agency determines*
2 *to utilize with respect to a regulated entity in default*
3 *or in danger of default, including transactions au-*
4 *thorized under subsection (i), this subsection shall*
5 *govern the rights of the creditors of such regulated en-*
6 *tity.*

7 “(2) *MAXIMUM LIABILITY.—The maximum li-*
8 *ability of the Agency, acting as receiver or in any*
9 *other capacity, to any person having a claim against*
10 *the receiver or the regulated entity for which such re-*
11 *ceiver is appointed shall equal the lesser of—*

12 “(A) *the amount such claimant would have*
13 *received if the Agency had liquidated the assets*
14 *and liabilities of such regulated entity without*
15 *exercising the authority of the Agency under sub-*
16 *section (i) of this section; or*

17 “(B) *the amount of proceeds realized from*
18 *the performance of contracts or sale of the assets*
19 *of the regulated entity.*

20 “(f) *LIMITATION ON COURT ACTION.—Except as pro-*
21 *vided in this section or at the request of the Director, no*
22 *court may take any action to restrain or affect the exercise*
23 *of powers or functions of the Agency as a conservator or*
24 *a receiver.*

25 “(g) *LIABILITY OF DIRECTORS AND OFFICERS.—*

1 “(1) *IN GENERAL.*—A director or officer of a reg-
2 ulated entity may be held personally liable for mone-
3 tary damages in any civil action by, on behalf of, or
4 at the request or direction of the Agency, which action
5 is prosecuted wholly or partially for the benefit of the
6 Agency—

7 “(A) acting as conservator or receiver of
8 such regulated entity, or

9 “(B) acting based upon a suit, claim, or
10 cause of action purchased from, assigned by, or
11 otherwise conveyed by such receiver or conser-
12 vator,

13 for gross negligence, including any similar conduct or
14 conduct that demonstrates a greater disregard of a
15 duty of care (than gross negligence) including inten-
16 tional tortious conduct, as such terms are defined and
17 determined under applicable State law.

18 “(2) *NO LIMITATION.*—Nothing in this para-
19 graph shall impair or affect any right of the Agency
20 under other applicable law.

21 “(h) *DAMAGES.*—In any proceeding related to any
22 claim against a director, officer, employee, agent, attorney,
23 accountant, appraiser, or any other party employed by or
24 providing services to a regulated entity, recoverable dam-
25 ages determined to result from the improvident or otherwise

1 *improper use or investment of any assets of the regulated*
2 *entity shall include principal losses and appropriate inter-*
3 *est.*

4 “(i) *LIMITED-LIFE REGULATED ENTITIES.*—

5 “(1) *ORGANIZATION.*—

6 “(A) *PURPOSE.*—*If a regulated entity is in*
7 *default, or if the Agency anticipates that a regu-*
8 *lated entity will default, the Agency may orga-*
9 *nize a limited-life regulated entity with those*
10 *powers and attributes of the regulated entity in*
11 *default or in danger of default that the Director*
12 *determines necessary, subject to the provisions of*
13 *this subsection. The Director shall grant a tem-*
14 *porary charter to the limited-life regulated enti-*
15 *ty, and the limited-life regulated entity shall op-*
16 *erate subject to that charter.*

17 “(B) *AUTHORITIES.*—*Upon the creation of*
18 *a limited-life regulated entity under subpara-*
19 *graph (A), the limited-life regulated entity*
20 *may—*

21 “(i) *assume such liabilities of the regu-*
22 *lated entity that is in default or in danger*
23 *of default as the Agency may, in its discre-*
24 *tion, determine to be appropriate, provided*
25 *that the liabilities assumed shall not exceed*

1 *the amount of assets of the limited-life regu-*
2 *lated entity;*

3 “(ii) *purchase such assets of the regu-*
4 *lated entity that is in default, or in danger*
5 *of default, as the Agency may, in its discre-*
6 *tion, determine to be appropriate; and*

7 “(iii) *perform any other temporary*
8 *function which the Agency may, in its dis-*
9 *cretion, prescribe in accordance with this*
10 *section.*

11 “(2) *CHARTER.—*

12 “(A) *CONDITIONS.—The Agency may grant*
13 *a temporary charter if the Agency determines*
14 *that the continued operation of the regulated en-*
15 *tity in default or in danger of default is in the*
16 *best interest of the national economy and the*
17 *housing markets.*

18 “(B) *TREATMENT AS BEING IN DEFAULT*
19 *FOR CERTAIN PURPOSES.—A limited-life regu-*
20 *lated entity shall be treated as a regulated entity*
21 *in default at such times and for such purposes*
22 *as the Agency may, in its discretion, determine.*

23 “(C) *MANAGEMENT.—A limited-life regu-*
24 *lated entity, upon the granting of its charter,*
25 *shall be under the management of a board of di-*

1 *rectors consisting of not fewer than 5 nor more*
2 *than 10 members appointed by the Agency.*

3 “(D) *BYLAWS.*—*The board of directors of a*
4 *limited-life regulated entity shall adopt such by-*
5 *laws as may be approved by the Agency.*

6 “(3) *CAPITAL STOCK.*—*No capital stock need be*
7 *paid into a limited-life regulated entity by the Agen-*
8 *cy.*

9 “(4) *INVESTMENTS.*—*Funds of a limited-life reg-*
10 *ulated entity shall be kept on hand in cash, invested*
11 *in obligations of the United States or obligations*
12 *guaranteed as to principal and interest by the United*
13 *States, or deposited with the Agency, or any Federal*
14 *Reserve bank.*

15 “(5) *EXEMPT STATUS.*—*Notwithstanding any*
16 *other provision of Federal or State law, the limited-*
17 *life regulated entity, its franchise, property, and in-*
18 *come shall be exempt from all taxation now or here-*
19 *after imposed by the United States, by any territory,*
20 *dependency, or possession thereof, or by any State,*
21 *county, municipality, or local taxing authority.*

22 “(6) *WINDING UP.*—

23 “(A) *IN GENERAL.*—*Subject to subpara-*
24 *graph (B), unless Congress authorizes the sale of*
25 *the capital stock of the limited-life regulated en-*

1 *tity, not later than 2 years after the date of its*
2 *organization, the Agency shall wind up the af-*
3 *fairs of the limited-life regulated entity.*

4 “(B) *EXTENSION.*—*The Director may, in*
5 *the discretion of the Director, extend the status*
6 *of the limited-life regulated entity for 3 addi-*
7 *tional 1-year periods.*

8 “(7) *TRANSFER OF ASSETS AND LIABILITIES.*—

9 “(A) *IN GENERAL.*—

10 “(i) *TRANSFER OF ASSETS AND LIABIL-*
11 *ITIES.*—*The Agency, as receiver, may trans-*
12 *fer any assets and liabilities of a regulated*
13 *entity in default, or in danger of default, to*
14 *the limited-life regulated entity in accord-*
15 *ance with paragraph (1).*

16 “(ii) *SUBSEQUENT TRANSFERS.*—*At*
17 *any time after a charter is transferred to a*
18 *limited-life regulated entity, the Agency, as*
19 *receiver, may transfer any assets and liabil-*
20 *ities of such regulated entity in default, or*
21 *in danger in default, as the Agency may, in*
22 *its discretion, determine to be appropriate*
23 *in accordance with paragraph (1).*

24 “(iii) *EFFECTIVE WITHOUT AP-*
25 *PROVAL.*—*The transfer of any assets or li-*

1 abilities of a regulated entity in default, or
2 in danger of default, transferred to a lim-
3 ited-life regulated entity shall be effective
4 without any further approval under Federal
5 or State law, assignment, or consent with
6 respect thereto.

7 “(8) *PROCEEDS*.—To the extent that available
8 proceeds from the limited-life regulated entity exceed
9 amounts required to pay obligations, such proceeds
10 may be paid to the regulated entity in default, or in
11 danger of default.

12 “(9) *POWERS*.—

13 “(A) *IN GENERAL*.—Each limited-life regu-
14 lated entity created under this subsection shall
15 have all corporate powers of, and be subject to
16 the same provisions of law as, the regulated enti-
17 ty in default or in danger of default to which it
18 relates, except that—

19 “(i) the Agency may—

20 “(I) remove the directors of a lim-
21 ited-life regulated entity; and

22 “(II) fix the compensation of
23 members of the board of directors and
24 senior management, as determined by

1 *the Agency in its discretion, of a lim-*
2 *ited-life regulated entity;*

3 “(ii) *the Agency may indemnify the*
4 *representatives for purposes of paragraph*
5 *(1)(B), and the directors, officers, employ-*
6 *ees, and agents of a limited-life regulated*
7 *entity on such terms as the Agency deter-*
8 *mines to be appropriate; and*

9 “(iii) *the board of directors of a lim-*
10 *ited-life regulated entity—*

11 “(I) *shall elect a chairperson who*
12 *may also serve in the position of chief*
13 *executive officer, except that such per-*
14 *son shall not serve either as chair-*
15 *person or as chief executive officer*
16 *without the prior approval of the Agen-*
17 *cy; and*

18 “(II) *may appoint a chief execu-*
19 *tive officer who is not also the chair-*
20 *person, except that such person shall*
21 *not serve as chief executive officer with-*
22 *out the prior approval of the Agency.*

23 “(B) *STAY OF JUDICIAL ACTION.—Any judi-*
24 *cial action to which a limited-life regulated enti-*
25 *ty becomes a party by virtue of its acquisition*

1 *of any assets or assumption of any liabilities of*
2 *a regulated entity in default shall be stayed from*
3 *further proceedings for a period of up to 45 days*
4 *at the request of the limited-life regulated entity.*
5 *Such period may be modified upon the consent*
6 *of all parties.*

7 “(10) *OBTAINING OF CREDIT AND INCURRING OF*
8 *DEBT.—*

9 “(A) *IN GENERAL.—The limited-life regu-*
10 *lated entity may obtain unsecured credit and*
11 *incur unsecured debt in the ordinary course of*
12 *business.*

13 “(B) *INABILITY TO OBTAIN CREDIT.—If the*
14 *limited-life regulated entity is unable to obtain*
15 *unsecured credit the Director may authorize the*
16 *obtaining of credit or the incurring of debt—*

17 “(i) *with priority over any or all ad-*
18 *ministrative expenses;*

19 “(ii) *secured by a lien on property that*
20 *is not otherwise subject to a lien; or*

21 “(iii) *secured by a junior lien on prop-*
22 *erty that is subject to a lien.*

23 “(C) *LIMITATIONS.—*

24 “(i) *IN GENERAL.—The Director, after*
25 *notice and a hearing, may authorize the ob-*

1 *taining of credit or the incurring of debt se-*
2 *cured by a senior or equal lien on property*
3 *that is subject to a lien (other than mort-*
4 *gages that collateralize the mortgage-backed*
5 *securities issued or guaranteed by the regu-*
6 *lated entity) only if—*

7 *“(I) the limited-life regulated en-*
8 *tity is unable to obtain such credit oth-*
9 *erwise; and*

10 *“(II) there is adequate protection*
11 *of the interest of the holder of the lien*
12 *on the property which such senior or*
13 *equal lien is proposed to be granted.*

14 *“(ii) BURDEN OF PROOF.—In any*
15 *hearing under this subsection, the Director*
16 *has the burden of proof on the issue of ade-*
17 *quate protection.*

18 *“(D) AFFECT ON DEBTS AND LIENS.—The*
19 *reversal or modification on appeal of an author-*
20 *ization under this paragraph to obtain credit or*
21 *incur debt, or of a grant under this section of a*
22 *priority or a lien, does not affect the validity of*
23 *any debt so incurred, or any priority or lien so*
24 *granted, to an entity that extended such credit in*
25 *good faith, whether or not such entity knew of*

1 *the pendency of the appeal, unless such author-*
2 *ization and the incurring of such debt, or the*
3 *granting of such priority or lien, were stayed*
4 *pending appeal.*

5 “(11) *ISSUANCE OF PREFERRED DEBT.*—*A lim-*
6 *ited-life regulated entity may, subject to the approval*
7 *of the Director and subject to such terms and condi-*
8 *tions as the Director may prescribe, issue notes,*
9 *bonds, or other debt obligations of a class to which all*
10 *other debt obligations of the limited-life regulated en-*
11 *tity shall be subordinate in right and payment.*

12 “(12) *NO FEDERAL STATUS.*—

13 “(A) *AGENCY STATUS.*—*A limited-life regu-*
14 *lated entity is not an agency, establishment, or*
15 *instrumentality of the United States.*

16 “(B) *EMPLOYEE STATUS.*—*Representatives*
17 *for purposes of paragraph (1)(B), interim direc-*
18 *tors, directors, officers, employees, or agents of a*
19 *limited-life regulated entity are not, solely by*
20 *virtue of service in any such capacity, officers or*
21 *employees of the United States. Any employee of*
22 *the Agency or of any Federal instrumentality*
23 *who serves at the request of the Agency as a rep-*
24 *resentative for purposes of paragraph (1)(B), in-*
25 *terim director, director, officer, employee, or*

1 *agent of a limited-life regulated entity shall*
2 *not—*

3 “(i) *solely by virtue of service in any*
4 *such capacity lose any existing status as an*
5 *officer or employee of the United States for*
6 *purposes of title 5, United States Code, or*
7 *any other provision of law; or*

8 “(ii) *receive any salary or benefits for*
9 *service in any such capacity with respect to*
10 *a limited-life regulated entity in addition to*
11 *such salary or benefits as are obtained*
12 *through employment with the Agency or*
13 *such Federal instrumentality.*

14 “(13) *ADDITIONAL POWERS.—In addition to any*
15 *other powers granted under this subsection, a limited-*
16 *life regulated entity may—*

17 “(A) *extend a maturity date or change in*
18 *an interest rate or other term of outstanding se-*
19 *curities;*

20 “(B) *issue securities of the limited-life regu-*
21 *lated entity, for cash, for property, for existing*
22 *securities, or in exchange for claims or interests,*
23 *or for any other appropriate purposes; and*

24 “(C) *take any other action not inconsistent*
25 *with this section.*

1 “(j) *OTHER EXEMPTIONS.*—When acting as a receiver,
2 *the following provisions shall apply with respect to the*
3 *Agency:*

4 “(1) *EXEMPTION FROM TAXATION.*—The Agency,
5 *including its franchise, its capital, reserves, and sur-*
6 *plus, and its income, shall be exempt from all tax-*
7 *ation imposed by any State, country, municipality,*
8 *or local taxing authority, except that any real prop-*
9 *erty of the Agency shall be subject to State, territorial,*
10 *county, municipal, or local taxation to the same ex-*
11 *tent according to its value as other real property is*
12 *taxed, except that, notwithstanding the failure of any*
13 *person to challenge an assessment under State law of*
14 *the value of such property, and the tax thereon, shall*
15 *be determined as of the period for which such tax is*
16 *imposed.*

17 “(2) *EXEMPTION FROM ATTACHMENT AND*
18 *LIENS.*—No property of the Agency shall be subject to
19 *levy, attachment, garnishment, foreclosure, or sale*
20 *without the consent of the Agency, nor shall any in-*
21 *voluntary lien attach to the property of the Agency.*

22 “(3) *EXEMPTION FROM PENALTIES AND FINES.*—
23 *The Agency shall not be liable for any amounts in the*
24 *nature of penalties or fines, including those arising*
25 *from the failure of any person to pay any real prop-*

1 *erty, personal property, probate, or recording tax or*
 2 *any recording or filing fees when due.*

3 “(k) *PROHIBITION OF CHARTER REVOCATION.*—*In no*
 4 *case may a receiver appointed pursuant to this section re-*
 5 *voke, annul, or terminate the charter of a regulated entity.”.*

6 (b) *CONFORMING AMENDMENTS.*—*Subtitle B of title*
 7 *XIII of the Housing and Community Development Act of*
 8 *1992 is amended by striking sections 1369 (12 U.S.C.*
 9 *4619), 1369A (12 U.S.C. 4620), and 1369B (12 U.S.C.*
 10 *4621).*

11 **SEC. 145. CONFORMING AMENDMENTS.**

12 *Title XIII of the Housing and Community Develop-*
 13 *ment Act of 1992, as amended by the preceding provisions*
 14 *of this Act, is further amended—*

15 (1) *in sections 1365 (12 U.S.C. 4615) through*
 16 *1369D (12 U.S.C. 4623), but not including section*
 17 *1367 (12 U.S.C. 4617) as added by section 144 of this*
 18 *Act—*

19 (A) *by striking “An enterprise” each place*
 20 *such term appears and inserting “A regulated*
 21 *entity”;*

22 (B) *by striking “an enterprise” each place*
 23 *such term appears and inserting “a regulated*
 24 *entity”;* *and*

1 (C) by striking “the enterprise” each place
2 such term appears and inserting “the regulated
3 entity”;

4 (2) in section 1366 (12 U.S.C. 4616)—

5 (A) in subsection (b)(7), by striking “section
6 1369 (excluding subsection (a)(1) and (2))” and
7 inserting “section 1367”; and

8 (B) in subsection (d), by striking “the en-
9 terprises” and inserting “the regulated entities”;

10 (3) in section 1368(d) (12 U.S.C. 4618(d)), by
11 striking “Committee on Banking, Finance and Urban
12 Affairs” and inserting “Committee on Financial
13 Services”;

14 (4) in section 1369C(c) (12 U.S.C. 4622(c)), by
15 striking “any enterprise” and inserting “any regu-
16 lated entity”; and

17 (5) in subsections (a) and (d) of section 1369D,
18 by striking “section 1366 or 1367 or action under sec-
19 tion 1369)” each place such phrase appears and in-
20 serting “section 1367”).

21 **Subtitle D—Enforcement Actions**

22 **SEC. 161. CEASE-AND-DESIST PROCEEDINGS.**

23 Section 1371 of the Housing and Community Develop-
24 ment Act of 1992 (12 U.S.C. 4631) is amended—

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

3 “(a) *ISSUANCE FOR UNSAFE OR UNSOUND PRACTICES*
4 *AND VIOLATIONS OF RULES OR LAWS.—If, in the opinion*
5 *of the Director, a regulated entity or any regulated entity-*
6 *affiliated party is engaging or has engaged, or the Director*
7 *has reasonable cause to believe that the regulated entity or*
8 *any regulated entity-affiliated party is about to engage, in*
9 *an unsafe or unsound practice in conducting the business*
10 *of the regulated entity or is violating or has violated, or*
11 *the Director has reasonable cause to believe that the regu-*
12 *lated entity or any regulated entity-affiliated party is about*
13 *to violate, a law, rule, or regulation, or any condition im-*
14 *posed in writing by the Director in connection with the*
15 *granting of any application or other request by the regu-*
16 *lated entity or any written agreement entered into with the*
17 *Director, the Director may issue and serve upon the regu-*
18 *lated entity or such party a notice of charges in respect*
19 *thereof. The Director may not, pursuant to this section, en-*
20 *force compliance with any housing goal established under*
21 *subpart B of part 2 of subtitle A of this title, with section*
22 *1336 or 1337 of this title, with subsection (m) or (n) of*
23 *section 309 of the Federal National Mortgage Association*
24 *Charter Act (12 U.S.C. 1723a(m), (n)), with subsection (e)*
25 *or (f) of section 307 of the Federal Home Loan Mortgage*

1 Corporation Act (12 U.S.C. 1456(e), (f)), or with paragraph
2 (5) of section 10(j) of the Federal Home Loan Bank Act
3 (12 U.S.C. 1430(j)).

4 “(b) *ISSUANCE FOR UNSATISFACTORY RATING.*—If a
5 regulated entity receives, in its most recent report of exam-
6 ination, a less-than-satisfactory rating for asset quality,
7 management, earnings, or liquidity, the Director may (if
8 the deficiency is not corrected) deem the regulated entity
9 to be engaging in an unsafe or unsound practice for pur-
10 poses of this subsection.”;

11 (2) in subsection (c)(2), by striking “enterprise,
12 executive officer, or director” and inserting “regulated
13 entity or regulated entity-affiliated party”; and

14 (3) in subsection (d)—

15 (A) in the matter preceding paragraph (1),
16 by striking “enterprise, executive officer, or di-
17 rector” and inserting “regulated entity or regu-
18 lated entity-affiliated party”;

19 (B) in paragraph (1)—

20 (i) by striking “an executive officer or
21 director” and inserting “a regulated entity
22 affiliated party”; and

23 (ii) by inserting “(including reim-
24 bursement of compensation under section
25 1318)” after “reimbursement”;

1 (C) in paragraph (6), by striking “and” at
2 the end;

3 (D) by redesignating paragraph (7) as
4 paragraph (8); and

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

7 “(7) to effect an attachment on a regulated enti-
8 ty or regulated entity-affiliated party subject to an
9 order under this section or section 1372; and”.

10 **SEC. 162. TEMPORARY CEASE-AND-DESIST PROCEEDINGS.**

11 Section 1372 of the Housing and Community Develop-
12 ment Act of 1992 (12 U.S.C. 4632) is amended—

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

15 “(a) **GROUNDS FOR ISSUANCE.**—Whenever the Direc-
16 tor determines that the violation or threatened violation or
17 the unsafe or unsound practice or practices specified in the
18 notice of charges served upon the regulated entity or any
19 regulated entity-affiliated party pursuant to section
20 1371(a), or the continuation thereof, is likely to cause insol-
21 vency or significant dissipation of assets or earnings of the
22 regulated entity, or is likely to weaken the condition of the
23 regulated entity prior to the completion of the proceedings
24 conducted pursuant to sections 1371 and 1373, the Director
25 may issue a temporary order requiring the regulated entity

1 *or such party to cease and desist from any such violation*
2 *or practice and to take affirmative action to prevent or rem-*
3 *edy such insolvency, dissipation, condition, or prejudice*
4 *pending completion of such proceedings. Such order may*
5 *include any requirement authorized under section*
6 *1371(d).”;*

7 (2) *in subsection (b), by striking “enterprise, ex-*
8 *ecutive officer, or director” and inserting “regulated*
9 *entity or regulated entity-affiliated party”;*

10 (3) *in subsection (d)—*

11 (A) *by striking “An enterprise, executive of-*
12 *ficer, or director” and inserting “A regulated en-*
13 *tity or regulated entity-affiliated party”; and*

14 (B) *by striking “the enterprise, executive of-*
15 *ficer, or director” and inserting “the regulated*
16 *entity or regulated entity-affiliated party”; and*

17 (4) *by striking subsection (e) and in inserting*
18 *the following new subsection:*

19 “(e) *ENFORCEMENT.—In the case of violation or*
20 *threatened violation of, or failure to obey, a temporary*
21 *cease-and-desist order issued pursuant to this section, the*
22 *Director may apply to the United States District Court for*
23 *the District of Columbia or the United States district court*
24 *within the jurisdiction of which the headquarters of the reg-*
25 *ulated entity is located, for an injunction to enforce such*

1 *order, and, if the court determines that there has been such*
2 *violation or threatened violation or failure to obey, it shall*
3 *be the duty of the court to issue such injunction.”.*

4 **SEC. 163. PREJUDGMENT ATTACHMENT.**

5 *The Housing and Community Development Act of*
6 *1992 is amended by inserting after section 1375 (12 U.S.C.*
7 *4635) the following new section:*

8 **“SEC. 1375A. PREJUDGMENT ATTACHMENT.**

9 *“(a) IN GENERAL.—In any action brought pursuant*
10 *to this title, or in actions brought in aid of, or to enforce*
11 *an order in, any administrative or other civil action for*
12 *money damages, restitution, or civil money penalties*
13 *brought pursuant to this title, the court may, upon applica-*
14 *tion of the Director or Attorney General, as applicable,*
15 *issue a restraining order that—*

16 *“(1) prohibits any person subject to the pro-*
17 *ceeding from withdrawing, transferring, removing,*
18 *dissipating, or disposing of any funds, assets or other*
19 *property; and*

20 *“(2) appoints a person on a temporary basis to*
21 *administer the restraining order.*

22 *“(b) STANDARD.—*

23 *“(1) SHOWING.—Rule 65 of the Federal Rules of*
24 *Civil Procedure shall apply with respect to any pro-*
25 *ceeding under subsection (a) without regard to the re-*

1 *quirement of such rule that the applicant show that*
2 *the injury, loss, or damage is irreparable and imme-*
3 *diate.*

4 *“(2) STATE PROCEEDING.—If, in the case of any*
5 *proceeding in a State court, the court determines that*
6 *rules of civil procedure available under the laws of*
7 *such State provide substantially similar protections*
8 *to a party’s right to due process as Rule 65 (as modi-*
9 *fied with respect to such proceeding by paragraph*
10 *(1)), the relief sought under subsection (a) may be re-*
11 *quested under the laws of such State.”.*

12 **SEC. 164. ENFORCEMENT AND JURISDICTION.**

13 *Section 1375 of the Housing and Community Develop-*
14 *ment Act of 1992 (12 U.S.C. 4635) is amended—*

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

17 *“(a) ENFORCEMENT.—The Director may, in the dis-*
18 *cretion of the Director, apply to the United States District*
19 *Court for the District of Columbia, or the United States*
20 *district court within the jurisdiction of which the head-*
21 *quarters of the regulated entity is located, for the enforce-*
22 *ment of any effective and outstanding notice or order issued*
23 *under this subtitle or subtitle B, or request that the Attorney*
24 *General of the United States bring such an action. Such*

1 *court shall have jurisdiction and power to order and require*
2 *compliance with such notice or order.”; and*

3 *(2) in subsection (b), by striking “or 1376” and*
4 *inserting “1376, or 1377”.*

5 **SEC. 165. CIVIL MONEY PENALTIES.**

6 *Section 1376 of the Housing and Community Develop-*
7 *ment Act of 1992 (12 U.S.C. 4636) is amended—*

8 *(1) in subsection (a)—*

9 *(A) in the matter preceding paragraph (1),*
10 *by striking “or any executive officer or” and in-*
11 *serting “any executive officer of a regulated enti-*
12 *ty, any regulated entity-affiliated party, or*
13 *any”; and*

14 *(B) in paragraph (1)—*

15 *(i) by striking “the Federal National*
16 *Mortgage Association Charter Act, the Fed-*
17 *eral Home Loan Mortgage Corporation Act”*
18 *and inserting “any provision of any of the*
19 *authorizing statutes”;*

20 *(ii) by striking “or Act” and inserting*
21 *“or statute”;*

22 *(iii) by striking “or subsection” and*
23 *inserting “, subsection”; and*

24 *(iv) by inserting “, or paragraph (5)*
25 *or (12) of section 10(j) of the Federal Home*

1 *Loan Bank Act*” before the semicolon at the
2 end;

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

5 “(b) *AMOUNT OF PENALTY.*—

6 “(1) *FIRST TIER.*—Any regulated entity which,
7 or any regulated entity-affiliated party who—

8 “(A) violates any provision of this title, any
9 provision of any of the authorizing statutes, or
10 any order, condition, rule, or regulation under
11 any such title or statute, except that the Director
12 may not, pursuant to this section, enforce com-
13 pliance with any housing goal established under
14 subpart B of part 2 of subtitle A of this title,
15 with section 1336 or 1337 of this title, with sub-
16 section (m) or (n) of section 309 of the Federal
17 National Mortgage Association Charter Act (12
18 U.S.C. 1723a(m), (n)), with subsection (e) or (f)
19 of section 307 of the Federal Home Loan Mort-
20 gage Corporation Act (12 U.S.C. 1456(e), (f)), or
21 with paragraph (5) or (12) of section 10(j) of the
22 Federal Home Loan Bank Act;

23 “(B) violates any final or temporary order
24 or notice issued pursuant to this title;

1 “(C) violates any condition imposed in
2 writing by the Director in connection with the
3 grant of any application or other request by such
4 regulated entity;

5 “(D) violates any written agreement be-
6 tween the regulated entity and the Director; or

7 “(E) engages in any conduct the Director
8 determines to be an unsafe or unsound practice,
9 shall forfeit and pay a civil penalty of not more
10 than \$10,000 for each day during which such
11 violation continues.

12 “(2) SECOND TIER.—Notwithstanding paragraph
13 (1)—

14 “(A) if a regulated entity, or a regulated
15 entity-affiliated party—

16 “(i) commits any violation described
17 in any subparagraph of paragraph (1);

18 “(ii) recklessly engages in an unsafe or
19 unsound practice in conducting the affairs
20 of such regulated entity; or

21 “(iii) breaches any fiduciary duty; and

22 “(B) the violation, practice, or breach—

23 “(i) is part of a pattern of misconduct;

1 “(ii) causes or is likely to cause more
2 than a minimal loss to such regulated enti-
3 ty; or

4 “(iii) results in pecuniary gain or
5 other benefit to such party, the regulated en-
6 tity or regulated entity-affiliated party
7 shall forfeit and pay a civil penalty of not
8 more than \$50,000 for each day during
9 which such violation, practice, or breach
10 continues.

11 “(3) *THIRD TIER.*—Notwithstanding paragraphs
12 (1) and (2), any regulated entity which, or any regu-
13 lated entity-affiliated party who—

14 “(A) knowingly—

15 “(i) commits any violation or engages
16 in any conduct described in any subpara-
17 graph of paragraph (1);

18 “(ii) engages in any unsafe or unsound
19 practice in conducting the affairs of such
20 regulated entity; or

21 “(iii) breaches any fiduciary duty; and

22 “(B) knowingly or recklessly causes a sub-
23 stantial loss to such regulated entity or a sub-
24 stantial pecuniary gain or other benefit to such
25 party by reason of such violation, practice, or

1 *breach, shall forfeit and pay a civil penalty in*
2 *an amount not to exceed the applicable max-*
3 *imum amount determined under paragraph (4)*
4 *for each day during which such violation, prac-*
5 *tice, or breach continues.*

6 “(4) *MAXIMUM AMOUNTS OF PENALTIES FOR ANY*
7 *VIOLATION DESCRIBED IN PARAGRAPH (3).—The max-*
8 *imum daily amount of any civil penalty which may*
9 *be assessed pursuant to paragraph (3) for any viola-*
10 *tion, practice, or breach described in such paragraph*
11 *is—*

12 “(A) *in the case of any person other than*
13 *a regulated entity, an amount not to exceed*
14 *\$2,000,000; and*

15 “(B) *in the case of any regulated entity,*
16 *\$2,000,000.”;*

17 (3) *in subsection (c)(1)(B), by striking “enter-*
18 *prise, executive officer, or director” and inserting*
19 *“regulated entity or regulated entity-affiliated party”;*

20 (4) *in subsection (d), by striking the first sen-*
21 *tence and inserting the following: “If a regulated enti-*
22 *ty or regulated entity-affiliated party fails to comply*
23 *with an order of the Director imposing a civil money*
24 *penalty under this section, after the order is no longer*
25 *subject to review as provided under subsection (c)(1)*

1 *and section 1374, the Director may, in the discretion*
2 *of the Director, bring an action in the United States*
3 *District Court for the District of Columbia, or the*
4 *United States district court within the jurisdiction of*
5 *which the headquarters of the regulated entity is lo-*
6 *cated, to obtain a monetary judgment against the reg-*
7 *ulated entity or regulated entity affiliated party and*
8 *such other relief as may be available, or request that*
9 *the Attorney General of the United States bring such*
10 *an action.”; and*

11 *(5) in subsection (g), by striking “subsection*
12 *(b)(3)” and inserting “this section, unless authorized*
13 *by the Director by rule, regulation, or order”.*

14 **SEC. 166. REMOVAL AND PROHIBITION AUTHORITY.**

15 *(a) IN GENERAL.—Subtitle C of title XIII of the Hous-*
16 *ing and Community Development Act of 1992 is amend-*
17 *ed—*

18 *(1) by redesignating sections 1377, 1378, 1379,*
19 *1379A, and 1379B (12 U.S.C. 4637–41) as sections*
20 *1379, 1379A, 1379B, 1379C, and 1379D, respectively;*
21 *and*

22 *(2) by inserting after section 1376 (12 U.S.C.*
23 *4636) the following new section:*

1 **“SEC. 1377. REMOVAL AND PROHIBITION AUTHORITY.**

2 “(a) *AUTHORITY TO ISSUE ORDER.*—Whenever the Di-
3 rector determines that—

4 “(1) any regulated entity-affiliated party has,
5 directly or indirectly—

6 “(A) violated—

7 “(i) any law or regulation;

8 “(ii) any cease-and-desist order which
9 has become final;

10 “(iii) any condition imposed in writ-
11 ing by the Director in connection with the
12 grant of any application or other request by
13 such regulated entity; or

14 “(iv) any written agreement between
15 such regulated entity and the Director;

16 “(B) engaged or participated in any unsafe
17 or unsound practice in connection with any reg-
18 ulated entity; or

19 “(C) committed or engaged in any act,
20 omission, or practice which constitutes a breach
21 of such party’s fiduciary duty;

22 “(2) by reason of the violation, practice, or
23 breach described in any subparagraph of paragraph
24 (1)—

1 “(A) such regulated entity has suffered or
2 will probably suffer financial loss or other dam-
3 age; or

4 “(B) such party has received financial gain
5 or other benefit by reason of such violation, prac-
6 tice, or breach; and

7 “(3) such violation, practice, or breach—

8 “(A) involves personal dishonesty on the
9 part of such party; or

10 “(B) demonstrates willful or continuing dis-
11 regard by such party for the safety or soundness
12 of such regulated entity, the Director may serve
13 upon such party a written notice of the Direc-
14 tor’s intention to remove such party from office
15 or to prohibit any further participation by such
16 party, in any manner, in the conduct of the af-
17 fairs of any regulated entity.

18 “(b) *SUSPENSION ORDER.*—

19 “(1) *SUSPENSION OR PROHIBITION AUTHOR-*
20 *ITY.*—If the Director serves written notice under sub-
21 section (a) to any regulated entity-affiliated party of
22 the Director’s intention to issue an order under such
23 subsection, the Director may—

24 “(A) suspend such party from office or pro-
25 hibit such party from further participation in

1 *any manner in the conduct of the affairs of the*
2 *regulated entity, if the Director—*

3 “(i) *determines that such action is nec-*
4 *essary for the protection of the regulated en-*
5 *tity; and*

6 “(ii) *serves such party with written*
7 *notice of the suspension order; and*

8 “(B) *prohibit the regulated entity from re-*
9 *leasing to or on behalf of the regulated entity-af-*
10 *filiated party any compensation or other pay-*
11 *ment of money or other thing of current or po-*
12 *tential value in connection with any resignation,*
13 *removal, retirement, or other termination of em-*
14 *ployment or office of the party.*

15 “(2) *EFFECTIVE PERIOD.—Any suspension order*
16 *issued under this subsection—*

17 “(A) *shall become effective upon service; and*

18 “(B) *unless a court issues a stay of such*
19 *order under subsection (g) of this section, shall*
20 *remain in effect and enforceable until—*

21 “(i) *the date the Director dismisses the*
22 *charges contained in the notice served under*
23 *subsection (a) with respect to such party; or*

1 “(ii) the effective date of an order
2 issued by the Director to such party under
3 subsection (a).

4 “(3) COPY OF ORDER.—If the Director issues a
5 suspension order under this subsection to any regu-
6 lated entity-affiliated party, the Director shall serve a
7 copy of such order on any regulated entity with which
8 such party is affiliated at the time such order is
9 issued.

10 “(c) NOTICE, HEARING, AND ORDER.—A notice of in-
11 tention to remove a regulated entity-affiliated party from
12 office or to prohibit such party from participating in the
13 conduct of the affairs of a regulated entity shall contain
14 a statement of the facts constituting grounds for such ac-
15 tion, and shall fix a time and place at which a hearing
16 will be held on such action. Such hearing shall be fixed for
17 a date not earlier than 30 days nor later than 60 days after
18 the date of service of such notice, unless an earlier or a
19 later date is set by the Director at the request of (1) such
20 party, and for good cause shown, or (2) the Attorney Gen-
21 eral of the United States. Unless such party shall appear
22 at the hearing in person or by a duly authorized representa-
23 tive, such party shall be deemed to have consented to the
24 issuance of an order of such removal or prohibition. In the
25 event of such consent, or if upon the record made at any

1 *such hearing the Director shall find that any of the grounds*
2 *specified in such notice have been established, the Director*
3 *may issue such orders of suspension or removal from office,*
4 *or prohibition from participation in the conduct of the af-*
5 *fairs of the regulated entity, as it may deem appropriate,*
6 *together with an order prohibiting compensation described*
7 *in subsection (b)(1)(B). Any such order shall become effec-*
8 *tive at the expiration of 30 days after service upon such*
9 *regulated entity and such party (except in the case of an*
10 *order issued upon consent, which shall become effective at*
11 *the time specified therein). Such order shall remain effective*
12 *and enforceable except to such extent as it is stayed, modi-*
13 *fied, terminated, or set aside by action of the Director or*
14 *a reviewing court.*

15 “(d) *PROHIBITION OF CERTAIN SPECIFIC ACTIVI-*
16 *TIES.—Any person subject to an order issued under this sec-*
17 *tion shall not—*

18 “(1) *participate in any manner in the conduct*
19 *of the affairs of any regulated entity;*

20 “(2) *solicit, procure, transfer, attempt to trans-*
21 *fer, vote, or attempt to vote any proxy, consent, or au-*
22 *thorization with respect to any voting rights in any*
23 *regulated entity;*

24 “(3) *violate any voting agreement previously ap-*
25 *proved by the Director; or*

1 “(4) *vote for a director, or serve or act as a regu-*
2 *lated entity-affiliated party.*

3 “(e) *INDUSTRY-WIDE PROHIBITION.—*

4 “(1) *IN GENERAL.—Except as provided in para-*
5 *graph (2), any person who, pursuant to an order*
6 *issued under this section, has been removed or sus-*
7 *sended from office in a regulated entity or prohibited*
8 *from participating in the conduct of the affairs of a*
9 *regulated entity may not, while such order is in effect,*
10 *continue or commence to hold any office in, or par-*
11 *ticipate in any manner in the conduct of the affairs*
12 *of, any regulated entity.*

13 “(2) *EXCEPTION IF DIRECTOR PROVIDES WRIT-*
14 *TEN CONSENT.—If, on or after the date an order is*
15 *issued under this section which removes or suspends*
16 *from office any regulated entity-affiliated party or*
17 *prohibits such party from participating in the con-*
18 *duct of the affairs of a regulated entity, such party*
19 *receives the written consent of the Director, the order*
20 *shall, to the extent of such consent, cease to apply to*
21 *such party with respect to the regulated entity de-*
22 *scribed in the written consent. If the Director grants*
23 *such a written consent, it shall publicly disclose such*
24 *consent.*

1 “(3) *VIOLATION OF PARAGRAPH (1) TREATED AS*
2 *VIOLATION OF ORDER.*—*Any violation of paragraph*
3 *(1) by any person who is subject to an order described*
4 *in such subsection shall be treated as a violation of*
5 *the order.*

6 “(f) *APPLICABILITY.*—*This section shall only apply to*
7 *a person who is an individual, unless the Director specifi-*
8 *cally finds that it should apply to a corporation, firm, or*
9 *other business enterprise.*

10 “(g) *STAY OF SUSPENSION AND PROHIBITION OF REG-*
11 *ULATED ENTITY-AFFILIATED PARTY.*—*Within 10 days*
12 *after any regulated entity-affiliated party has been sus-*
13 *pending from office and/or prohibited from participation in*
14 *the conduct of the affairs of a regulated entity under this*
15 *section, such party may apply to the United States District*
16 *Court for the District of Columbia, or the United States*
17 *district court for the judicial district in which the head-*
18 *quarters of the regulated entity is located, for a stay of such*
19 *suspension and/or prohibition and any prohibition under*
20 *subsection (b)(1)(B) pending the completion of the adminis-*
21 *trative proceedings pursuant to the notice served upon such*
22 *party under this section, and such court shall have jurisdic-*
23 *tion to stay such suspension and/or prohibition.*

24 “(h) *SUSPENSION OR REMOVAL OF REGULATED ENTI-*
25 *TY-AFFILIATED PARTY CHARGED WITH FELONY.*—

1 “(1) *SUSPENSION OR PROHIBITION.*—

2 “(A) *IN GENERAL.*—Whenever any regu-
3 lated entity-affiliated party is charged in any
4 information, indictment, or complaint, with the
5 commission of or participation in a crime in-
6 volving dishonesty or breach of trust which is
7 punishable by imprisonment for a term exceed-
8 ing one year under State or Federal law, the Di-
9 rector may, if continued service or participation
10 by such party may pose a threat to the regulated
11 entity or impair public confidence in the regu-
12 lated entity, by written notice served upon such
13 party—

14 “(i) suspend such party from office or
15 prohibit such party from further participa-
16 tion in any manner in the conduct of the
17 affairs of any regulated entity; and

18 “(ii) prohibit the regulated entity from
19 releasing to or on behalf of the regulated en-
20 tity-affiliated party any compensation or
21 other payment of money or other thing of
22 current or potential value in connection
23 with the period of any such suspension or
24 with any resignation, removal, retirement,

1 *or other termination of employment or of-*
2 *face of the party.*

3 “(B) *PROVISIONS APPLICABLE TO NO-*
4 *TICE.—*

5 “(i) *COPY.—A copy of any notice*
6 *under paragraph (1)(A) shall also be served*
7 *upon the regulated entity.*

8 “(ii) *EFFECTIVE PERIOD.—A suspen-*
9 *sion or prohibition under subparagraph (A)*
10 *shall remain in effect until the information,*
11 *indictment, or complaint referred to in such*
12 *subparagraph is finally disposed of or until*
13 *terminated by the Director.*

14 “(2) *REMOVAL OR PROHIBITION.—*

15 “(A) *IN GENERAL.—If a judgment of con-*
16 *viction or an agreement to enter a pretrial diver-*
17 *sion or other similar program is entered against*
18 *a regulated entity-affiliated party in connection*
19 *with a crime described in paragraph (1)(A), at*
20 *such time as such judgment is not subject to fur-*
21 *ther appellate review, the Director may, if con-*
22 *tinued service or participation by such party*
23 *may pose a threat to the regulated entity or im-*
24 *pair public confidence in the regulated entity,*
25 *issue and serve upon such party an order that—*

1 “(i) removes such party from office or
2 prohibits such party from further participa-
3 tion in any manner in the conduct of the
4 affairs of the regulated entity without the
5 prior written consent of the Director; and

6 “(ii) prohibits the regulated entity
7 from releasing to or on behalf of the regu-
8 lated entity-affiliated party any compensa-
9 tion or other payment of money or other
10 thing of current or potential value in con-
11 nection with the termination of employment
12 or office of the party.

13 “(B) PROVISIONS APPLICABLE TO ORDER.—

14 “(i) COPY.—A copy of any order under
15 paragraph (2)(A) shall also be served upon
16 the regulated entity, whereupon the regu-
17 lated entity-affiliated party who is subject
18 to the order (if a director or an officer)
19 shall cease to be a director or officer of such
20 regulated entity.

21 “(ii) EFFECT OF ACQUITTAL.—A find-
22 ing of not guilty or other disposition of the
23 charge shall not preclude the Director from
24 instituting proceedings after such finding or
25 disposition to remove such party from office

1 or to prohibit further participation in regu-
2 lated entity affairs, and to prohibit com-
3 pensation or other payment of money or
4 other thing of current or potential value in
5 connection with any resignation, removal,
6 retirement, or other termination of employ-
7 ment or office of the party, pursuant to sub-
8 sections (a), (d), or (e) of this section.

9 “(iii) *EFFECTIVE PERIOD.*—Any notice
10 of suspension or order of removal issued
11 under this subsection shall remain effective
12 and outstanding until the completion of any
13 hearing or appeal authorized under para-
14 graph (4) unless terminated by the Director.

15 “(3) *AUTHORITY OF REMAINING BOARD MEM-*
16 *BERS.*—If at any time, because of the suspension of
17 one or more directors pursuant to this section, there
18 shall be on the board of directors of a regulated entity
19 less than a quorum of directors not so suspended, all
20 powers and functions vested in or exercisable by such
21 board shall vest in and be exercisable by the director
22 or directors on the board not so suspended, until such
23 time as there shall be a quorum of the board of direc-
24 tors. In the event all of the directors of a regulated
25 entity are suspended pursuant to this section, the Di-

1 *rector shall appoint persons to serve temporarily as*
2 *directors in their place and stead pending the termi-*
3 *nation of such suspensions, or until such time as*
4 *those who have been suspended cease to be directors of*
5 *the regulated entity and their respective successors*
6 *take office.*

7 *“(4) HEARING REGARDING CONTINUED PARTICI-*
8 *PATION.—Within 30 days from service of any notice*
9 *of suspension or order of removal issued pursuant to*
10 *paragraph (1) or (2) of this subsection, the regulated*
11 *entity-affiliated party concerned may request in writ-*
12 *ing an opportunity to appear before the Director to*
13 *show that the continued service to or participation in*
14 *the conduct of the affairs of the regulated entity by*
15 *such party does not, or is not likely to, pose a threat*
16 *to the interests of the regulated entity or threaten to*
17 *impair public confidence in the regulated entity.*
18 *Upon receipt of any such request, the Director shall*
19 *fix a time (not more than 30 days after receipt of*
20 *such request, unless extended at the request of such*
21 *party) and place at which such party may appear,*
22 *personally or through counsel, before one or more*
23 *members of the Director or designated employees of*
24 *the Director to submit written materials (or, at the*
25 *discretion of the Director, oral testimony) and oral*

1 *argument. Within 60 days of such hearing, the Direc-*
2 *tor shall notify such party whether the suspension or*
3 *prohibition from participation in any manner in the*
4 *conduct of the affairs of the regulated entity will be*
5 *continued, terminated, or otherwise modified, or*
6 *whether the order removing such party from office or*
7 *prohibiting such party from further participation in*
8 *any manner in the conduct of the affairs of the regu-*
9 *lated entity, and prohibiting compensation in connec-*
10 *tion with termination will be rescinded or otherwise*
11 *modified. Such notification shall contain a statement*
12 *of the basis for the Director's decision, if adverse to*
13 *such party. The Director is authorized to prescribe*
14 *such rules as may be necessary to effectuate the pur-*
15 *poses of this subsection.*

16 *“(i) HEARINGS AND JUDICIAL REVIEW.—*

17 *“(1) VENUE AND PROCEDURE.—Any hearing*
18 *provided for in this section shall be held in the Dis-*
19 *trict of Columbia or in the Federal judicial district*
20 *in which the headquarters of the regulated entity is*
21 *located, unless the party afforded the hearing consents*
22 *to another place, and shall be conducted in accord-*
23 *ance with the provisions of chapter 5 of title 5,*
24 *United States Code. After such hearing, and within*
25 *90 days after the Director has notified the parties*

1 *that the case has been submitted to it for final deci-*
2 *sion, it shall render its decision (which shall include*
3 *findings of fact upon which its decision is predicated)*
4 *and shall issue and serve upon each party to the pro-*
5 *ceeding an order or orders consistent with the provi-*
6 *sions of this section. Judicial review of any such*
7 *order shall be exclusively as provided in this sub-*
8 *section. Unless a petition for review is timely filed in*
9 *a court of appeals of the United States, as provided*
10 *in paragraph (2), and thereafter until the record in*
11 *the proceeding has been filed as so provided, the Di-*
12 *rector may at any time, upon such notice and in such*
13 *manner as it shall deem proper, modify, terminate, or*
14 *set aside any such order. Upon such filing of the*
15 *record, the Director may modify, terminate, or set*
16 *aside any such order with permission of the court.*

17 *“(2) REVIEW OF ORDER.—Any party to any*
18 *proceeding under paragraph (1) may obtain a review*
19 *of any order served pursuant to paragraph (1) (other*
20 *than an order issued with the consent of the regulated*
21 *entity or the regulated entity-affiliated party con-*
22 *cerned, or an order issued under subsection (h) of this*
23 *section) by the filing in the United States Court of*
24 *Appeals for the District of Columbia Circuit or court*
25 *of appeals of the United States for the circuit in*

1 *which the headquarters of the regulated entity is lo-*
2 *cated, within 30 days after the date of service of such*
3 *order, a written petition praying that the order of the*
4 *Director be modified, terminated, or set aside. A copy*
5 *of such petition shall be forthwith transmitted by the*
6 *clerk of the court to the Director, and thereupon the*
7 *Director shall file in the court the record in the pro-*
8 *ceeding, as provided in section 2112 of title 28,*
9 *United States Code. Upon the filing of such petition,*
10 *such court shall have jurisdiction, which upon the fil-*
11 *ing of the record shall (except as provided in the last*
12 *sentence of paragraph (1)) be exclusive, to affirm,*
13 *modify, terminate, or set aside, in whole or in part,*
14 *the order of the Director. Review of such proceedings*
15 *shall be had as provided in chapter 7 of title 5,*
16 *United States Code. The judgment and decree of the*
17 *court shall be final, except that the same shall be sub-*
18 *ject to review by the Supreme Court upon certiorari,*
19 *as provided in section 1254 of title 28, United States*
20 *Code.*

21 “(3) *PROCEEDINGS NOT TREATED AS STAY.—The*
22 *commencement of proceedings for judicial review*
23 *under paragraph (2) shall not, unless specifically or-*
24 *dered by the court, operate as a stay of any order*
25 *issued by the Director.”.*

1 (b) *CONFORMING AMENDMENTS.*—

2 (1) *1992 ACT.*—Section 1317(f) of the *Housing*
3 *and Community Development Act of 1992* (12 U.S.C.
4 4517(f)) is amended by striking “section 1379B” and
5 inserting “section 1379D”.

6 (2) *FANNIE MAE CHARTER ACT.*—The second sen-
7 tence of subsection (b) of section 308 of the *Federal*
8 *National Mortgage Association Charter Act* (12
9 U.S.C. 1723(b)) is amended by striking “The” and
10 inserting “Except to the extent that action under sec-
11 tion 1377 of the *Housing and Community Develop-*
12 *ment Act of 1992 temporarily results in a lesser num-*
13 *ber, the*”.

14 (3) *FREDDIE MAC ACT.*—The second sentence of
15 subparagraph (A) of section 303(a)(2) of the *Federal*
16 *Home Loan Mortgage Corporation Act* (12 U.S.C.
17 1452(a)(2)(A)) is amended by striking “The” and in-
18 sserting “Except to the extent that action under section
19 1377 of the *Housing and Community Development*
20 *Act of 1992 temporarily results in a lesser number,*
21 *the*”.

22 **SEC. 167. CRIMINAL PENALTY.**

23 Subtitle C of title XIII of the *Housing and Community*
24 *Development Act of 1992* (12 U.S.C. 4631 *et seq.*) is amend-

1 *ed by inserting after section 1377 (as added by the pre-*
2 *ceding provisions of this Act) the following new section:*

3 **“SEC. 1378. CRIMINAL PENALTY.**

4 *“Whoever, being subject to an order in effect under sec-*
5 *tion 1377, without the prior written approval of the Direc-*
6 *tor, knowingly participates, directly or indirectly, in any*
7 *manner (including by engaging in an activity specifically*
8 *prohibited in such an order) in the conduct of the affairs*
9 *of any regulated entity shall, notwithstanding section 3571*
10 *of title 18, be fined not more than \$1,000,000, imprisoned*
11 *for not more than 5 years, or both.”.*

12 **SEC. 168. SUBPOENA AUTHORITY.**

13 *Section 1379D(c) of the Housing and Community De-*
14 *velopment Act of 1992 (12 U.S.C. 4641(c)), as so redesign-*
15 *ated by section 165(a)(1) of this Act, is further amended—*

16 *(1) by striking “request the Attorney General of*
17 *the United States to” and inserting “, in the discre-*
18 *tion of the Director;”;*

19 *(2) by inserting “or request that the Attorney*
20 *General of the United States bring such an action,”*
21 *after “District of Columbia;”;* and

22 *(3) by striking “or may, under the direction and*
23 *control of the Attorney General, bring such an ac-*
24 *tion”.*

1 **SEC. 169. CONFORMING AMENDMENTS.**

2 *Subtitle C of title XIII of the Housing and Community*
3 *Development Act of 1992 is amended—*

4 *(1) in section 1372(c)(1) (12 U.S.C. 4632(c)), by*
5 *striking “that enterprise” and inserting “that regu-*
6 *lated entity”;*

7 *(2) in section 1379 (12 U.S.C. 4637), as so reded-*
8 *esignated by section 165(a)(1) of this Act—*

9 *(A) by inserting “, or of a regulated entity-*
10 *affiliated party,” before “shall not affect”; and*

11 *(B) by striking “such director or executive*
12 *officer” each place such term appears and insert-*
13 *ing “such director, executive officer, or regulated*
14 *entity-affiliated party”;*

15 *(3) in section 1379A (12 U.S.C. 4638), as so re-*
16 *designated by section 165(a)(1) of this Act, by insert-*
17 *ing “or against a regulated entity-affiliated party,”*
18 *before “or impair”;*

19 *(4) by striking “An enterprise” each place such*
20 *term appears in such subtitle and inserting “A regu-*
21 *lated entity”;*

22 *(5) by striking “an enterprise” each place such*
23 *term appears in such subtitle and inserting “a regu-*
24 *lated entity”;*

1 (D) in the fourth sentence, by striking “elec-
2 tive”; and

3 (E) by striking the fifth sentence.

4 (2) *TRANSITIONAL PROVISION.*—The amendments
5 made by paragraph (1) shall not apply to any ap-
6 pointed position of the board of directors of the Fed-
7 eral National Mortgage Association until the expira-
8 tion of the annual term for such position during
9 which the effective date under section 185 occurs.

10 (b) *FREDDIE MAC.*—

11 (1) *IN GENERAL.*—Paragraph (2) of section
12 303(a) of the Federal Home Loan Mortgage Corpora-
13 tion Act (12 U.S.C. 1452(a)(2)) is amended—

14 (A) in subparagraph (A)—

15 (i) in the first sentence, by striking
16 “18 persons, 5 of whom shall be appointed
17 annually by the President of the United
18 States and the remainder of whom” and in-
19 serting “not less than 7 and not more than
20 15 persons, who”; and

21 (ii) in the second sentence, by striking
22 “appointed by the President of the United
23 States”;

24 (B) in subparagraph (B)—

25 (i) by striking “such or”; and

1 (ii) by striking “, except that any ap-
2 pointed member may be removed from office
3 by the President for good cause”; and

4 (C) in subparagraph (C)—

5 (i) by striking the first sentence; and

6 (ii) by striking “elective”.

7 (2) *TRANSITIONAL PROVISION.*—The amendments
8 made by paragraph (1) shall not apply to any ap-
9 pointed position of the Board of Directors of the Fed-
10 eral Home Loan Mortgage Corporation until the expi-
11 ration of the annual term for such position during
12 which the effective date under section 185 occurs.

13 **SEC. 182. REPORT ON PORTFOLIO OPERATIONS, SAFETY**
14 **AND SOUNDNESS, AND MISSION OF ENTER-**
15 **PRISES.**

16 Not later than the expiration of the 12-month period
17 beginning on the effective date under section 185, the Direc-
18 tor of the Federal Housing Finance Agency shall submit
19 a report to the Congress which shall include—

20 (1) a description of the portfolio holdings of the
21 enterprises (as such term is defined in section 1303
22 of the Housing and Community Development Act of
23 1992 (12 U.S.C. 4502) in mortgages (including whole
24 loans and mortgage-backed securities), non-mortgages,
25 and other assets;

1 (2) *a description of the risk implications for the*
2 *enterprises of such holdings and the consequent risk*
3 *management undertaken by the enterprises (including*
4 *the use of derivatives for hedging purposes), compared*
5 *with off-balance sheet liabilities of the enterprises (in-*
6 *cluding mortgage-backed securities guaranteed by the*
7 *enterprises);*

8 (3) *an analysis of portfolio holdings for safety*
9 *and soundness purposes;*

10 (4) *an assessment of whether portfolio holdings*
11 *fulfill the mission purposes of the enterprises under*
12 *the Federal National Mortgage Association Charter*
13 *Act and the Federal Home Loan Mortgage Corpora-*
14 *tion Act; and*

15 (5) *an analysis of the potential systemic risk im-*
16 *plications for the enterprises, the housing and capital*
17 *markets, and the financial system of portfolio hold-*
18 *ings, and whether such holdings should be limited or*
19 *reduced over time.*

20 **SEC. 183. CONFORMING AND TECHNICAL AMENDMENTS.**

21 (a) *1992 ACT.—Title XIII of the Housing and Com-*
22 *munity Development Act of 1992 is amended by striking*
23 *section 1383 (12 U.S.C. 1451 note).*

24 (b) *TITLE 18, UNITED STATES CODE.—Section 1905*
25 *of title 18, United States Code, is amended by striking “Of-*

1 *vice of Federal Housing Enterprise Oversight” and insert-*
2 *ing “Federal Housing Finance Agency” .*

3 (c) *FLOOD DISASTER PROTECTION ACT OF 1973.—*
4 *Section 102(f)(3)(A) of the Flood Disaster Protection Act*
5 *of 1973 (42 U.S.C. 4012a(f)(3)(A)) is amended by striking*
6 *“Director of the Office of Federal Housing Enterprise Over-*
7 *sight of the Department of Housing and Urban Develop-*
8 *ment” and inserting “Director of the Federal Housing Fi-*
9 *nance Agency”.*

10 (d) *DEPARTMENT OF HOUSING AND URBAN DEVELOP-*
11 *MENT ACT.—Section 5 of the Department of Housing and*
12 *Urban Development Act (42 U.S.C. 3534) is amended by*
13 *striking subsection (d).*

14 (e) *TITLE 5, UNITED STATES CODE.—*

15 (1) *DIRECTOR’S PAY RATE.—Section 5313 of*
16 *title 5, United States Code, is amended by striking*
17 *the item relating to the Director of the Office of Fed-*
18 *eral Housing Enterprise Oversight, Department of*
19 *Housing and Urban Development and inserting the*
20 *following new item:*

21 *“ Director of the Federal Housing Finance Agency.”.*

22 (2) *DEPUTY DIRECTORS’ PAY RATE.—Section*
23 *5314 of title 5, United States Code, is amended by*
24 *adding at the end the following new item:*

1 *“Deputy Directors, Federal Housing Finance Agency*
2 *(3).”*.

3 (3) *PAY RATE FOR MEMBERS OF HOUSING FI-*
4 *NANCE OVERSIGHT BOARD.—Section 5315 of title 5,*
5 *United States Code, is amended by adding at the end*
6 *the following new item:*

7 *“Members, Housing Finance Oversight Board.”*.

8 (4) *EXCLUSION FROM SENIOR EXECUTIVE SERV-*
9 *ICE.—Section 3132(a)(1)(D) of title 5, United States*
10 *Code, is amended by striking “the Office of Federal*
11 *Housing Enterprise Oversight of the Department of*
12 *Housing and Urban Development” and inserting “the*
13 *Federal Housing Finance Agency”.*

14 (f) *INSPECTOR GENERAL ACT OF 1978.—Section*
15 *8G(a)(2) of the Inspector General Act of 1978 (5 U.S.C.*
16 *App.) is amended by striking “Federal Housing Finance*
17 *Board” and inserting “Federal Housing Finance Agency”.*

18 (g) *FEDERAL DEPOSIT INSURANCE ACT.—Section*
19 *11(t)(2)(A) of the Federal Deposit Insurance Act (12*
20 *U.S.C.1821(t)(2)(A)) is amended by adding at the end the*
21 *following new clause:*

22 *“(vii) The Federal Housing Finance*
23 *Agency.”*.

24 (h) *1997 EMERGENCY SUPPLEMENTAL APPROPRIA-*
25 *TIONS ACT.—Section 10001 of the 1997 Emergency Supple-*

1 *to the current secondary market system for housing finance,*
2 *taking into consideration changes in the structure of finan-*
3 *cial and housing finance markets and institutions since the*
4 *creation of the Federal National Mortgage Association and*
5 *the Federal Home Loan Mortgage Corporation.*

6 (b) *CONTENTS.—The study under this section shall—*

7 (1) *include, among the alternatives to the current*
8 *secondary market system analyzed—*

9 (A) *repeal of the chartering Acts for the*
10 *Federal National Mortgage Association and the*
11 *Federal Home Loan Mortgage Corporation;*

12 (B) *establishing bank-like mechanisms for*
13 *granting new charters for limited purposed*
14 *mortgage securitization entities;*

15 (C) *permitting the Director of the Federal*
16 *Housing Finance Agency to grant new charters*
17 *for limited purpose mortgage securitization enti-*
18 *ties, which shall include analyzing the terms on*
19 *which such charters should be granted, including*
20 *whether such charters should be sold, or whether*
21 *such charters and the charters for the Federal*
22 *National Mortgage Association and the Federal*
23 *Home Loan Mortgage Corporation should be*
24 *taxed or otherwise assessed a monetary price;*
25 *and*

1 (D) such other alternatives as the Director
2 considers appropriate;

3 (2) examine all of the issues involved in making
4 the transition to a completely private secondary mort-
5 gage market system;

6 (3) examine the technological advancements the
7 private sector has made in providing liquidity in the
8 secondary mortgage market and how such advance-
9 ments have affected liquidity in the secondary mort-
10 gage market; and

11 (4) examine how taxpayers would be impacted
12 by each alternative system, including the complete
13 privatization of the Federal National Mortgage Asso-
14 ciation and the Federal Home Loan Mortgage Cor-
15 poration.

16 (c) *REPORT.*—The Director of the Federal Housing Fi-
17 nance Agency shall submit a report to the Congress on the
18 study not later than the expiration of the 12-month period
19 beginning on the effective date under section 185.

20 **SEC. 185. EFFECTIVE DATE.**

21 *Except as specifically provided otherwise in this title,*
22 *the amendments made by this title shall take effect on, and*
23 *shall apply beginning on, the expiration of the 1-year pe-*
24 *riod beginning on the date of the enactment of this Act.*

1 **TITLE II—FEDERAL HOME LOAN**
2 **BANKS**

3 **SEC. 201. DEFINITIONS.**

4 *Section 2 of the Federal Home Loan Bank Act (12*
5 *U.S.C. 1422) is amended—*

6 *(1) by striking paragraphs (1), (10), and (11);*

7 *(2) by redesignating paragraphs (2) through (9)*
8 *as paragraphs (1) through (8), respectively;*

9 *(3) by redesignating paragraphs (12) and (13)*
10 *as paragraphs (9) and (10), respectively; and*

11 *(4) by adding at the end the following:*

12 *“(11) DIRECTOR.—The term ‘Director’ means*
13 *the Director of the Federal Housing Finance Agency.*

14 *“(12) AGENCY.—The term ‘Agency’ means the*
15 *Federal Housing Finance Agency.”.*

16 **SEC. 202. DIRECTORS.**

17 *(a) ELECTION.—Section 7 of the Federal Home Loan*
18 *Bank Act (12 U.S.C. 1427) is amended—*

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

21 *“(a) NUMBER; ELECTION; QUALIFICATIONS; CON-*
22 *FLICTS OF INTEREST.—*

23 *“(1) IN GENERAL.—The management of each*
24 *Federal Home Loan Bank shall be vested in a board*
25 *of 13 directors, or such other number as the Director*

1 *determines appropriate, each of whom shall be elected*
2 *by the members and shall be a citizen of the United*
3 *States.*

4 “(2) *MEMBER DIRECTORS.*—*A majority of the*
5 *directors of each Bank shall be officers or directors of*
6 *a member of such Bank that is located in the district*
7 *in which such Bank is located.*

8 “(3) *INDEPENDENT DIRECTORS.*—*At least one-*
9 *third of the directors of each Bank shall be inde-*
10 *pendent directors as follows:*

11 “(A) *IN GENERAL.*—*Each independent di-*
12 *rector shall be a bona fide resident of the district*
13 *in which such Bank is located.*

14 “(B) *PUBLIC INTEREST DIRECTORS.*—*At*
15 *least 2 of the independent directors under this*
16 *paragraph of each Bank shall be representatives*
17 *chosen from organizations with more than a 2-*
18 *year history of representing consumer or commu-*
19 *nity interests on banking services, credit needs,*
20 *housing, or financial consumer protections.*

21 “(C) *OTHER DIRECTORS.*—*Each inde-*
22 *pendent director that is not a public interest di-*
23 *rector under subparagraph (B) shall have dem-*
24 *onstrated knowledge of, or experience in, finan-*
25 *cial management, auditing and accounting, risk*

1 *management practices, derivatives, project devel-*
2 *opment, or organizational management, or such*
3 *other knowledge or expertise as the Director may*
4 *provide by regulation.*

5 “(D) *CONFLICTS OF INTEREST.*—*An inde-*
6 *pendent director under this paragraph of a Bank*
7 *may not, during such director’s term of office,*
8 *serve as an officer of any Federal Home Loan*
9 *Bank or as a director or officer of any member*
10 *of a Bank.”;*

11 *(2) in subsection (b)—*

12 *(A) in the first sentence, by striking “direc-*
13 *torship” and inserting “member directorship*
14 *pursuant to subsection (a)(2)”;* and

15 *(B) by inserting after the period at the end*
16 *of the first sentence the following new sentence:*
17 *“Each independent directorship pursuant to sub-*
18 *section (a)(3) shall be filled by election by a plu-*
19 *rality of the votes of the members of the Bank at*
20 *large, in which election each member shall be en-*
21 *titled to nominate candidates and to cast the*
22 *same number of votes as in an election to fill a*
23 *directorship allocated to the member’s State.”;*

24 *(3) in subsection (c), by striking the second,*
25 *third, and fifth sentences;*

1 (4) *in subsection (d)—*

2 (A) *in the first sentence, by striking “,*
3 *whether elected or appointed,”;*

4 (B) *in the second sentence, by striking “or*
5 *appointed”;* and

6 (C) *in the third sentence, by striking “an*
7 *elective” each place such term appears and in-*
8 *serting “a”;* and

9 (5) *by striking “elective” each place such term*
10 *appears (except in subsection (e)).*

11 (b) *TERMS.—*

12 (1) *IN GENERAL.—Section 7(d) of the Federal*
13 *Home Loan Bank Act (12 U.S.C. 1427(i)) is amend-*
14 *ed—*

15 (A) *in the first sentence, by striking “3*
16 *years” and inserting “4 years”;* and

17 (B) *in the second sentence—*

18 (i) *by striking “Federal Home Loan*
19 *Bank System Modernization Act of 1999”*
20 *and inserting “Federal Housing Finance*
21 *Reform Act of 2005”;* and

22 (ii) *by striking “1/3” and inserting “1/*
23 *4”.*

24 (2) *SAVINGS PROVISION.—The amendments made*
25 *by paragraph (1) shall not apply to the term of office*

1 of any director of a Federal home loan bank who is
2 serving as of the effective date of this Act under sec-
3 tion 211, including any director elected to fill a va-
4 cancy in any such office.

5 (c) VACANCIES.—Subsection (f) of section 7 of the Fed-
6 eral Home Loan Bank Act (12 U.S.C. 1427(f)) is amended
7 to read as follows:

8 “(f) VACANCIES.—A Bank director elected to fill a va-
9 cancy shall be elected for the unexpired term of his or her
10 predecessor in office. In the event of a vacancy in any Bank
11 directorship, such vacancy shall be filled by an affirmative
12 vote of a majority of the remaining Bank directors, regard-
13 less of whether such remaining Bank directors constitute a
14 quorum of the Bank’s board of directors. A Bank director
15 so elected shall satisfy the requirements for eligibility which
16 were applicable to his predecessor. If any Bank director
17 shall cease to have any qualification set forth in this section,
18 the office held by such person shall immediately become va-
19 cant. ”.

20 (d) COMPENSATION.—Subsection (i) of section 7 of the
21 Federal Home Loan Bank Act (12 U.S.C. 1427(i)) is
22 amended to read as follows:

23 “(i) DIRECTORS’ COMPENSATION.—

24 “(1) IN GENERAL.—Each Federal home loan
25 bank may pay the directors on the board of directors

1 *for the bank reasonable and appropriate compensa-*
2 *tion for the time required of such directors, and rea-*
3 *sonable and appropriate expenses incurred by such*
4 *directors, in connection with service on the board of*
5 *directors, in accordance with resolutions adopted by*
6 *the board of directors and subject to the approval of*
7 *the Director.*

8 “(2) *ANNUAL REPORT BY THE BOARD.*—*The Di-*
9 *rector shall include, in the annual report submitted to*
10 *the Congress pursuant to section 1319B of the Federal*
11 *Housing Enterprises Financial Safety and Soundness*
12 *Act of 1992, information regarding the compensation*
13 *and expenses paid by the Federal home loan banks to*
14 *the directors on the boards of directors of the banks.”.*

15 “(e) *TRANSITION RULE.*—*Any member of the board of*
16 *directors of a Federal Home Loan Bank serving as of the*
17 *effective date under section 211 may continue to serve as*
18 *a member of such board of directors for the remainder of*
19 *the term of such office as provided in section 7 of the Fed-*
20 *eral Home Loan Bank Act, as in effect before such effective*
21 *date.*

1 **SEC. 203. FEDERAL HOUSING FINANCE AGENCY OVERSIGHT**
2 **OF FEDERAL HOME LOAN BANKS.**

3 *The Federal Home Loan Bank Act (12 U.S.C. 1421*
4 *et seq.), other than in provisions of that Act added or*
5 *amended otherwise by this Act, is amended—*

6 (1) *by striking sections 2A and 2B (12 U.S.C.*
7 *1422a, 1422b);*

8 (2) *in section 6 (12 U.S.C. 1426(b)(1))—*

9 (A) *in subsection (b)(1), in the matter pre-*
10 *ceding subparagraph (A), by striking “Finance*
11 *Board approval” and inserting “approval by the*
12 *Director”; and*

13 (B) *in each of subsections (c)(4)(B) and*
14 *(d)(2), by striking “Finance Board regulations”*
15 *each place that term appears and inserting “reg-*
16 *ulations of the Director”;*

17 (3) *in section 8 (12 U.S.C. 1428), in the section*
18 *heading, by striking “BY THE BOARD”;*

19 (4) *in section 10(b) (12 U.S.C. 1430), by strik-*
20 *ing “by formal resolution”;*

21 (5) *in section 11 (12 U.S.C. 1431)—*

22 (A) *in subsection (b)—*

23 (i) *in the first sentence—*

24 (I) *by striking “The Board” and*
25 *inserting “The Office of Finance, as*
26 *agent for the Banks,”; and*

1 (II) by striking “the Board” and
2 inserting “such Office”; and

3 (ii) in the second and fourth sentences,
4 by striking “the Board” each place such
5 term appears and inserting “the Office of
6 Finance”;

7 (B) in subsection (c)—

8 (i) by striking “the Board” the first
9 place such term appears and inserting “the
10 Office of Finance, as agent for the Banks,”;
11 and

12 (ii) by striking “the Board” the second
13 place such term appears and inserting
14 “such Office”; and

15 (C) in subsection (f)—

16 (i) by striking the two commas after
17 “permit” and inserting “or”; and

18 (ii) by striking the comma after “re-
19 quire”;

20 (6) in section 15 (12 U.S.C. 1435), by inserting
21 “or the Director” after “the Board”;

22 (7) in section 18 (12 U.S.C. 1438), by striking
23 subsection (b);

24 (8) in section 21 (12 U.S.C. 1441)—

25 (A) in subsection (b)—

1 (i) in paragraph (5), by striking
2 “Chairperson of the Federal Housing Fi-
3 nance Board” and inserting “Director”;
4 and

5 (ii) in the heading for paragraph (8),
6 by striking “FEDERAL HOUSING FINANCE
7 BOARD” and inserting “DIRECTOR”; and

8 (B) in subsection (i), in the heading for
9 paragraph (2), by striking “FEDERAL HOUSING
10 FINANCE BOARD” and inserting “DIRECTOR”;

11 (9) in section 23 (12 U.S.C. 1443), by striking
12 “Board of Directors of the Federal Housing Finance
13 Board” and inserting “Director”;

14 (10) by striking “the Board” each place such
15 term appears in such Act (except in section 15 (12
16 U.S.C. 1435), section 21(f)(2) (12 U.S.C. 1441(f)(2)),
17 subsections (a), (k)(2)(B)(i), and (n)(6)(C)(ii) of sec-
18 tion 21A (12 U.S.C. 1441a), subsections (e)(7),
19 (f)(2)(C), and (k)(7)(B)(ii) of section 21B (12 U.S.C.
20 1441b), and the first two places such term appears in
21 section 22 (12 U.S.C. 1442)) and inserting “the Di-
22 rector”;

23 (11) by striking “The Board” each place such
24 term appears in such Act (except in sections 7(e) (12

1 U.S.C. 1427(e)), and 11(b) (12 U.S.C. 1431(b)) and
2 inserting “The Director”;

3 (12) by striking “the Board’s” each place such
4 term appears in such Act and inserting “the Direc-
5 tor’s”;

6 (13) by striking “The Board’s” each place such
7 term appears in such Act and inserting “The Direc-
8 tor’s”;

9 (14) by striking “The Finance Board” each place
10 such term appears in such Act and inserting “The
11 Director”;

12 (15) by striking “the Finance Board” each place
13 such term appears in such Act and inserting “the Di-
14 rector”;

15 (16) by striking “Federal Housing Finance
16 Board” each place such term appears and inserting
17 “Director”;

18 (17) in section 11(i) (12 U.S.C. 1431(i), by
19 striking “the Chairperson of”;

20 (18) in section 21(e)(9) (12 U.S.C. 1441(e)(9)),
21 by striking “Chairperson of the”.

22 **SEC. 204. JOINT ACTIVITIES OF BANKS.**

23 Section 11 of the Federal Home Loan Bank Act (12
24 U.S.C. 1431) is amended by adding at the end the following
25 new subsection:

1 “(l) *JOINT ACTIVITIES.*—Subject to the regulation of
2 the Director, any two or more Federal Home Loan Banks
3 may establish a joint office for the purpose of performing
4 functions for, or providing services to, the Banks on a com-
5 mon or collective basis, or may require that the Office of
6 Finance perform such functions or services, but only if the
7 Banks are otherwise authorized to perform such functions
8 or services individually.”.

9 **SEC. 205. SHARING OF INFORMATION BETWEEN FEDERAL**
10 **HOME LOAN BANKS.**

11 (a) *IN GENERAL.*— The Federal Home Loan Bank Act
12 is amended by inserting after section 20 (12 U.S.C. 1440)
13 the following new section:

14 **“SEC. 20A. SHARING OF INFORMATION BETWEEN FEDERAL**
15 **HOME LOAN BANKS.**

16 “(a) *REGULATORY AUTHORITY.*—The Director shall
17 prescribe such regulations as may be necessary to ensure
18 that each Federal Home Loan Bank has access to informa-
19 tion that the Bank needs to determine the nature and extent
20 of its joint and several liability.

21 “(b) *NO WAIVER OF PRIVILEGE.*—The Director shall
22 not be deemed to have waived any privilege applicable to
23 any information concerning a Federal Home Loan Bank
24 by transferring, or permitting the transfer of, that informa-
25 tion to any other Federal Home Loan Bank for the purpose

1 of enabling the recipient to evaluate the nature and extent
2 of its joint and several liability.”.

3 (b) *REGULATIONS.*—The regulations required under
4 the amendment made by subsection (a) shall be issued in
5 final form not later than 6 months after the effective date
6 under section 211 of this Act.

7 **SEC. 206. REORGANIZATION OF BANKS AND VOLUNTARY**
8 **MERGER.**

9 Section 26 of the Federal Home Loan Bank Act (12
10 U.S.C. 1446) is amended—

11 (1) by inserting “(a) *REORGANIZATION.*—” be-
12 fore “Whenever”; and

13 (2) by striking “liquidated or” each place such
14 phrase appears;

15 (3) by striking “liquidation or”; and

16 (4) by adding at the end the following new sub-
17 section:

18 “(b) *VOLUNTARY MERGERS.*—Any Bank may, with the
19 approval of the Director, and the approval of the boards
20 of directors of the Banks involved, merge with another
21 Bank. The Director shall promulgate regulations estab-
22 lishing the conditions and procedures for the consideration
23 and approval of any such voluntary merger, including the
24 procedures for Bank member approval.”.

1 **SEC. 207. SECURITIES AND EXCHANGE COMMISSION DIS-**
2 **CLOSURE.**

3 (a) *IN GENERAL.*—*The Federal Home Loan Banks*
4 *shall be exempt from compliance with—*

5 (1) *sections 13(e), 14(a), 14(c), and 17A of the*
6 *Securities Exchange Act of 1934 and related Commis-*
7 *sion regulations; and*

8 (2) *section 15 of that Act and related Securities*
9 *and Exchange Commission regulations with respect to*
10 *transactions in capital stock of the Banks.*

11 (b) *MEMBER EXEMPTION.*—*The members of the Fed-*
12 *eral Home Loan Banks shall be exempt from compliance*
13 *with sections 13(d), 13(f), 13(g), 14(d), and 16 of the Secu-*
14 *rities Exchange Act of 1934 and related Securities and Ex-*
15 *change Commission regulations with respect to their owner-*
16 *ship of, or transactions in, capital stock of the Federal*
17 *Home Loan Banks.*

18 (c) *EXEMPTED AND GOVERNMENT SECURITIES.*—

19 (1) *CAPITAL STOCK.*—*The capital stock issued by*
20 *each of the Federal Home Loan Banks under section*
21 *6 of the Federal Home Loan Bank Act are—*

22 (A) *exempted securities within the meaning*
23 *of section 3(a)(2) of the Securities Act of 1933;*
24 *and*

1 (B) “*exempted securities*” within the mean-
2 ing of section 3(a)(12)(A) of the *Securities Ex-*
3 change Act of 1934.

4 (2) *OTHER OBLIGATIONS.*—*The debentures,*
5 *bonds, and other obligations issued under section 11*
6 *of the Federal Home Loan Bank Act are—*

7 (A) *exempted securities within the meaning*
8 *of section 3(a)(2) of the Securities Act of 1933;*

9 (B) “*government securities*” within the
10 meaning of section 3(a)(42) of the *Securities Ex-*
11 change Act of 1934;

12 (C) *excluded from the definition of “govern-*
13 *ment securities broker” within section 3(a)(43)*
14 *of the Securities Exchange Act of 1934;*

15 (D) *excluded from the definition of “govern-*
16 *ment securities dealer” within section 3(a)(44) of*
17 *the Securities Exchange Act of 1934; and*

18 (E) “*government securities*” within the
19 meaning of section 2(a)(16) of the *Investment*
20 *Company Act of 1940.*

21 (d) *EXEMPTION FROM REPORTING REQUIREMENTS.*—
22 *The Federal Home Loan Banks shall be exempt from peri-*
23 *odic reporting requirements pertaining to—*

1 (1) *the disclosure of related party transactions*
2 *that occur in the ordinary course of business of the*
3 *Banks with their members; and*

4 (2) *the disclosure of unregistered sales of equity*
5 *securities.*

6 (e) *TENDER OFFERS.—The Securities and Exchange*
7 *Commission’s rules relating to tender offers shall not apply*
8 *in connection with transactions in capital stock of the Fed-*
9 *eral Home Loan Banks.*

10 (f) *REGULATIONS.—In issuing final regulations to im-*
11 *plement provisions of this section, the Securities and Ex-*
12 *change Commission shall consider the distinctive character-*
13 *istics of the Federal Home Loan Banks when evaluating*
14 *the accounting treatment with respect to the payment to*
15 *Resolution Funding Corporation, the role of the combined*
16 *financial statements of the twelve Banks, the accounting*
17 *classification of redeemable capital stock, and the account-*
18 *ing treatment related to the joint and several nature of the*
19 *obligations of the Banks.*

20 **SEC. 208. COMMUNITY FINANCIAL INSTITUTION MEMBERS.**

21 (a) *TOTAL ASSET REQUIREMENT.—Paragraph (10) of*
22 *section 2 of the Federal Home Loan Bank Act (12 U.S.C.*
23 *1422(10)), as so redesignated by section 201(3) of this Act,*
24 *is amended by striking “\$500,000,000” each place such*
25 *term appears and inserting “\$1,000,000,000”.*

1 (b) *USE OF ADVANCES FOR COMMUNITY DEVELOP-*
2 *MENT ACTIVITIES.*—Section 10(a) of the Federal Home
3 *Loan Bank Act (12 U.S.C. 1430(a)) is amended—*

4 (1) *in paragraph (2)(B)—*

5 (A) *by striking “and”; and*

6 (B) *by inserting “, and community develop-*
7 *ment activities” before the period at the end;*

8 (2) *in paragraph (3)(E), by inserting “or com-*
9 *munity development activities” after “agriculture,”;*
10 *and*

11 (3) *in paragraph (6)—*

12 (A) *by striking “and”; and*

13 (B) *by inserting “, and ‘community devel-*
14 *opment activities’” before “shall”.*

15 **SEC. 209. TECHNICAL AND CONFORMING AMENDMENTS.**

16 (a) *RIGHT TO FINANCIAL PRIVACY ACT OF 1978.*—Sec-
17 *tion 1113(o) of the Right to Financial Privacy Act of 1978*
18 *(12 U.S.C. 3413(o)) is amended—*

19 (1) *by striking “Federal Housing Finance*
20 *Board” and inserting “Federal Housing Finance*
21 *Agency”; and*

22 (2) *by striking “Federal Housing Finance*
23 *Board’s” and inserting “Federal Housing Finance*
24 *Agency’s”.*

1 (b) *RIEGLE COMMUNITY DEVELOPMENT AND REGU-*
2 *LATORY IMPROVEMENT ACT OF 1994.*—Section 117(e) of the
3 *Riegle Community Development and Regulatory Improve-*
4 *ment Act of 1994 (12 U.S.C. 4716(e)) is amended by strik-*
5 *ing “Federal Housing Finance Board” and inserting “Fed-*
6 *eral Housing Finance Agency”.*

7 (c) *TITLE 18, UNITED STATES CODE.*—Title 18,
8 *United States Code, is amended by striking “Federal Hous-*
9 *ing Finance Board” each place such term appears in each*
10 *of sections 212, 657, 1006, 1014, and inserting “Federal*
11 *Housing Finance Agency”.*

12 (d) *MAHRA ACT OF 1997.*—Section 517(b)(4) of the
13 *Multifamily Assisted Housing Reform and Affordability*
14 *Act of 1997 (42 U.S.C. 1437f note) is amended by striking*
15 *“Federal Housing Finance Board” and inserting “Federal*
16 *Housing Finance Agency”.*

17 (e) *TITLE 44, UNITED STATES CODE.*—Section
18 *3502(5) of title 44, United States Code, is amended by strik-*
19 *ing “Federal Housing Finance Board” and inserting “Fed-*
20 *eral Housing Finance Agency”.*

21 (f) *ACCESS TO LOCAL TV ACT OF 2000.*—Section
22 *1004(d)(2)(D)(iii) of the Launching Our Communities’ Ac-*
23 *cess to Local Television Act of 2000 (47 U.S.C.*
24 *1103(d)(2)(D)(iii)) is amended by striking “Office of Fed-*
25 *eral Housing Enterprise Oversight, the Federal Housing Fi-*

1 nance Board” and inserting “Federal Housing Finance
2 Agency”.

3 **SEC. 210. STUDY OF AFFORDABLE HOUSING PROGRAM USE**
4 **FOR LONG-TERM CARE FACILITIES.**

5 *The Comptroller General shall conduct a study of the*
6 *use of affordable housing programs of the Federal home loan*
7 *banks under section 10(j) of the Federal Home Loan Bank*
8 *Act to determine how and the extent to which such programs*
9 *are used to assist long-term care facilities for low- and mod-*
10 *erate-income individuals, and the effectiveness and ade-*
11 *quacy of such assistance in meeting the needs of affected*
12 *communities. The study shall examine the applicability of*
13 *such use to the affordable housing programs required to be*
14 *established by the enterprises pursuant to the amendment*
15 *made by section 128 of this Act. The Comptroller General*
16 *shall submit a report to the Director of the Federal Housing*
17 *Finance Agency and the Congress regarding the results of*
18 *the study not later than the expiration of the 1-year period*
19 *beginning on the date of the enactment of this Act.*

20 **SEC. 211. EFFECTIVE DATE.**

21 *Except as specifically provided otherwise in this title,*
22 *the amendments made by this title shall take effect on, and*
23 *shall apply beginning on, the expiration of the 1-year pe-*
24 *riod beginning on the date of the enactment of this Act.*

1 **TITLE III—TRANSFER OF FUNC-**
2 **TIONS, PERSONNEL, AND**
3 **PROPERTY OF OFFICE OF**
4 **FEDERAL HOUSING ENTER-**
5 **PRISE OVERSIGHT, FEDERAL**
6 **HOUSING FINANCE BOARD,**
7 **AND DEPARTMENT OF HOUS-**
8 **ING AND URBAN DEVELOP-**
9 **MENT**

10 **Subtitle A—Office of Federal**
11 **Housing Enterprise Oversight**

12 **SEC. 301. ABOLISHMENT OF OFHEO.**

13 *(a) IN GENERAL.—Effective at the end of the 1-year*
14 *period beginning on the date of the enactment of this Act,*
15 *the Office of Federal Housing Enterprise Oversight of the*
16 *Department of Housing and Urban Development and the*
17 *positions of the Director and Deputy Director of such Office*
18 *are abolished.*

19 *(b) DISPOSITION OF AFFAIRS.—During the 1-year pe-*
20 *riod beginning on the date of the enactment of this Act,*
21 *the Director of the Office of Federal Housing Enterprise*
22 *Oversight shall, solely for the purpose of winding up the*
23 *affairs of the Office of Federal Housing Enterprise Over-*
24 *sight—*

1 (1) *manage the employees of such Office and pro-*
2 *vide for the payment of the compensation and benefits*
3 *of any such employee which accrue before the effective*
4 *date of the transfer of such employee pursuant to sec-*
5 *tion 303; and*

6 (2) *may take any other action necessary for the*
7 *purpose of winding up the affairs of the Office.*

8 (c) *STATUS OF EMPLOYEES BEFORE TRANSFER.*—*The*
9 *amendments made by title I and the abolishment of the Of-*
10 *fice of Federal Housing Enterprise Oversight under sub-*
11 *section (a) of this section may not be construed to affect*
12 *the status of any employee of such Office as employees of*
13 *an agency of the United States for purposes of any other*
14 *provision of law before the effective date of the transfer of*
15 *any such employee pursuant to section 303.*

16 (d) *USE OF PROPERTY AND SERVICES.*—

17 (1) *PROPERTY.*—*The Director of the Federal*
18 *Housing Finance Agency may use the property of the*
19 *Office of Federal Housing Enterprise Oversight to*
20 *perform functions which have been transferred to the*
21 *Director of the Federal Housing Finance Agency for*
22 *such time as is reasonable to facilitate the orderly*
23 *transfer of functions transferred pursuant to any*
24 *other provision of this Act or any amendment made*
25 *by this Act to any other provision of law.*

1 (2) *AGENCY SERVICES.*—Any agency, depart-
2 ment, or other instrumentality of the United States,
3 and any successor to any such agency, department, or
4 instrumentality, which was providing supporting
5 services to the Office of Federal Housing Enterprise
6 Oversight before the expiration of the period under
7 subsection (a) in connection with functions that are
8 transferred to the Director of the Federal Housing Fi-
9 nance Agency shall—

10 (A) continue to provide such services, on a
11 reimbursable basis, until the transfer of such
12 functions is complete; and

13 (B) consult with any such agency to coordi-
14 nate and facilitate a prompt and reasonable
15 transition.

16 (e) *SAVINGS PROVISIONS.*—

17 (1) *EXISTING RIGHTS, DUTIES, AND OBLIGA-*
18 *TIONS NOT AFFECTED.*—Subsection (a) shall not affect
19 the validity of any right, duty, or obligation of the
20 United States, the Director of the Office of Federal
21 Housing Enterprise Oversight, or any other person,
22 which—

23 (A) arises under or pursuant to the title
24 XIII of the Housing and Community Develop-
25 ment Act of 1992, the Federal National Mortgage

1 *Association Charter Act, the Federal Home Loan*
2 *Mortgage Corporation Act, or any other provi-*
3 *sion of law applicable with respect to such Of-*
4 *fice; and*

5 *(B) existed on the day before the abolish-*
6 *ment under subsection (a) of this section.*

7 (2) *CONTINUATION OF SUITS.—No action or*
8 *other proceeding commenced by or against the Direc-*
9 *tor of the Office of Federal Housing Enterprise Over-*
10 *sight in connection with functions that are trans-*
11 *ferred to the Director of the Federal Housing Finance*
12 *Agency shall abate by reason of the enactment of this*
13 *Act, except that the Director of the Federal Housing*
14 *Finance Agency shall be substituted for the Director*
15 *of the Office of Federal Housing Enterprise Oversight*
16 *as a party to any such action or proceeding.*

17 **SEC. 302. CONTINUATION AND COORDINATION OF CERTAIN**
18 **REGULATIONS.**

19 *All regulations, orders, determinations, and resolutions*
20 *that—*

21 *(1) were issued, made, prescribed, or allowed to*
22 *become effective by—*

23 *(A) the Office of Federal Housing Enter-*
24 *prise Oversight; or*

1 *employee holding a permanent position shall not be invol-*
2 *untarily separated or reduced in grade or compensation for*
3 *12 months after the date of transfer, except for cause or,*
4 *if the employee is a temporary employee, separated in ac-*
5 *cordance with the terms of the appointment.*

6 (c) *APPOINTMENT AUTHORITY FOR EXCEPTED SERV-*
7 *ICE EMPLOYEES.—*

8 (1) *IN GENERAL.—In the case of employees occu-*
9 *pying positions in the excepted service, any appoint-*
10 *ment authority established pursuant to law or regula-*
11 *tions of the Office of Personnel Management for filling*
12 *such positions shall be transferred, subject to para-*
13 *graph (2).*

14 (2) *DECLINE OF TRANSFER.—The Director of the*
15 *Federal Housing Finance Agency may decline a*
16 *transfer of authority under paragraph (1) (and the*
17 *employees appointed pursuant thereto) to the extent*
18 *that such authority relates to positions excepted from*
19 *the competitive service because of their confidential,*
20 *policy-making, policy-determining, or policy-advocating*
21 *character.*

22 (d) *REORGANIZATION.—If the Director of the Federal*
23 *Housing Finance Agency determines, after the end of the*
24 *1-year period beginning on the date of the abolishment*
25 *under section 201(a), that a reorganization of the combined*

1 *work force is required, that reorganization shall be deemed*
2 *a major reorganization for purposes of affording affected*
3 *employees retirement under section 8336(d)(2) or*
4 *8414(b)(1)(B) of title 5, United States Code.*

5 *(e) EMPLOYEE BENEFIT PROGRAMS.—Any employee*
6 *of the Office of Federal Housing Enterprise Oversight ac-*
7 *cepting employment with the Director of the Federal Hous-*
8 *ing Finance Agency as a result of a transfer under sub-*
9 *section (a) may retain for 12 months after the date such*
10 *transfer occurs membership in any employee benefit pro-*
11 *gram of the Federal Housing Finance Agency or the Office*
12 *of Federal Housing Enterprise Oversight, as applicable, in-*
13 *cluding insurance, to which such employee belongs on the*
14 *date of the abolishment under section 201(a) if—*

15 *(1) the employee does not elect to give up the*
16 *benefit or membership in the program; and*

17 *(2) the benefit or program is continued by the*
18 *Director of the Federal Housing Finance Agency;*

19 *The difference in the costs between the benefits which would*
20 *have been provided by such agency and those provided by*
21 *this section shall be paid by the Director of the Federal*
22 *Housing Finance Agency. If any employee elects to give up*
23 *membership in a health insurance program or the health*
24 *insurance program is not continued by such Director, the*
25 *employee shall be permitted to select an alternate Federal*

1 *health insurance program within 30 days of such election*
2 *or notice, without regard to any other regularly scheduled*
3 *open season.*

4 **SEC. 304. TRANSFER OF PROPERTY AND FACILITIES.**

5 *Upon the abolishment under section 301(a), all prop-*
6 *erty of the Office of Federal Housing Enterprise Oversight*
7 *shall transfer to the Director of the Federal Housing Fi-*
8 *nance Agency.*

9 **Subtitle B—Federal Housing**
10 **Finance Board**

11 **SEC. 321. ABOLISHMENT OF THE FEDERAL HOUSING FI-**
12 **NANCE BOARD.**

13 *(a) IN GENERAL.—Effective at the end of the 1-year*
14 *period beginning on the date of enactment of this Act, the*
15 *Federal Housing Finance Board (in this title referred to*
16 *as the “Board”) is abolished.*

17 *(b) DISPOSITION OF AFFAIRS.—During the 1-year pe-*
18 *riod beginning on the date of enactment of this Act, the*
19 *Board, solely for the purpose of winding up the affairs of*
20 *the Board—*

21 *(1) shall manage the employees of such Board*
22 *and provide for the payment of the compensation and*
23 *benefits of any such employee which accrue before the*
24 *effective date of the transfer of such employee under*
25 *section 323; and*

1 (2) *may take any other action necessary for the*
2 *purpose of winding up the affairs of the Board.*

3 (c) *STATUS OF EMPLOYEES BEFORE TRANSFER.*—*The*
4 *amendments made by titles I and II and the abolishment*
5 *of the Board under subsection (a) may not be construed to*
6 *affect the status of any employee of such Board as employees*
7 *of an agency of the United States for purposes of any other*
8 *provision of law before the effective date of the transfer of*
9 *any such employee under section 323.*

10 (d) *USE OF PROPERTY AND SERVICES.*—

11 (1) *PROPERTY.*—*The Director of the Federal*
12 *Housing Finance Agency may use the property of the*
13 *Board to perform functions which have been trans-*
14 *ferred to the Director of the Federal Housing Finance*
15 *Agency for such time as is reasonable to facilitate the*
16 *orderly transfer of functions transferred under any*
17 *other provision of this Act or any amendment made*
18 *by this Act to any other provision of law.*

19 (2) *AGENCY SERVICES.*—*Any agency, depart-*
20 *ment, or other instrumentality of the United States,*
21 *and any successor to any such agency, department, or*
22 *instrumentality, which was providing supporting*
23 *services to the Board before the expiration of the 1-*
24 *year period under subsection (a) in connection with*

1 *functions that are transferred to the Director of the*
2 *Federal Housing Finance Agency shall—*

3 *(A) continue to provide such services, on a*
4 *reimbursable basis, until the transfer of such*
5 *functions is complete; and*

6 *(B) consult with any such agency to coordi-*
7 *nate and facilitate a prompt and reasonable*
8 *transition.*

9 *(e) SAVINGS PROVISIONS.—*

10 *(1) EXISTING RIGHTS, DUTIES, AND OBLIGA-*
11 *TIONS NOT AFFECTED.—Subsection (a) shall not affect*
12 *the validity of any right, duty, or obligation of the*
13 *United States, a member of the Board, or any other*
14 *person, which—*

15 *(A) arises under the Federal Home Loan*
16 *Bank Act or any other provision of law applica-*
17 *ble with respect to such Board; and*

18 *(B) existed on the day before the effective*
19 *date of the abolishment under subsection (a).*

20 *(2) CONTINUATION OF SUITS.—No action or*
21 *other proceeding commenced by or against the Board*
22 *in connection with functions that are transferred to*
23 *the Director of the Federal Housing Finance Agency*
24 *shall abate by reason of the enactment of this Act, ex-*
25 *cept that the Director of the Federal Housing Finance*

1 **SEC. 323. TRANSFER AND RIGHTS OF EMPLOYEES OF THE**
2 **FEDERAL HOUSING FINANCE BOARD.**

3 (a) *TRANSFER.*—Each employee of the Board shall be
4 transferred to the Federal Housing Finance Agency for em-
5 ployment not later than the effective date of the abolishment
6 under section 321(a), and such transfer shall be deemed a
7 transfer of function for purposes of section 3503 of title 5,
8 United States Code.

9 (b) *GUARANTEED POSITIONS.*—Each employee trans-
10 ferred under subsection (a) shall be guaranteed a position
11 with the same status, tenure, grade, and pay as that held
12 on the day immediately preceding the transfer. Each such
13 employee holding a permanent position shall not be invol-
14 untarily separated or reduced in grade or compensation for
15 12 months after the date of transfer, except for cause or,
16 if the employee is a temporary employee, separated in ac-
17 cordance with the terms of the appointment.

18 (c) *APPOINTMENT AUTHORITY FOR EXCEPTED AND*
19 *SENIOR EXECUTIVE SERVICE EMPLOYEES.*—

20 (1) *IN GENERAL.*—In the case of employees occu-
21 pying positions in the excepted service or the Senior
22 Executive Service, any appointment authority estab-
23 lished under law or by regulations of the Office of
24 Personnel Management for filling such positions shall
25 be transferred, subject to paragraph (2).

1 (2) *DECLINE OF TRANSFER.*—*The Director of the*
2 *Federal Housing Finance Agency may decline a*
3 *transfer of authority under paragraph (1) to the ex-*
4 *tent that such authority relates to positions excepted*
5 *from the competitive service because of their confiden-*
6 *tial, policymaking, policy-determining, or policy-ad-*
7 *vocating character, and noncareer positions in the*
8 *Senior Executive Service (within the meaning of sec-*
9 *tion 3132(a)(7) of title 5, United States Code).*

10 (d) *REORGANIZATION.*—*If the Director of the Federal*
11 *Housing Finance Agency determines, after the end of the*
12 *1-year period beginning on the effective date of the abolish-*
13 *ment under section 321(a), that a reorganization of the*
14 *combined workforce is required, that reorganization shall*
15 *be deemed a major reorganization for purposes of affording*
16 *affected employees retirement under section 8336(d)(2) or*
17 *8414(b)(1)(B) of title 5, United States Code.*

18 (e) *EMPLOYEE BENEFIT PROGRAMS.*—

19 (1) *IN GENERAL.*—*Any employee of the Board*
20 *accepting employment with the Federal Housing Fi-*
21 *nance Agency as a result of a transfer under sub-*
22 *section (a) may retain for 12 months after the date*
23 *on which such transfer occurs membership in any em-*
24 *ployee benefit program of the Federal Housing Fi-*
25 *nance Agency or the Board, as applicable, including*

1 *insurance, to which such employee belongs on the ef-*
2 *fective date of the abolishment under section 321(a)*
3 *if—*

4 *(A) the employee does not elect to give up*
5 *the benefit or membership in the program; and*

6 *(B) the benefit or program is continued by*
7 *the Director of the Federal Housing Finance*
8 *Agency.*

9 *(2) COST DIFFERENTIAL.—The difference in the*
10 *costs between the benefits which would have been pro-*
11 *vided by the Board and those provided by this section*
12 *shall be paid by the Director of the Federal Housing*
13 *Finance Agency. If any employee elects to give up*
14 *membership in a health insurance program or the*
15 *health insurance program is not continued by such*
16 *Director, the employee shall be permitted to select an*
17 *alternate Federal health insurance program within 30*
18 *days after such election or notice, without regard to*
19 *any other regularly scheduled open season.*

20 **SEC. 324. TRANSFER OF PROPERTY AND FACILITIES.**

21 *Upon the effective date of the abolishment under sec-*
22 *tion 321(a), all property of the Board shall transfer to the*
23 *Director of the Federal Housing Finance Agency.*

1 ***Subtitle C—Department of Housing***
2 ***and Urban Development***

3 ***SEC. 341. TERMINATION OF ENTERPRISE-RELATED FUNC-***
4 ***TIONS.***

5 (a) *TERMINATION DATE.*—For purposes of this sub-
6 title, the term “termination date” means the date that oc-
7 curs one year after the date of the enactment of this Act.

8 (b) *DETERMINATION OF TRANSFERRED FUNCTIONS*
9 *AND EMPLOYEES.*—

10 (1) *IN GENERAL.*—Not later than the expiration
11 of the 6-month period beginning on the date of the en-
12 actment of this Act, the Secretary, in consultation
13 with the Director of the Office of Federal Housing
14 Enterprise Oversight, shall determine—

15 (A) *the functions, duties, and activities of*
16 *the Secretary of Housing and Urban Develop-*
17 *ment regarding oversight or regulation of the en-*
18 *terprises under or pursuant to the authorizing*
19 *statutes, title XIII of the Housing and Commu-*
20 *nity Development Act of 1992, and any other*
21 *provisions of law, as in effect before the date of*
22 *the enactment of this Act, but not including any*
23 *such functions, duties, and activities of the Di-*
24 *rector of the Office of Federal Housing Enter-*

1 *prise Oversight of the Department of Housing*
2 *and Urban Development and such Office; and*

3 *(B) the employees of the Department of*
4 *Housing and Urban Development necessary to*
5 *perform such functions, duties, and activities.*

6 *(2) ENTERPRISE-RELATED FUNCTIONS.—For*
7 *purposes of this subtitle, the term “enterprise-related*
8 *functions of the Department” means the functions,*
9 *duties, and activities of the Department of Housing*
10 *and Urban Development determined under paragraph*
11 *(1)(A).*

12 *(3) ENTERPRISE-RELATED EMPLOYEES.—For*
13 *purposes of this subtitle, the term “enterprise-related*
14 *employees of the Department” means the employees of*
15 *the Department of Housing and Urban Development*
16 *determined under paragraph (1)(B).*

17 *(c) DISPOSITION OF AFFAIRS.—During the 1-year pe-*
18 *riod beginning on the date of enactment of this Act, the*
19 *Secretary of Housing and Urban Development (in this title*
20 *referred to as the “Secretary”), solely for the purpose of*
21 *winding up the affairs of the Secretary regarding the enter-*
22 *prise-related functions of the Department of Housing and*
23 *Urban Development (in this title referred to as the “Depart-*
24 *ment)” —*

1 (1) *shall manage the enterprise-related employees*
2 *of the Department and provide for the payment of the*
3 *compensation and benefits of any such employee*
4 *which accrue before the effective date of the transfer*
5 *of any such employee under section 343; and*

6 (2) *may take any other action necessary for the*
7 *purpose of winding up the enterprise-related functions*
8 *of the Department.*

9 (d) *STATUS OF EMPLOYEES BEFORE TRANSFER.—The*
10 *amendments made by titles I and II and the termination*
11 *of the enterprise-related functions of the Department under*
12 *subsection (b) may not be construed to affect the status of*
13 *any employee of the Department as employees of an agency*
14 *of the United States for purposes of any other provision*
15 *of law before the effective date of the transfer of any such*
16 *employee under section 343.*

17 (e) *USE OF PROPERTY AND SERVICES.—*

18 (1) *PROPERTY.—The Director of the Federal*
19 *Housing Finance Agency may use the property of the*
20 *Secretary to perform functions which have been trans-*
21 *ferred to the Director of the Federal Housing Finance*
22 *Agency for such time as is reasonable to facilitate the*
23 *orderly transfer of functions transferred under any*
24 *other provision of this Act or any amendment made*
25 *by this Act to any other provision of law.*

1 (2) *AGENCY SERVICES.*—Any agency, depart-
2 ment, or other instrumentality of the United States,
3 and any successor to any such agency, department, or
4 instrumentality, which was providing supporting
5 services to the Secretary regarding enterprise-related
6 functions of the Department before the termination
7 date under subsection (a) in connection with such
8 functions that are transferred to the Director of the
9 Federal Housing Finance Agency shall—

10 (A) continue to provide such services, on a
11 reimbursable basis, until the transfer of such
12 functions is complete; and

13 (B) consult with any such agency to coordi-
14 nate and facilitate a prompt and reasonable
15 transition.

16 (f) *SAVINGS PROVISIONS.*—

17 (1) *EXISTING RIGHTS, DUTIES, AND OBLIGA-*
18 *TIONS NOT AFFECTED.*—Subsection (a) shall not affect
19 the validity of any right, duty, or obligation of the
20 United States, the Secretary, or any other person,
21 which—

22 (A) arises under the authorizing statutes,
23 title XIII of the Housing and Community Devel-
24 opment Act of 1992, or any other provision of
25 law applicable with respect to the Secretary, in

1 *connection with the enterprise-related functions*
2 *of the Department; and*

3 *(B) existed on the day before the termi-*
4 *nation date under subsection (a).*

5 (2) *CONTINUATION OF SUITS.—No action or*
6 *other proceeding commenced by or against the Sec-*
7 *retary in connection with the enterprise-related func-*
8 *tions of the Department shall abate by reason of the*
9 *enactment of this Act, except that the Director of the*
10 *Federal Housing Finance Agency shall be substituted*
11 *for the Secretary or any member thereof as a party*
12 *to any such action or proceeding.*

13 **SEC. 342. CONTINUATION AND COORDINATION OF CERTAIN**
14 **REGULATIONS.**

15 (a) *IN GENERAL.—All regulations, orders, and deter-*
16 *minations described in subsection (b) shall remain in effect*
17 *according to the terms of such regulations, orders, deter-*
18 *minations, and resolutions, and shall be enforceable by or*
19 *against the Director of the Federal Housing Finance Agen-*
20 *cy until modified, terminated, set aside, or superseded in*
21 *accordance with applicable law by such Director, any court*
22 *of competent jurisdiction, or operation of law.*

23 (b) *APPLICABILITY.—A regulation, order, or deter-*
24 *mination is described under this subsection if it—*

1 (1) *was issued, made, prescribed, or allowed to*
2 *become effective by—*

3 (A) *the Secretary; or*

4 (B) *a court of competent jurisdiction and*
5 *that relate to the enterprise-related functions of*
6 *the Department; and*

7 (2) *is in effect on the termination date under*
8 *section 341(a).*

9 **SEC. 343. TRANSFER AND RIGHTS OF EMPLOYEES.**

10 (a) *TRANSFER.—*

11 (1) *IN GENERAL.—Except as provided in para-*
12 *graph (2), each enterprise-related employee of the De-*
13 *partment shall be transferred to the Federal Housing*
14 *Finance Agency for employment not later than the*
15 *termination date under section 341(a) and such*
16 *transfer shall be deemed a transfer of function for*
17 *purposes of section 3503 of title 5, United States*
18 *Code.*

19 (2) *AUTHORITY TO DECLINE.—An enterprise-re-*
20 *lated employee of the Department may, in the discre-*
21 *tion of the employee, decline transfer under para-*
22 *graph (1) to a position in the Federal Housing Fi-*
23 *nance Agency and shall be guaranteed a position in*
24 *the Department with the same status, tenure, grade,*
25 *and pay as that held on the day immediately pre-*

1 ceding the date that such declination was made. Each
2 such employee holding a permanent position shall not
3 be involuntarily separated or reduced in grade or
4 compensation for 12 months after the date that the
5 transfer would otherwise have occurred, except for
6 cause or, if the employee is a temporary employee,
7 separated in accordance with the terms of the ap-
8 pointment.

9 (b) *GUARANTEED POSITIONS.*—Each enterprise-related
10 employee of the Department transferred under subsection
11 (a) shall be guaranteed a position with the same status,
12 tenure, grade, and pay as that held on the day immediately
13 preceding the transfer. Each such employee holding a per-
14 manent position shall not be involuntarily separated or re-
15 duced in grade or compensation for 12 months after the date
16 of transfer, except for cause or, if the employee is a tem-
17 porary employee, separated in accordance with the terms
18 of the appointment.

19 (c) *APPOINTMENT AUTHORITY FOR EXCEPTED AND*
20 *SENIOR EXECUTIVE SERVICE EMPLOYEES.*—

21 (1) *IN GENERAL.*—In the case of employees occu-
22 pying positions in the excepted service or the Senior
23 Executive Service, any appointment authority estab-
24 lished under law or by regulations of the Office of

1 *Personnel Management for filling such positions shall*
2 *be transferred, subject to paragraph (2).*

3 (2) *DECLINE OF TRANSFER.*—*The Director of the*
4 *Federal Housing Finance Agency may decline a*
5 *transfer of authority under paragraph (1) to the ex-*
6 *tent that such authority relates to positions excepted*
7 *from the competitive service because of their confiden-*
8 *tial, policymaking, policy-determining, or policy-ad-*
9 *vocating character, and noncareer positions in the*
10 *Senior Executive Service (within the meaning of sec-*
11 *tion 3132(a)(7) of title 5, United States Code).*

12 (d) *REORGANIZATION.*—*If the Director of the Federal*
13 *Housing Finance Agency determines, after the end of the*
14 *1-year period beginning on the termination date under sec-*
15 *tion 341(a), that a reorganization of the combined work-*
16 *force is required, that reorganization shall be deemed a*
17 *major reorganization for purposes of affording affected em-*
18 *ployees retirement under section 8336(d)(2) or*
19 *8414(b)(1)(B) of title 5, United States Code.*

20 (e) *EMPLOYEE BENEFIT PROGRAMS.*—

21 (1) *IN GENERAL.*—*Any enterprise-related em-*
22 *ployee of the Department accepting employment with*
23 *the Federal Housing Finance Agency as a result of a*
24 *transfer under subsection (a) may retain for 12*
25 *months after the date on which such transfer occurs*

1 membership in any employee benefit program of the
2 Federal Housing Finance Agency or the Department,
3 as applicable, including insurance, to which such em-
4 ployee belongs on the termination date under section
5 341(a) if—

6 (A) the employee does not elect to give up
7 the benefit or membership in the program; and

8 (B) the benefit or program is continued by
9 the Director of the Federal Housing Finance
10 Agency.

11 (2) *COST DIFFERENTIAL.*—The difference in the
12 costs between the benefits which would have been pro-
13 vided by the Department and those provided by this
14 section shall be paid by the Director of the Federal
15 Housing Finance Agency. If any employee elects to
16 give up membership in a health insurance program
17 or the health insurance program is not continued by
18 such Director, the employee shall be permitted to se-
19 lect an alternate Federal health insurance program
20 within 30 days after such election or notice, without
21 regard to any other regularly scheduled open season.

22 **SEC. 344. TRANSFER OF APPROPRIATIONS, PROPERTY, AND**
23 **FACILITIES.**

24 Upon the termination date under section 341(a), all
25 assets, liabilities, contracts, property, records, and unex-

1 *pending balances of appropriations, authorizations, alloca-*
2 *tions, and other funds employed, held, used, arising from,*
3 *available to, or to be made available to the Department in*
4 *connection with enterprise-related functions of the Depart-*
5 *ment shall transfer to the Director of the Federal Housing*
6 *Finance Agency. Unexpended funds transferred by this sec-*
7 *tion shall be used only for the purposes for which the funds*
8 *were originally authorized and appropriated.*

Union Calendar No. 126

109TH CONGRESS
1ST Session

H. R. 1461

[Report No. 109-171, Part I]

A BILL

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

SEPTEMBER 16, 2005

Committee on the Judiciary discharged; committed to the
Committee of the Whole House on the State of the
Union and ordered to be printed