

110TH CONGRESS  
1ST SESSION

# S. 1100

To address the regulation of secondary mortgage market enterprises, and  
for other purposes.

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## IN THE SENATE OF THE UNITED STATES

APRIL 12, 2007

Mr. HAGEL (for himself, Mr. SUNUNU, Mrs. DOLE, and Mr. MARTINEZ) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To address the regulation of secondary mortgage market  
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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the  
5 “Federal Housing Enterprise Regulatory Reform Act of  
6 2007”.

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

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

Subtitle A—Improvement of Safety and Soundness Supervision

- Sec. 101. Establishment of the Federal Housing Enterprise Regulatory Agency.
- Sec. 102. Duties and authorities of Director.
- Sec. 103. Federal Housing Enterprise Board.
- Sec. 104. Authority to require reports by regulated entities.
- Sec. 105. Examiners and accountants; authority to contract for reviews of regulated entities.
- Sec. 106. Assessments.
- Sec. 107. Regulations and orders.
- Sec. 108. Prudential management and operations standards.
- Sec. 109. Capital levels and holdings.
- Sec. 110. Risk-Based capital test for enterprises.
- Sec. 111. Registration of enterprise securities.
- Sec. 112. Limit on golden parachutes.
- Sec. 113. Reporting of fraudulent loans.

Subtitle B—Improvement of Mission Supervision

- Sec. 121. Transfer of program approval and housing goal oversight.
- Sec. 122. Review of enterprise products.
- Sec. 123. Monitoring and enforcing compliance with housing goals.
- Sec. 124. Assumption by Director of other HUD responsibilities.
- Sec. 125. Administrative and judicial enforcement proceedings.
- Sec. 126. Conforming loan limits.
- Sec. 127. Reporting of mortgage data; housing goals.
- Sec. 128. Duty to serve underserved markets.
- Sec. 129. Home purchase goal.

Subtitle C—Prompt Corrective Action

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

Subtitle D—Enforcement Actions

- Sec. 151. Cease-and-desist proceedings.
- Sec. 152. Temporary cease-and-desist proceedings.
- Sec. 153. Removal and prohibition authority.
- Sec. 154. Enforcement and jurisdiction.
- Sec. 155. Civil money penalties.
- Sec. 156. Criminal penalty.
- Sec. 157. Notice after separation from service.
- Sec. 158. Subpoena authority.

Subtitle E—General Provisions

- Sec. 161. Conforming and technical amendments.
- Sec. 162. Presidentially appointed directors of enterprises.
- Sec. 163. Effective date.

TITLE II—FEDERAL HOME LOAN BANKS

- Sec. 201. Directors.

- Sec. 202. Definitions.
- Sec. 203. Agency oversight of Federal home loan banks.
- Sec. 204. Federal Home Loan Bank Finance Facility.
- Sec. 205. Exclusion from certain securities reporting requirements.
- Sec. 206. Mergers.
- Sec. 207. Authority to reduce districts.
- Sec. 208. Management of home loan banks.

TITLE III—TRANSFER OF FUNCTIONS, PERSONNEL, AND PROPERTY OF OFHEO AND THE FEDERAL HOUSING FINANCE BOARD

Subtitle A—OFHEO

- 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. 311. Abolishment of the Federal Housing Finance Board.
- Sec. 312. Continuation and coordination of certain regulations.
- Sec. 313. Transfer and rights of employees of the Federal Housing Finance Board.
- Sec. 314. Transfer of property and facilities.

TITLE IV—STUDIES AND REPORTS

- Sec. 401. Study and report on Basel II and enterprise debt.
- Sec. 402. Affordable housing audits.
- Sec. 403. Report on insured depository institution holdings of regulated entity debt and mortgage-backed securities.
- Sec. 404. Report on risk-based capital levels.
- Sec. 405. Report on resources and allocations.
- Sec. 406. Study and report on guarantee fees.
- Sec. 407. Report on conforming loan limits.
- Sec. 408. Reviews and studies relating to enterprises and related foundations.
- Sec. 409. Recommendations.

**1 SEC. 2. DEFINITIONS.**

2 (a) FEDERAL SAFETY AND SOUNDNESS ACT DEFINI-  
 3 TIONS.—Section 1303 of the Federal Housing Enterprises  
 4 Financial Safety and Soundness Act of 1992 (12 U.S.C.  
 5 4502) is amended—

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

1           (2) in paragraph (14), by striking “Office of  
2           Federal Housing Enterprise Oversight of the De-  
3           partment of Housing and Urban Development” and  
4           inserting “Federal Housing Enterprise Regulatory  
5           Agency”;

6           (3) by redesignating paragraphs (16) through  
7           (19) as paragraphs (22) through (25), respectively;

8           (4) by striking paragraph (15) and inserting  
9           the following:

10           “(21) REGULATED ENTITY.—The term ‘regu-  
11           lated entity’ means—

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

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

16                   “(C) any Federal Home Loan Bank.”;

17           (5) by striking paragraph (13);

18           (6) by redesignating paragraph (7) as para-  
19           graph (13);

20           (7) by redesignating paragraphs (11), (12), and  
21           (14) as paragraphs (18) through (20), respectively;

22           (8) by striking paragraphs (8) through (10)  
23           and inserting the following:

24           “(15) LOW-INCOME.—The term ‘low-income’  
25           means a family income that is less than 50 percent

1 of the area median income, or a family income that  
2 is less than 50 percent of the area median income.

3 “(16) MEDIAN INCOME.—The term ‘area me-  
4 dian income’ means—

5 “(A) the median family income for a met-  
6 ropolitan statistical area (as designated under  
7 13 U.S.C. 421), if the family is located in a  
8 metropolitan statistical area; or

9 “(B) the statewide nonmetropolitan me-  
10 dian family income, if the family is located out-  
11 side a metropolitan statistical area.

12 “(17) MODERATE-INCOME.—The term ‘mod-  
13 erate-income’ means an individual income that is at  
14 least 50 percent and less than 80 percent of the area  
15 median income, or a median family income that is  
16 at least 50 percent and not more than 80 percent  
17 of the area median income.”;

18 (9) in paragraph (5)—

19 (A) by striking “(5)” and inserting “(9)”;  
20 and

21 (B) by striking “Office of Federal Housing  
22 Enterprise Oversight of the Department of  
23 Housing and Urban Development” and insert-  
24 ing “Federal Housing Enterprise Regulatory  
25 Agency”;

1           (10) by redesignating paragraph (6) as para-  
2 graph (10);

3           (11) by redesignating paragraphs (2) through  
4 (4) as paragraphs (5) through (7), respectively;

5           (12) by inserting after paragraph (7), as reded-  
6 ignated, the following:

7           “(8) DEFAULT; IN DANGER OF DEFAULT.—

8           “(A) DEFAULT.—The term ‘default’  
9 means, with respect to a regulated entity, any  
10 adjudication or other official determination by  
11 any court of competent jurisdiction, or the  
12 Agency, pursuant to which a conservator, re-  
13 ceiver, limited-life regulated entity, or legal cus-  
14 todian is appointed for a regulated entity.

15           “(B) IN DANGER OF DEFAULT.—The term  
16 ‘in danger of default’ means a regulated entity  
17 with respect to which—

18           “(i) in the opinion of the Agency—

19           “(I) the regulated entity is not  
20 likely to be able to pay the obligations  
21 of the regulated entity in the normal  
22 course of business; or

23           “(II) the regulated entity has in-  
24 curred or is likely to incur losses that

1                   will deplete all or substantially all of  
2                   its capital; and

3                   “(ii) there is no reasonable prospect  
4                   that the capital of the regulated entity will  
5                   be replenished.”;

6                   (13) by inserting after paragraph (1) the fol-  
7                   lowing:

8                   “(2) AGENCY; DIRECTOR.—The term—

9                   “(A) ‘Agency’ means the Federal Housing  
10                  Enterprise Regulatory Agency established under  
11                  section 1311; and

12                  “(B) ‘Director’ means the Director of the  
13                  Agency, appointed under section 1312;

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

16                  “(A) the Federal National Mortgage Asso-  
17                  ciation Charter Act;

18                  “(B) the Federal Home Loan Mortgage  
19                  Corporation Act; and

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

21                  “(4) BOARD.—The term ‘Board’ means the  
22                  Federal Housing Enterprise Board established under  
23                  section 1313A.”;

24                  (14) by inserting after paragraph (10), as re-  
25                  designated, the following:

1           “(11) ENTITY-AFFILIATED PARTY.—The term  
2           ‘entity-affiliated party’ means—

3                   “(A) any director, officer, employee, or  
4                   controlling stockholder of, or agent for, a regu-  
5                   lated entity;

6                   “(B) any shareholder, affiliate, consultant,  
7                   or joint venture partner of a regulated entity,  
8                   and any other person, as determined by the Di-  
9                   rector (by regulation or on a case-by-case basis)  
10                  that participates in the conduct of the affairs of  
11                  a regulated entity, provided that a member of  
12                  a Federal Home Loan Bank shall not be  
13                  deemed to have participated in the affairs of  
14                  that Bank solely by virtue of being a share-  
15                  holder of, and obtaining advances from, that  
16                  Bank;

17                  “(C) any independent contractor for a reg-  
18                  ulated entity (including any attorney, appraiser,  
19                  or accountant), if—

20                           “(i) the independent contractor know-  
21                           ingly or recklessly participates in—

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

24                                   “(II) any breach of fiduciary  
25                                   duty; or

1                   “(III) any unsafe or unsound  
2                   practice; and

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

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

10                  “(E) the Finance Facility.

11                  “(12) FINANCE FACILITY.—The term ‘Finance  
12                  Facility’ means the Federal Home Loan Bank Fi-  
13                  nance Facility established under section 11A of the  
14                  Federal Home Loan Bank Act.

15                  “(13) LIMITED-LIFE REGULATED ENTITY.—  
16                  The term ‘limited-life regulated entity’ means an en-  
17                  tity established by the Agency under section 1367(i)  
18                  with respect to a Federal Home Loan Bank in de-  
19                  fault or in danger of default or with respect to an  
20                  enterprise in default or in danger of default.”;

21                  (15) in paragraph (25), as so redesignated by  
22                  this section, by striking “60” each place that term  
23                  appears and inserting “30”; and

24                  (16) by adding at the end the following:

25                  “(26) UPPER- AND MIDDLE-INCOME.—

1           “(A) UPPER-INCOME.—The term ‘upper-  
2 income’ means a family income that is 120 per-  
3 cent of the area median income or greater.

4           “(B) MIDDLE-INCOME.—The term ‘middle-  
5 income’ means a family income that is not less  
6 than 80 percent but less than 120 percent of  
7 the area median income, or a median family in-  
8 come that is at least 80 percent and not more  
9 than 120 percent.

10          “(27) VIOLATION.—The term ‘violation’ in-  
11 cludes any action (alone or in combination with an-  
12 other or others) for or toward causing, bringing  
13 about, participating in, counseling, or aiding or abet-  
14 ting a violation.”.

15          (b) REFERENCES IN THIS ACT.—As used in this Act,  
16 unless otherwise specified—

17           (1) the term “Agency” means the Federal  
18 Housing Enterprise Regulatory Agency;

19           (2) the term “Director” means the Director of  
20 the Agency; and

21           (3) the terms “enterprise”, “Finance Facility”,  
22 “regulated entity”, and “authorizing statutes” have  
23 the same meanings as in section 1303 of the Federal  
24 Housing Enterprises Financial Safety and Sound-  
25 ness Act of 1992, as amended by this Act.

1                   **TITLE I—REFORM OF**  
2                   **REGULATION OF ENTERPRISES**  
3                   **Subtitle A—Improvement of Safety**  
4                   **and Soundness Supervision**

5                   **SEC. 101. ESTABLISHMENT OF THE FEDERAL HOUSING EN-**  
6                   **TERPRISE REGULATORY AGENCY.**

7                   The Federal Housing Enterprises Financial Safety  
8                   and Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is  
9                   amended by striking sections 1311 and 1312 and inserting  
10                  the following:

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

13                  “(a) ESTABLISHMENT.—There is established the  
14                  Federal Housing Enterprise Regulatory Agency, which  
15                  shall be an independent agency of the Federal Govern-  
16                  ment.

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

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

22                         “(2) AUTHORITY OVER FANNIE MAE, FREDDIE  
23                         MAC, THE FEDERAL HOME LOAN BANKS, AND THE  
24                         FINANCE FACILITY.—The Director shall have gen-  
25                         eral regulatory authority over each regulated entity

1 and the Finance Facility, and shall exercise such  
2 general regulatory authority, including such duties  
3 and authorities set forth under section 1313, to en-  
4 sure that the purposes of this Act, the authorizing  
5 statutes, and any other applicable law are carried  
6 out.

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

11 **“SEC. 1312. DIRECTOR.**

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

15 “(b) APPOINTMENT; TERM.—

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

1           “(2) TERM.—The Director shall be appointed  
2 for a term of 6 years, unless removed before the end  
3 of such term for cause by the President.

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

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

15           “(5) TRANSITIONAL PROVISION.—Notwith-  
16 standing paragraphs (1) and (2), during the period  
17 beginning on the effective date of the Federal Hous-  
18 ing Enterprise Regulatory Reform Act of 2007, and  
19 ending on the date on which the Director is ap-  
20 pointed and confirmed, the person serving as the Di-  
21 rector of the Office of Federal Housing Enterprise  
22 Oversight of the Department of Housing and Urban  
23 Development on that effective date shall act for all  
24 purposes as, and with the full powers of, the Direc-  
25 tor.

1       “(c) DEPUTY DIRECTOR OF THE DIVISION OF EN-  
2     TERPRISE REGULATION.—

3               “(1) IN GENERAL.—The Agency shall have a  
4     Deputy Director of the Division of Enterprise Regu-  
5     lation, who shall be designated by the Director from  
6     among individuals who are citizens of the United  
7     States, have a demonstrated understanding of finan-  
8     cial management or oversight, and have a dem-  
9     onstrated understanding of mortgage securities mar-  
10    kets and housing finance.

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

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

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  
4           respect to the oversight of the Federal Home Loan  
5           Banks as the Director shall prescribe.

6           “(e) DEPUTY DIRECTOR FOR HOUSING MISSION AND  
7           GOALS.—

8           “(1) IN GENERAL.—The Agency shall have a  
9           Deputy Director for Housing Mission and Goals,  
10          who shall be designated by the Director from among  
11          individuals who are citizens of the United States,  
12          and have a demonstrated understanding of the hous-  
13          ing markets and housing finance.

14          “(2) FUNCTIONS.—The Deputy Director for  
15          Housing Mission and Goals shall have such func-  
16          tions, powers, and duties with respect to the over-  
17          sight of the housing mission and goals of the regu-  
18          lated entities as the Director shall prescribe.

19          “(f) ACTING DIRECTOR.—In the event of the death,  
20          resignation, sickness, or absence of the Director, the  
21          President shall designate either the Deputy Director of the  
22          Division of Enterprise Regulation, the Deputy Director of  
23          the Division of Federal Home Loan Bank Regulation, or  
24          the Deputy Director for Housing Mission and Goals, to  
25          serve as acting Director until the return of the Director,

1 or the appointment of a successor pursuant to subsection  
2 (b).

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

5 “(1) have any direct or indirect financial inter-  
6 est in any regulated entity or entity-affiliated party;

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

9 “(3) have served as an executive officer or di-  
10 rector of any regulated entity or entity-affiliated  
11 party at any time during the 3-year period preceding  
12 the date of appointment of such individual as Direc-  
13 tor or Deputy Director.”.

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

15 (a) IN GENERAL.—Section 1313 of the Federal  
16 Housing Enterprises Financial Safety and Soundness Act  
17 of 1992 (12 U.S.C. 4513) is amended to read as follows:

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

19 “(a) DUTIES.—

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

22 “(A) to oversee the prudential operations  
23 of each regulated entity; and

24 “(B) to ensure that—

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

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

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

18           “(iv) each regulated entity carries out  
19 its statutory mission only through activi-  
20 ties that are authorized under and con-  
21 sistent with this title and the authorizing  
22 statutes;

23           “(v) the activities of each regulated  
24 entity and the manner in which such regu-

1           lated entity is operated are consistent with  
2           the public interest;

3           “(vi) each regulated entity remains  
4           adequately capitalized, after due consider-  
5           ation of the risk to such regulated entity;  
6           and

7           “(vii) in the case of the Federal Home  
8           Loan Banks, they provide funds to com-  
9           munity financial institutions for small  
10          businesses, small farms, and small agricul-  
11          tural businesses and accept as collateral  
12          whole interests in such obligations.

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

15               “(A) to review and, if warranted based on  
16               the principle duties described in paragraph (1),  
17               reject any acquisition or transfer of a control-  
18               ling interest in a regulated entity; and

19               “(B) to exercise such incidental powers as  
20               may be necessary or appropriate to fulfill the  
21               duties and responsibilities of the Director in the  
22               supervision and regulation of each regulated en-  
23               tity.

24          “(b) DELEGATION OF AUTHORITY.—The Director  
25          may delegate to officers and employees of the Agency any

1 of the functions, powers, or duties of the Director, as the  
2 Director considers appropriate.

3 “(c) LITIGATION AUTHORITY.—

4 “(1) IN GENERAL.—In enforcing any provision  
5 of this title, any regulation or order prescribed under  
6 this title, or any other provision of law, rule, regula-  
7 tion, or order, or in any other action, suit, or pro-  
8 ceeding to which the Director is a party or in which  
9 the Director is interested, and in the administration  
10 of conservatorships and receiverships, the Director  
11 may act in the Director’s own name and through the  
12 Director’s own attorneys.

13 “(2) SUBJECT TO SUIT.—Except as otherwise  
14 provided by law, the Director shall be subject to suit  
15 (other than suits on claims for money damages) by  
16 a regulated entity with respect to any matter under  
17 this title or any other applicable provision of law,  
18 rule, order, or regulation under this title, in the  
19 United States district court for the judicial district  
20 in which the regulated entity has its principle place  
21 of business, or in the United States District Court  
22 for the District of Columbia, and the Director may  
23 be served with process in the manner prescribed by  
24 the Federal Rules of Civil Procedure.”.

1 (b) INDEPENDENCE IN CONGRESSIONAL TESTIMONY  
2 AND RECOMMENDATIONS.—Section 111 of Public Law  
3 93–495 (12 U.S.C. 250) is amended by striking “the Fed-  
4 eral Housing Finance Board” and inserting “the Director  
5 of the Federal Housing Enterprise Regulatory Agency”.

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

7 (a) IN GENERAL.—The Federal Housing Enterprises  
8 Financial Safety and Soundness Act of 1992 (12 U.S.C.  
9 4501 et seq.) is amended by inserting after section 1313  
10 the following:

11 **“SEC. 1313A. FEDERAL HOUSING ENTERPRISE BOARD.**

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

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

20 “(c) COMPOSITION.—The Board shall be comprised  
21 of 4 members, of whom—

22 “(1) 1 member shall be the Secretary of the  
23 Treasury;

24 “(2) 1 member shall be the Secretary of Hous-  
25 ing and Urban Development;

1           “(3) 1 member shall be the Chairman of the  
2 Securities and Exchange Commission; and

3           “(4) 1 member shall be the Director, who shall  
4 serve as the Chairperson of the Board.

5           “(d) MEETINGS.—

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

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

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

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

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

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

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

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

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

9           (b) ANNUAL REPORT OF THE DIRECTOR.—Section  
10 1319B(a) of the Federal Housing Enterprises Financial  
11 Safety and Soundness Act of 1992 (12 U.S.C. 4521(a))  
12 is amended—

13           (1) by striking “enterprise” each place that  
14 term appears and inserting “regulated entity”;

15           (2) by striking “enterprises” each place that  
16 term appears and inserting “regulated entities”;

17           (3) in paragraph (3), by striking “; and” and  
18 inserting a semicolon;

19           (4) in paragraph (4), by striking “1994.” and  
20 inserting “1994; and”; and

21           (5) by adding at the end the following:

22           “(5) the assessment of the Board or any of its  
23 members with respect to—

24           “(A) the safety and soundness of the regu-  
25 lated entities;

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

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

5           “(D) an evaluation of the performance of  
6           the regulated entities in carrying out their re-  
7           spective missions;

8           “(6) operations, resources, and performance of  
9           the Agency; and

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

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

14          (a) IN GENERAL.—Section 1314 of the Federal  
15          Housing Enterprises Financial Safety and Soundness Act  
16          of 1992 (12 U.S.C. 4514) is amended—

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

19                 (2) by striking “an enterprise” each place that  
20                 term appears and inserting “a regulated entity”;

21                 (3) by striking “the enterprise” and inserting  
22                 “the regulated entity”;

23                 (4) in subsection (a)—

1 (A) by striking the subsection heading and  
2 all that follows through “and operations” in  
3 paragraph (1) and inserting the following:

4 “(a) REGULAR AND SPECIAL REPORTS.—

5 “(1) REGULAR REPORTS.—The Director may  
6 require, by general or specific orders, a regulated en-  
7 tity to submit regular reports, including financial  
8 statements determined on a fair value basis, on the  
9 condition (including financial condition), manage-  
10 ment, activities, or operations of the regulated enti-  
11 ty, as the Director considers appropriate”; and

12 (B) in paragraph (2)—

13 (i) by inserting “, by general or spe-  
14 cific orders,” after “may also require”; and

15 (ii) by striking “whenever” and insert-  
16 ing “on any of the topics specified in para-  
17 graph (1) or any other relevant topics, if”;

18 and

19 (5) by adding at the end the following:

20 “(c) PENALTIES FOR FAILURE TO MAKE RE-  
21 PORTS.—

22 “(1) VIOLATIONS.—It shall be a violation of  
23 this section for any regulated entity—

24 “(A) to fail to make, obtain, transmit, or  
25 publish any report or information required by

1 the Director under this section, section 309(k)  
2 of the Federal National Mortgage Association  
3 Charter Act, or section 307(c) of the Federal  
4 Home Loan Mortgage Corporation Act, within  
5 the period of time specified in such provision of  
6 law or otherwise by the Director; or

7 “(B) to submit or publish any false or mis-  
8 leading report or information under this sec-  
9 tion.

10 “(2) PENALTIES.—

11 “(A) TIER 1.—

12 “(i) IN GENERAL.—A violation de-  
13 scribed in paragraph (1) shall be subject to  
14 a penalty of not more than \$2,000 for each  
15 day during which such violation continues,  
16 in any case in which—

17 “(I) the subject regulated entity  
18 maintains procedures reasonably  
19 adapted to avoid any inadvertent error  
20 and the violation was unintentional  
21 and a result of such an error; or

22 “(II) the violation was an inad-  
23 vertent transmittal or publication of  
24 any report which was minimally late.

1                   “(ii) BURDEN OF PROOF.—For pur-  
2                   poses of this subparagraph, the regulated  
3                   entity shall have the burden of proving  
4                   that the error was inadvertent or that a re-  
5                   port was inadvertently transmitted or pub-  
6                   lished late.

7                   “(B) TIER 2.—A violation described in  
8                   paragraph (1) shall be subject to a penalty of  
9                   not more than \$20,000 for each day during  
10                  which such violation continues or such false or  
11                  misleading information is not corrected, in any  
12                  case that is not addressed in subparagraph (A)  
13                  or (C).

14                  “(C) TIER 3.—A violation described in  
15                  paragraph (1) shall be subject to a penalty of  
16                  not more than \$2,000,000 per day for each day  
17                  during which such violation continues or such  
18                  false or misleading information is not corrected,  
19                  in any case in which the subject regulated enti-  
20                  ty committed such violation knowingly or with  
21                  reckless disregard for the accuracy of any such  
22                  information or report.

23                  “(3) ASSESSMENTS.—Any penalty imposed  
24                  under this subsection shall be in lieu of a penalty  
25                  under section 1376, but shall be assessed and col-

1 lected by the Director in the manner provided in sec-  
2 tion 1376 for penalties imposed under that section,  
3 and any such assessment (including the determina-  
4 tion of the amount of the penalty) shall be otherwise  
5 subject to the provisions of section 1376.

6 “(4) HEARING.—A regulated entity against  
7 which a penalty is assessed under this section shall  
8 be afforded an agency hearing if the regulated entity  
9 submits a request for a hearing not later than 20  
10 days after the date of the issuance of the notice of  
11 assessment. Section 1374 shall apply to any such  
12 proceedings.”.

13 (b) CONFORMING AMENDMENT.—The Federal Hous-  
14 ing Enterprises Financial Safety and Soundness Act of  
15 1992 (12 U.S.C. 4501 et seq.) is amended by striking sec-  
16 tions 1327 and 1328.

17 **SEC. 105. EXAMINERS AND ACCOUNTANTS; AUTHORITY TO**

18 **CONTRACT FOR REVIEWS OF REGULATED EN-**

19 **TITIES.**

20 (a) IN GENERAL.—Section 1317 of the Federal  
21 Housing Enterprises Financial Safety and Soundness Act  
22 of 1992 (12 U.S.C. 4517) is amended—

23 (1) in subsection (a), by striking “enterprise”  
24 each place that term appears and inserting “regu-  
25 lated entity”;

1           (2) in subsection (b), by striking “an enter-  
2           prise” and inserting “a regulated entity”;

3           (3) in subsection (c), in the second sentence, by  
4           inserting before the period “to conduct examinations  
5           under this section”;

6           (4) by redesignating subsections (d) through (f)  
7           as subsections (e) through (g), respectively; and

8           (5) by inserting after subsection (c) the fol-  
9           lowing:

10          “(d) INSPECTOR GENERAL.—There shall be within  
11          the Agency an Inspector General, who shall be appointed  
12          in accordance with section 3(a) of the Inspector General  
13          Act of 1978.”.

14          (b) DIRECT HIRE AUTHORITY TO HIRE ACCOUNT-  
15          ANTS, ECONOMISTS, AND EXAMINERS.—Section 1317 of  
16          the Federal Housing Enterprises Financial Safety and  
17          Soundness Act of 1992 (12 U.S.C. 4517) is amended by  
18          adding at the end the following:

19          “(h) APPOINTMENT OF ACCOUNTANTS, ECONOMISTS,  
20          AND EXAMINERS.—

21                 “(1) APPLICABILITY.—This section shall apply  
22                 with respect to any position of examiner, accountant,  
23                 economist, and specialist in financial markets and in  
24                 technology at the Agency, with respect to supervision

1 and regulation of the regulated entities, that is in  
2 the competitive service.

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

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

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

12 (c) AMENDMENTS TO INSPECTOR GENERAL ACT.—  
13 Section 11 of the Inspector General Act of 1978 (5 U.S.C.  
14 11 App.) is amended—

15 (1) in paragraph (1), by inserting “, the Direc-  
16 tor of the Federal Housing Enterprises Regulatory  
17 Agency” after “Social Security Administration”; and

18 (2) in paragraph (2), by inserting “, the Fed-  
19 eral Housing Enterprises Regulatory Agency” after  
20 “Social Security Administration”.

21 (d) AUTHORITY TO CONTRACT FOR REVIEWS OF  
22 REGULATED ENTITIES.—Section 1319 of the Federal  
23 Housing Enterprises Financial Safety and Soundness Act  
24 of 1992 (12 U.S.C. 4519) is amended in the section head-  
25 ing, by striking “**BY RATING ORGANIZATION**”.

1 **SEC. 106. ASSESSMENTS.**

2 Section 1316 of the Federal Housing Enterprises Fi-  
3 nancial Safety and Soundness Act of 1992 (12 U.S.C.  
4 4516) is amended—

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

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

12 “(1) the expenses of any examinations under  
13 section 1317;

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

16 “(3) such amounts in excess of actual expenses  
17 for any given fiscal year, as deemed necessary by the  
18 Director to maintain working capital.”;

19 (2) by striking “an enterprise” each place that  
20 term appears and inserting “a regulated entity”;

21 (3) by striking “enterprises” each place that  
22 term appears and inserting “regulated entities”;

23 (4) by striking “enterprise” each place that  
24 term appears, other than in subparagraph (B) of  
25 subsection (b)(3), and inserting “regulated entity”;

26 (5) in subsection (b)—

1 (A) in paragraph (1)—

2 (i) by striking “bears to” and insert-  
3 ing “bear to”; and

4 (ii) by striking “both” and inserting  
5 “all”; and

6 (B) in paragraph (3)(B)—

7 (i) by inserting “with respect to an  
8 enterprise,” before “the unpaid principal”;  
9 and

10 (ii) by striking “by the enterprise”  
11 and inserting “by an enterprise”;

12 (6) in subsection (c)—

13 (A) by striking “The semiannual” and in-  
14 serting the following:

15 “(1) IN GENERAL.—The semiannual”; and

16 (B) by adding at the end the following:

17 “(2) ADJUSTMENTS.—The Director may adjust  
18 the amounts of any semiannual assessments for an  
19 assessment under subsection (a) that are to be paid  
20 pursuant to subsection (b) by a regulated entity, as  
21 the Director determines necessary to ensure that the  
22 costs of enforcement activities under subtitles B and  
23 C for a regulated entity are borne only by that regu-  
24 lated entity.

1           “(3) SPECIAL CIRCUMSTANCES.—If at any  
2 time, as a result of increased costs of regulation of  
3 a regulated entity that is not classified (for purposes  
4 of subtitle B) as adequately capitalized, or as the re-  
5 sult of supervisory or enforcement activities under  
6 subtitle B or C for a regulated entity, the amount  
7 available from any semiannual payment made by  
8 such regulated entity pursuant to subsection (b) is  
9 insufficient to cover the costs of the Agency with re-  
10 spect to such entity, the Director may make and col-  
11 lect from such entity an immediate assessment to  
12 cover the amount of such deficiency for the semi-  
13 annual period. If, at the end of any semiannual pe-  
14 riod during which such an assessment is made, any  
15 amount remains from such assessment, such remain-  
16 ing amount shall be deducted from the assessment  
17 for such regulated entity for the following semi-  
18 annual period.”;

19           (7) in subsection (d), by striking “If” and in-  
20 sserting “Except with respect to amounts collected  
21 pursuant to subsection (a)(3), if”;

22           (8) by striking subsections (e) and (f) and in-  
23 sserting the following:

24           “(e) REMISSION OF ASSESSMENT.—At the end of  
25 each year for which an assessment under this section is

1 made, the Director shall remit to each regulated entity any  
 2 amount of an assessment collected from the regulated en-  
 3 tity that is attributable to subsection (a)(3), and is in ex-  
 4 cess of the amount that the Director deems necessary to  
 5 maintain working capital.

6 “(f) NO APPROPRIATED FUNDS.—Salaries of the Di-  
 7 rector and other employees of the Agency, and all other  
 8 expenses thereof, may be paid from assessments collected  
 9 under this subsection or other sources, and shall not be  
 10 construed to be Government funds or appropriated mon-  
 11 ies, or subject to apportionment for the purposes of chap-  
 12 ter 15 of title 31, United States Code, or any other au-  
 13 thority.”; and

14 (9) in subsection (g)—

15 (A) by striking “the Secretary and” each  
 16 place that term appears; and

17 (B) in paragraph (3)—

18 (i) by striking “(A)”; and

19 (ii) by striking “, and (B)” and all  
 20 that follows through the end of the para-  
 21 graph and inserting a period.

22 **SEC. 107. REGULATIONS AND ORDERS.**

23 Section 1319G of the Federal Housing Enterprises  
 24 Financial Safety and Soundness Act of 1992 (12 U.S.C.  
 25 4526) is amended—

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

3           “(a) **AUTHORITY.**—The Director shall issue any reg-  
4 ulations, guidelines, directives, or orders necessary to  
5 carry out the duties of the Director under this title or the  
6 authorizing statutes, and to ensure that the purposes of  
7 this title and the authorizing statutes are accomplished.”;  
8 and

9           (2) by striking subsection (c).

10 **SEC. 108. PRUDENTIAL MANAGEMENT AND OPERATIONS**  
11 **STANDARDS.**

12           The Federal Housing Enterprises Financial Safety  
13 and Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is  
14 amended by inserting after section 1313A, as added by  
15 this Act, the following new section:

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

18           “The Director may establish standards, by regula-  
19 tion, order, or guideline, for each regulated entity relating  
20 to—

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

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

1           “(3) management of interest rate risk exposure;

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

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

8           “(6) management of asset and investment port-  
9 folio growth;

10           “(7) investments and acquisitions of assets by  
11 a regulated entity, to ensure that they are consistent  
12 with the purposes of this title and the authorizing  
13 statutes;

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

22           “(9) such other operational and management  
23 standards as the Director determines to be appro-  
24 priate.”.

1 **SEC. 109. CAPITAL LEVELS AND HOLDINGS.**

2 Subtitle B of the Federal Housing Enterprises Fi-  
3 nancial Safety and Soundness Act of 1992 (12 U.S.C.  
4 4611 et seq.) is amended—

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

7 **“Subtitle B—Required Capital Lev-**  
8 **els for Enterprises, Special En-**  
9 **forcement Powers, Limitation**  
10 **on Assets, and Securities Treat-**  
11 **ment”;**

12 and

13 (2) by adding at the end the following:

14 **“SEC. 1369E. AFFORDABLE HOUSING FOCUSED PORT-**  
15 **FOLIOS.**

16 **“(a) SUPPORTING AFFORDABLE HOUSING.—**Con-  
17 gress finds that, consistent with the missions of the enter-  
18 prises, the portfolio holdings of the enterprises should be  
19 focused, to the maximum extent possible, on mortgages  
20 and mortgage-backed securities that meet the affordable  
21 housing goals established for the enterprises pursuant to  
22 this Act.

23 **“(b) AUTHORITY OF THE DIRECTOR.—**The Director  
24 shall, by regulation, provide that any mortgages or mort-  
25 gage-related securities acquired by an enterprise after the  
26 date of enactment of this Act shall—

1           “(1) meet one or more of the housing goals es-  
2           tablished for the enterprise under this Act; or

3           “(2) be promptly securitized and sold to third  
4           parties.

5           “(c) TEMPORARY ADJUSTMENTS.—The Director  
6           may, by order, make temporary adjustments to the stand-  
7           ards under subsection (b), if such action would help to  
8           mitigate market disruptions in the housing finance sys-  
9           tem.”.

10 **SEC. 110. RISK-BASED CAPITAL TEST FOR ENTERPRISES.**

11           (a) RISK-BASED CAPITAL LEVELS.—Section 1361 of  
12           the Federal Housing Enterprises Financial Safety and  
13           Soundness Act of 1992 (12 U.S.C. 4611) is amended to  
14           read as follows:

15 **“SEC. 1361. RISK-BASED CAPITAL LEVELS.**

16           “(a) IN GENERAL.—The Director shall, by regulation  
17           or order, establish risk-based capital requirements for each  
18           of the enterprises to ensure that the enterprises operate  
19           in a safe and sound manner, with sufficient capital and  
20           reserves to support the risks that arise in the operations  
21           and management of each enterprise.

22           “(b) NO LIMITATION.—Nothing in this section limits  
23           the authority of the Director to require other reports or  
24           undertakings in furtherance of the responsibilities of the  
25           Director under this Act.”.

1 (b) MINIMUM CAPITAL LEVELS FOR REGULATED  
2 ENTITIES.—

3 (1) ENTERPRISES.—Section 1362 of the Fed-  
4 eral Housing Enterprises Financial Safety and  
5 Soundness Act of 1992 (12 U.S.C. 4612) is amend-  
6 ed—

7 (A) in the section heading, by inserting  
8 “**FOR ENTERPRISES**” after “**LEVELS**”; and

9 (B) by striking subsection (b) and insert-  
10 ing the following:

11 “(b) REGULATORY DISCRETION.—The Director may,  
12 by regulation or order, establish a minimum capital level  
13 that is higher than the level specified in subsection (a).”.

14 (2) FEDERAL HOME LOAN BANKS.—Section  
15 6(a)(2) of the Federal Home Loan Bank Act (12  
16 U.S.C. 1426(a)(2)) is amended by adding at the end  
17 the following:

18 “(C) AUTHORITY TO ALTER LEVEL.—The  
19 Director may, by regulation or order, establish  
20 a minimum capital level that is higher than the  
21 level specified in subparagraph (A).”.

22 **SEC. 111. REGISTRATION OF ENTERPRISE SECURITIES.**

23 (a) FANNIE MAE.—

24 (1) MORTGAGE-BACKED SECURITIES.—Section  
25 304(d) of the Federal National Mortgage Associa-

1 tion Charter Act (12 U.S.C. 1719(d)) is amended by  
 2 striking the fourth sentence and inserting the fol-  
 3 lowing: “Securities issued by the corporation under  
 4 this subsection shall not be exempt securities for  
 5 purposes of the Securities Act of 1933.”.

6 (2) SUBORDINATE OBLIGATIONS.—Section  
 7 304(e) of the Federal National Mortgage Association  
 8 Charter Act (12 U.S.C. 1719(e)) is amended by  
 9 striking the fourth sentence and inserting the fol-  
 10 lowing: “Obligations issued by the corporation under  
 11 this subsection shall not be exempt securities for  
 12 purposes of the Securities Act of 1933.”.

13 (3) SECURITIES.—Section 311 of the Federal  
 14 National Mortgage Association Charter Act (12  
 15 U.S.C. 1723e) is amended—

16 (A) in the section heading, by striking “AS-  
 17 SOCIATION”;

18 (B) by inserting “(a) IN GENERAL.—”  
 19 after “SEC. 311.”;

20 (C) in the second sentence, by inserting  
 21 “by the Association” after “issued”; and

22 (D) by adding at the end the following:

23 “(b) TREATMENT OF CORPORATION SECURITIES.—

24 “(1) IN GENERAL.—Any stock, obligations, se-  
 25 curities, participations, or other instruments issued

1 or guaranteed by the corporation pursuant to this  
2 title shall not be exempt securities for purposes of  
3 the Securities Act of 1933.

4 “(2) EXEMPTION FOR APPROVED SELLERS.—  
5 Notwithstanding any other provision of this title or  
6 the Securities Act of 1933, transactions involving  
7 the initial disposition by an approved seller of pooled  
8 certificates that are acquired by that seller from the  
9 corporation upon the initial issuance of the pooled  
10 certificates shall be deemed to be transactions by a  
11 person other than an issuer, underwriter, or dealer  
12 for purposes of the Securities Act of 1933.

13 “(3) DEFINITIONS.—For purposes of this sub-  
14 section, the following definitions shall apply:

15 “(A) APPROVED SELLER.—The term ‘ap-  
16 proved seller’ means an institution approved by  
17 the corporation to sell mortgage loans to the  
18 corporation in exchange for pooled certificates.

19 “(B) POOLED CERTIFICATES.—The term  
20 ‘pooled certificates’ means single class mort-  
21 gage-backed securities guaranteed by the cor-  
22 poration that have been issued by the corpora-  
23 tion directly to the approved seller in exchange  
24 for the mortgage loans underlying such mort-  
25 gage-backed securities.

1           “(4) MORTGAGE RELATED SECURITIES.—A sin-  
2           gle class mortgage-backed security guaranteed by  
3           the corporation that has been issued by the corpora-  
4           tion directly to the approved seller in exchange for  
5           the mortgage loans underlying such mortgage-  
6           backed securities or directly by the corporation for  
7           cash shall be deemed to be a mortgage related secu-  
8           rity, as defined in section 3(a) of the Securities Ex-  
9           change Act of 1934.”.

10          (b) FREDDIE MAC.—Section 306(g) of the Federal  
11 Home Loan Mortgage Corporation Act (12 U.S.C.  
12 1455(g)) is amended to read as follows:

13          “(g) TREATMENT OF SECURITIES.—

14                 “(1) IN GENERAL.—Any securities issued or  
15                 guaranteed by the Corporation shall not be exempt  
16                 securities for purposes of the Securities Act of 1933.

17                 “(2) EXEMPTION FOR APPROVED SELLERS.—  
18                 Notwithstanding any other provision of this title or  
19                 the Securities Act of 1933, transactions involving  
20                 the initial disposition by an approved seller of pooled  
21                 certificates that are acquired by that seller from the  
22                 Corporation upon the initial issuance of the pooled  
23                 certificates shall be deemed to be transactions by a  
24                 person other than an issuer, underwriter, or dealer  
25                 for purposes of the Securities Act of 1933.

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

3           “(A) APPROVED SELLER.—The term ‘ap-  
4 proved seller’ means an institution approved by  
5 the Corporation to sell mortgage loans to the  
6 Corporation in exchange for pooled certificates.

7           “(B) POOLED CERTIFICATES.—The term  
8 ‘pooled certificates’ means single class mort-  
9 gage-backed securities guaranteed by the Cor-  
10 poration that have been issued by the Corpora-  
11 tion directly to the approved seller in exchange  
12 for the mortgage loans underlying such mort-  
13 gage-backed securities.”.

14       (c) LIMITATION ON FEES.—Section 6(b)(2) of the  
15 Securities Act of 1933 (15 U.S.C. 77f(b)(2)) is amended  
16 by adding at the end the following: “Notwithstanding any  
17 other provision of this title, no applicant, or group of affili-  
18 ated applicants that does not include any investment com-  
19 pany registered under the Investment Company Act of  
20 1940, filing a registration statement subject to a fee shall  
21 be required in any fiscal year with respect to all registra-  
22 tion statements filed by such applicant in such fiscal year  
23 to pay an aggregate amount in fees to the Commission  
24 pursuant to this subsection in an amount that exceeds 5  
25 percent of the target offsetting collection amount for such

1 fiscal year. Fees paid in connection with registration state-  
2 ments relating to business combinations shall not be in-  
3 cluded in calculating the total fees paid by any such appli-  
4 cant.”.

5 (d) NO EFFECT ON OTHER LAW.—Nothing in this  
6 section or the amendments made by this section shall be  
7 construed to affect any exemption from the provisions of  
8 the Trust Indenture Act of 1939 provided to the Federal  
9 National Mortgage Association or the Federal Home Loan  
10 Mortgage Corporation.

11 (e) REGULATIONS.—The Securities and Exchange  
12 Commission may issue such regulations as may be nec-  
13 essary or appropriate to carry out this section and the  
14 amendments made by this section.

15 (f) EFFECTIVE DATE.—The amendments made by  
16 this section shall become effective 1 year after the date  
17 of enactment of this Act.

18 **SEC. 112. LIMIT ON GOLDEN PARACHUTES.**

19 Section 1318 of the Federal Housing Enterprises Fi-  
20 nancial Safety and Soundness Act of 1992 (12 U.S.C.  
21 4518) is amended by adding at the end the following:

22 “(c) AUTHORITY TO REGULATE OR PROHIBIT CER-  
23 TAIN FORMS OF BENEFITS TO AFFILIATED PARTIES.—

24 “(1) GOLDEN PARACHUTES AND INDEMNIFICA-  
25 TION PAYMENTS.—The Agency may prohibit or

1 limit, by regulation or order, any golden parachute  
2 payment or indemnification payment.

3 “(2) FACTORS TO BE TAKEN INTO ACCOUNT.—

4 The Agency shall prescribe, by regulation, the fac-  
5 tors to be considered by the Agency in taking any  
6 action pursuant to paragraph (1), which may include  
7 such factors as—

8 “(A) whether there is a reasonable basis to  
9 believe that the affiliated party has committed  
10 any fraudulent act or omission, breach of trust  
11 or fiduciary duty, or insider abuse with regard  
12 to the regulated entity that has had a material  
13 effect on the financial condition of the regulated  
14 entity;

15 “(B) whether there is a reasonable basis to  
16 believe that the affiliated party is substantially  
17 responsible for the insolvency of the regulated  
18 entity, the appointment of a conservator or re-  
19 ceiver for the regulated entity, or the troubled  
20 condition of the regulated entity (as defined in  
21 regulations prescribed by the Agency);

22 “(C) whether there is a reasonable basis to  
23 believe that the affiliated party has materially  
24 violated any applicable provision of Federal or  
25 State law or regulation that has had a material

1 affect on the financial condition of the regu-  
2 lated entity;

3 “(D) whether the affiliated party was in a  
4 position of managerial or fiduciary responsi-  
5 bility; and

6 “(E) the length of time that the party was  
7 affiliated with the regulated entity, and the de-  
8 gree to which—

9 “(i) the payment reasonably reflects  
10 compensation earned over the period of  
11 employment; and

12 “(ii) the compensation involved rep-  
13 resents a reasonable payment for services  
14 rendered.

15 “(3) CERTAIN PAYMENTS PROHIBITED.—No  
16 regulated entity may prepay the salary or any liabil-  
17 ity or legal expense of any affiliated party if such  
18 payment is made—

19 “(A) in contemplation of the insolvency of  
20 such regulated entity, or after the commission  
21 of an act of insolvency; and

22 “(B) with a view to, or having the result  
23 of—

1           “(i) preventing the proper application  
2           of the assets of the regulated entity to  
3           creditors; or

4           “(ii) preferring one creditor over an-  
5           other.

6           “(4) GOLDEN PARACHUTE PAYMENT DE-  
7           FINED.—

8           “(A) IN GENERAL.—For purposes of this  
9           subsection, the term ‘golden parachute pay-  
10          ment’ means any payment (or any agreement to  
11          make any payment) in the nature of compensa-  
12          tion by any regulated entity for the benefit of  
13          any affiliated party pursuant to an obligation of  
14          such regulated entity that—

15               “(i) is contingent on the termination  
16               of such party’s affiliation with the regu-  
17               lated entity; and

18               “(ii) is received on or after the date  
19               on which—

20                       “(I) the regulated entity became  
21                       insolvent;

22                       “(II) any conservator or receiver  
23                       is appointed for such regulated entity;

24                       or

1                   “(III) the Agency determines  
2                   that the regulated entity is in a trou-  
3                   bled condition (as defined in the regu-  
4                   lations of the Agency).

5                   “(B) CERTAIN PAYMENTS IN CONTEMPLA-  
6                   TION OF AN EVENT.—Any payment which  
7                   would be a golden parachute payment but for  
8                   the fact that such payment was made before the  
9                   date referred to in subparagraph (A)(ii) shall be  
10                  treated as a golden parachute payment if the  
11                  payment was made in contemplation of the oc-  
12                  currence of an event described in any subclause  
13                  of such subparagraph.

14                  “(C) CERTAIN PAYMENTS NOT IN-  
15                  CLUDED.—For purposes of this subsection, the  
16                  term ‘golden parachute payment’ shall not in-  
17                  clude—

18                         “(i) any payment made pursuant to a  
19                         retirement plan which is qualified (or is in-  
20                         tended to be qualified) under section 401  
21                         of the Internal Revenue Code of 1986, or  
22                         other nondiscriminatory benefit plan;

23                         “(ii) any payment made pursuant to a  
24                         bona fide deferred compensation plan or  
25                         arrangement which the Board determines,

1 by regulation or order, to be permissible;  
2 or

3 “(iii) any payment made by reason of  
4 the death or disability of an affiliated  
5 party.

6 “(5) OTHER DEFINITIONS.—For purposes of  
7 this subsection, the following definitions shall apply:

8 “(A) INDEMNIFICATION PAYMENT.—Sub-  
9 ject to paragraph (6), the term ‘indemnification  
10 payment’ means any payment (or any agree-  
11 ment to make any payment) by any regulated  
12 entity for the benefit of any person who is or  
13 was an affiliated party, to pay or reimburse  
14 such person for any liability or legal expense  
15 with regard to any administrative proceeding or  
16 civil action instituted by the Agency which re-  
17 sults in a final order under which such per-  
18 son—

19 “(i) is assessed a civil money penalty;

20 “(ii) is removed or prohibited from  
21 participating in conduct of the affairs of  
22 the regulated entity; or

23 “(iii) is required to take any affirma-  
24 tive action to correct certain conditions re-

1           sulting from violations or practices, by  
2           order of the Agency.

3           “(B) LIABILITY OR LEGAL EXPENSE.—The  
4           term ‘liability or legal expense’ means—

5                   “(i) any legal or other professional ex-  
6                   pense incurred in connection with any  
7                   claim, proceeding, or action;

8                   “(ii) the amount of, and any cost in-  
9                   curred in connection with, any settlement  
10                  of any claim, proceeding, or action; and

11                  “(iii) the amount of, and any cost in-  
12                  curred in connection with, any judgment or  
13                  penalty imposed with respect to any claim,  
14                  proceeding, or action.

15           “(C) PAYMENT.—The term ‘payment’ in-  
16           cludes—

17                   “(i) any direct or indirect transfer of  
18                   any funds or any asset; and

19                   “(ii) any segregation of any funds or  
20                   assets for the purpose of making, or pursu-  
21                   ant to an agreement to make, any payment  
22                   after the date on which such funds or as-  
23                   sets are segregated, without regard to  
24                   whether the obligation to make such pay-  
25                   ment is contingent on—

1                   “(I) the determination, after such  
2                   date, of the liability for the payment  
3                   of such amount; or

4                   “(II) the liquidation, after such  
5                   date, of the amount of such payment.

6                   “(6) CERTAIN COMMERCIAL INSURANCE COV-  
7                   ERAGE NOT TREATED AS COVERED BENEFIT PAY-  
8                   MENT.—No provision of this subsection shall be con-  
9                   strued as prohibiting any regulated entity from pur-  
10                  chasing any commercial insurance policy or fidelity  
11                  bond, except that, subject to any requirement de-  
12                  scribed in paragraph (5)(A)(iii), such insurance pol-  
13                  icy or bond shall not cover any legal or liability ex-  
14                  pense of the regulated entity which is described in  
15                  paragraph (5)(A).”.

16 **SEC. 113. REPORTING OF FRAUDULENT LOANS.**

17                  Part 1 of subtitle C of the Federal Housing Enter-  
18                  prises Financial Safety and Soundness Act of 1992 (12  
19                  U.S.C. 4631 et seq.), as amended by this Act, is amended  
20                  by adding at the end the following:

21 **“SEC. 1379E. REPORTING OF FRAUDULENT LOANS.**

22                  “(a) REQUIREMENT TO REPORT.—The Director  
23                  shall require a regulated entity to submit to the Director  
24                  a timely report upon discovery by the regulated entity that  
25                  it has purchased or sold a fraudulent loan or financial in-

1 strument, or suspects a possible fraud relating to the pur-  
 2 chase or sale of any loan or financial instrument. The Di-  
 3 rector shall require each regulated entity to establish and  
 4 maintain procedures designed to discover any such trans-  
 5 actions.

6 “(b) PROTECTION FROM LIABILITY FOR REPORTS.—  
 7 Any regulated entity that makes a report pursuant to sub-  
 8 section (a), and any entity-affiliated party, that makes or  
 9 requires another to make any such report, shall not be  
 10 liable to any person under any provision of law or regula-  
 11 tion, any constitution, law, or regulation of any State or  
 12 political subdivision of any State, or under any contract  
 13 or other legally enforceable agreement (including any arbi-  
 14 tration agreement) for such report or for any failure to  
 15 provide notice of such report to the person who is the sub-  
 16 ject of such report or any other persons identified in the  
 17 report.”.

18 **Subtitle B—Improvement of**  
 19 **Mission Supervision**

20 **SEC. 121. TRANSFER OF PROGRAM APPROVAL AND HOUS-**  
 21 **ING GOAL OVERSIGHT.**

22 Part 2 of subtitle A of the Federal Housing Enter-  
 23 prises Financial Safety and Soundness Act of 1992 (12  
 24 U.S.C. 4541 et seq.) is amended—

1 (1) by striking the heading for the part and in-  
2 serting the following:

3 **“PART ‘2’—ADDITIONAL AUTHORITIES OF THE**  
4 **DIRECTOR”;**

5 and

6 (2) by striking sections 1321 and 1322.

7 **SEC. 122. REVIEW OF ENTERPRISE PRODUCTS.**

8 Part 2 of subtitle A of the Federal Housing Enter-  
9 prises Financial Safety and Soundness Act of 1992 (12  
10 U.S.C. 4501 et seq.), as amended by this Act, is amended  
11 by inserting before section 1323 the following:

12 **“SEC. 1321. PRIOR APPROVAL AUTHORITY FOR PRODUCTS.**

13 “(a) IN GENERAL.—The Director shall require each  
14 enterprise to obtain the approval of the Director for any  
15 product of the enterprise before initially offering the prod-  
16 uct.

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

20 “(1) in the case of a product of the Federal Na-  
21 tional Mortgage Association, the Director determines  
22 that the product is authorized under paragraph (2),  
23 (3), (4), or (5) of section 302(b) or section 304 of  
24 the Federal National Mortgage Association Charter  
25 Act (12 U.S.C. 1717(b), 1719);

1           “(2) in the case of a product of the Federal  
2 Home Loan Mortgage Corporation, the Director de-  
3 termines that the product is authorized under para-  
4 graph (1), (4), or (5) of section 305(a) of the Fed-  
5 eral Home Loan Mortgage Corporation Act (12  
6 U.S.C. 1454(a));

7           “(3) the product is in the public interest;

8           “(4) the product is consistent with the safety  
9 and soundness of the enterprise or the mortgage fi-  
10 nance system; and

11           “(5) the product does not impair the stability  
12 or competitiveness of the mortgage finance system.

13           “(c) PROCEDURE FOR APPROVAL.—

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

19           “(2) REQUEST FOR PUBLIC COMMENT.—Imme-  
20 diately upon receipt of a request for approval of a  
21 product, as required under paragraph (1), the Direc-  
22 tor shall publish notice of such request and of the  
23 period for public comment pursuant to paragraph  
24 (3) regarding the product, and a description of the  
25 product proposed by the request. The Director shall

1 give interested parties the opportunity to respond in  
2 writing to the proposed product.

3 “(3) PUBLIC COMMENT PERIOD.—During the  
4 30-day period beginning on the date of publication  
5 pursuant to paragraph (2) of a request for approval  
6 of a product, the Director shall receive public com-  
7 ments regarding the proposed product.

8 “(4) OFFERING OF PRODUCT.—

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

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

18 “(d) EXPEDITED REVIEW.—

19 “(1) DETERMINATION AND NOTICE.—If an en-  
20 terprise determines that any new activity, service,  
21 undertaking or offering is excluded from the defini-  
22 tion of a product under subsection (f), then the en-  
23 terprise shall provide written notice to the Director  
24 prior to the commencement of such activity, service,  
25 undertaking, or offering.

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

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

9                   “(A) the Director shall notify the enter-  
10                  prise of the determination;

11                   “(B) the new activity, service, undertaking,  
12                  or offering described in the notice under para-  
13                  graph (1) shall be considered a product for the  
14                  purposes of this section; and

15                   “(C) the enterprise shall withdraw its re-  
16                  quest or submit a written request for approval  
17                  of the product pursuant to subsection (e).

18           “(e) CONDITIONAL APPROVAL.—The Director may  
19           conditionally approve the offering of any product by an  
20           enterprise, and may establish terms, conditions, or limita-  
21           tions with respect to such product with which the enter-  
22           prise must comply in order to offer such product.

23           “(f) DEFINITION OF PRODUCT.—As used in this sec-  
24           tion, the term ‘product’—

1           “(1) all programs, products, and activities, of-  
2           ferred by the enterprise in the marketplace; and

3           “(2) does not include—

4                   “(A) the automated loan underwriting sys-  
5                   tem of an enterprise in existence as of the date  
6                   of enactment of the Federal Housing Enter-  
7                   prise Regulatory Reform Act of 2007, including  
8                   any upgrade to the technology, operating sys-  
9                   tem, or software to operate the underwriting  
10                  system; or

11                   “(B) any modification to the mortgage  
12                   terms and conditions or mortgage underwriting  
13                   criteria relating to the mortgages that are pur-  
14                   chased or guaranteed by an enterprise, provided  
15                   that such modifications do not alter the under-  
16                   lying transaction so as to include services or fi-  
17                   nancing, other than residential mortgage fi-  
18                   nancing, or create significant new exposure to  
19                   risk for the enterprise or the holder of the  
20                  mortgage.

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

23                   “(1) the safety and soundness authority of the  
24                   Director over all new and existing products or activi-  
25                   ties; or

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

5 **SEC. 123. MONITORING AND ENFORCING COMPLIANCE**  
6                                   **WITH HOUSING GOALS.**

7           Section 1336(a)(1) of the Federal Housing Enter-  
8           prises Financial Safety and Soundness Act of 1992 (12  
9           U.S.C. 4566(a)(1)) is amended by striking “established”  
10          and all that follows through “1334” and inserting “under  
11          this subpart”.

12 **SEC. 124. ASSUMPTION BY DIRECTOR OF OTHER HUD RE-**  
13                                   **SPONSIBILITIES.**

14          (a) IN GENERAL.—Part 2 of subtitle A of the Federal  
15          Housing Enterprises Financial Safety and Soundness Act  
16          of 1992 (12 U.S.C. 4541 et seq.) is amended—

17                 (1) by striking “Secretary” each place that  
18                 term appears and inserting “Director” in each of  
19                 sections 1323, 1324, 1326, 1331, 1332, 1333, 1334,  
20                 and 1336;

21                 (2) in section 1332 (12 U.S.C. 4562), by strik-  
22                 ing subsection (d);

23                 (3) in section 1333 (12 U.S.C. 4563), by strik-  
24                 ing subsection (d);

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

3 (5) by striking sections 1337, 1338, and 1349  
4 (12 U.S.C. 4567, 4562 note, 4589).

5 (b) RETENTION OF FAIR HOUSING RESPONSIBIL-  
6 ITIES.—Section 1325 of the Federal Housing Enterprises  
7 Financial Safety and Soundness Act of 1992 (12 U.S.C.  
8 4545) is amended in the matter preceding paragraph (1),  
9 by inserting “of Housing and Urban Development” after  
10 “The Secretary”.

11 **SEC. 125. ADMINISTRATIVE AND JUDICIAL ENFORCEMENT**  
12 **PROCEEDINGS.**

13 (a) DIRECTOR AUTHORITY.—Subpart C of part 2 of  
14 subtitle A of the Federal Housing Enterprises Financial  
15 Safety and Soundness Act of 1992 (12 U.S.C. 4581 et  
16 seq.) is amended by striking “Secretary” each place that  
17 term appears and inserting “Director” in each of—

18 (1) section 1341 (12 U.S.C. 4581);

19 (2) section 1342 (12 U.S.C. 4582);

20 (3) section 1343 (12 U.S.C. 4583);

21 (4) section 1344 (12 U.S.C. 4584);

22 (5) section 1345 (12 U.S.C. 4585);

23 (6) section 1346 (12 U.S.C. 4586);

24 (7) section 1347 (12 U.S.C. 4587); and

25 (8) section 1348 (12 U.S.C. 4588).

1 (b) SUBPOENA ENFORCEMENT BY DIRECTOR.—Sec-  
2 tion 1348(c) of the Federal Housing Enterprises Financial  
3 Safety and Soundness Act of 1992 (12 U.S.C. 4588(c))  
4 is amended by inserting “may bring an action or” before  
5 “may request”.

6 **SEC. 126. CONFORMING LOAN LIMITS.**

7 (a) FANNIE MAE.—Section 302(b)(2) of the Federal  
8 National Mortgage Association Charter Act (12 U.S.C.  
9 1717(b)(2)) is amended by striking “The Corporation  
10 shall establish” and all that follows through the end of  
11 the paragraph and inserting the following: “Such limita-  
12 tions shall not exceed \$417,000 for a mortgage secured  
13 by a single-family residence, \$533,850 for a mortgage se-  
14 cured by a 2-family residence, \$645,300 for a mortgage  
15 secured by a 3-family residence, or \$801,950 for a mort-  
16 gage secured by a 4-family residence, except that such  
17 maximum limitations shall be adjusted effective January  
18 1 of each year beginning after the effective date under  
19 section 163 of the Federal Housing Enterprise Regulatory  
20 Reform Act of 2007, subject to the limitations in this  
21 paragraph. Such limitation shall be calculated with respect  
22 to the total original principal obligation of the mortgage,  
23 and not merely with respect to the interest purchased by  
24 the enterprise. Each adjustment shall be made by adding  
25 to or subtracting from each such amount (as it may have

1 been previously adjusted) a percentage thereof equal to the  
2 percentage increase or decrease, during the most recent  
3 12-month or fourth quarter period ending before the time  
4 of determining such annual adjustment, in the housing  
5 price index maintained by the Director of the Federal  
6 Housing Enterprise Regulatory Agency (pursuant to sec-  
7 tion 1321 of the Federal Housing Enterprises Financial  
8 Safety and Soundness Act of 1992 (12 U.S.C. 4541)).”.

9 (b) FREDDIE MAC.—Section 305(a)(2) of the Fed-  
10 eral Home Loan Mortgage Corporation Act (12 U.S.C.  
11 1454(a)(2)) is amended by striking “The Corporation  
12 shall establish” and all that follows through the end of  
13 the paragraph and inserting the following: “Such limita-  
14 tions shall not exceed \$417,000 for a mortgage secured  
15 by a single-family residence, \$533,850 for a mortgage se-  
16 cured by a 2-family residence, \$645,300 for a mortgage  
17 secured by a 3-family residence, or \$801,950 for a mort-  
18 gage secured by a 4-family residence, except that such  
19 maximum limitations shall be adjusted effective January  
20 1 of each year beginning after the effective date under  
21 section 163 of the Federal Housing Enterprise Regulatory  
22 Reform Act of 2007, subject to the limitations in this  
23 paragraph. Such limitation shall be calculated with respect  
24 to the total original principal obligation of the mortgage  
25 and not merely with respect to the interest purchased by

1 the enterprise. Each adjustment shall be made by adding  
2 to or subtracting from each such amount (as it may have  
3 been previously adjusted) a percentage thereof equal to the  
4 percentage increase or decrease, during the most recent  
5 12-month or fourth quarter period ending before the time  
6 of determining such annual adjustment, in the housing  
7 price index maintained by the Director of the Federal  
8 Housing Enterprise Regulatory Agency (pursuant to sec-  
9 tion 1321 of the Federal Housing Enterprises Financial  
10 Safety and Soundness Act of 1992 (12 U.S.C. 4541)).”.

11 (c) HOUSING PRICE INDEX.—The Federal Housing  
12 Enterprises Financial Safety and Soundness Act of 1992,  
13 as amended by this Act, is amended by inserting before  
14 section 1323 the following:

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

16 “(a) METHOD OF ASSESSMENT.—The Director shall  
17 establish, by regulation, and maintain a method of assess-  
18 ing the national average single-family housing price for  
19 use in adjusting the conforming loan limitations of the en-  
20 terprises.

21 “(b) CONSIDERATIONS.—The Director shall take into  
22 consideration the monthly survey of all major lenders con-  
23 ducted by the Agency to determine the national average  
24 single-family house price, the Housing Price Index main-  
25 tained by the Office of Federal Housing Enterprise Over-

1 sight of the Department of Housing and Urban Develop-  
2 ment before the effective date under section 163 of the  
3 Federal Housing Enterprise Regulatory Reform Act of  
4 2007, any appropriate housing price indexes of the Bureau  
5 of the Census of the Department of Commerce, and any  
6 other indexes or measure that the Director considers ap-  
7 propriate.”.

8 **SEC. 127. REPORTING OF MORTGAGE DATA; HOUSING**  
9 **GOALS.**

10 (a) REPORTING OF MORTGAGE DATA.—Section 1325  
11 of the Federal Housing Enterprises Financial Safety and  
12 Soundness Act of 1992 (12 U.S.C. 4546), as so redesign-  
13 nated by this Act, is amended—

14 (1) in subsection (a), by striking “The Direc-  
15 tor” and inserting “Subject to subsection (d), the  
16 Director”; and

17 (2) by adding at the end the following:

18 “(d) MORTGAGE DATA.—The Director shall, by regu-  
19 lation or order, provide that certain information relating  
20 to single family mortgage data of the enterprises shall be  
21 disclosed to the public in order to make available to the  
22 public the same data from the enterprises that is required  
23 of insured depository institutions under the Home Mort-  
24 gage Disclosure Act.”.

1 (b) DEFINITIONS.—Section 1334 of the Federal  
2 Housing Enterprises Financial Safety and Soundness Act  
3 of 1992 (12 U.S.C. 4564), as amended by this Act, is  
4 amended by adding at the end the following:

5 “(d) DEFINITIONS.—For purposes of this section, the  
6 term ‘underserved area’ means an urban census tract that  
7 has—

8 (1) an average median family income of less  
9 than 80 percent of the area median family income;  
10 or

11 (2) a minority population of at least 30 per-  
12 cent and a median family income of less than 100  
13 percent of the area family median income.”.

14 **SEC. 128. DUTY TO SERVE UNDERSERVED MARKETS.**

15 (a) ESTABLISHMENT AND EVALUATION OF PER-  
16 FORMANCE.—Section 1335 of the Federal Housing Enter-  
17 prises Financial Safety and Soundness Act of 1992 (12  
18 U.S.C. 4565) is amended—

19 (1) in the section heading, by inserting “**DUTY**  
20 **TO SERVE UNDERSERVED MARKETS AND**” be-  
21 fore “**OTHER**”;

22 (2) by striking subsection (b);

23 (3) in subsection (a)—

1 (A) by inserting “and to carry out the duty  
2 under subsection (a)” before “, each enterprise  
3 shall”;

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

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

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

9 (4) by redesignating subsection (a) as sub-  
10 section (b);

11 (5) by inserting before subsection (b) (as so re-  
12 designated) the following:

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

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

1 available for mortgage financing for underserved  
2 markets.

3 “(2) UNDERSERVED MARKETS.—To meet its  
4 duty under paragraph (1), each enterprise shall lead  
5 the industry in developing loan products and flexible  
6 underwriting guidelines to facilitate a secondary  
7 market—

8 “(A) for mortgages on manufactured  
9 homes for very low-, low-, and moderate-income  
10 families;

11 “(B) to preserve housing affordable to very  
12 low-, low-, and moderate-income families, in-  
13 cluding housing projects subsidized under—

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

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

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

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

1           “(v) the supportive housing program  
2           for persons with disabilities under section  
3           811 of the Cranston-Gonzalez National Af-  
4           fordable Housing Act; and

5           “(vi) the rural rental housing program  
6           under section 515 of the Housing Act of  
7           1949;

8           “(C) for mortgages on housing for very  
9           low-, low-, and moderate-income families in  
10          rural areas, and for mortgages for housing for  
11          any other underserved market for very low-,  
12          low-, and moderate-income families that the Di-  
13          rector identifies as lacking adequate credit  
14          through conventional lending sources, which un-  
15          derserved markets may be identified by bor-  
16          rower type, market segment, or geographic  
17          area; and

18          “(D) for mortgages originated through  
19          State or local affordable or subsidized housing  
20          programs.”; and

21          (6) by adding at the end the following new sub-  
22          section:

23          “(c) EVALUATION AND REPORTING OF COMPLI-  
24          ANCE.—

1           “(1) METHOD OF EVALUATION.—Not later  
2 than 6 months after the effective date of title I of  
3 the Federal Housing Enterprise Regulatory Reform  
4 Act of 2007, the Director shall establish a method  
5 for evaluating whether, and the extent to which, the  
6 enterprises have complied with the duty under sub-  
7 section (a) to serve underserved markets and for rat-  
8 ing the extent of such compliance.

9           “(2) ANNUAL EVALUATIONS.—Using the meth-  
10 od established under paragraph (1), the Director  
11 shall, for each year, evaluate such compliance and  
12 rate the performance of each enterprise as to the ex-  
13 tent of compliance. The Director shall include such  
14 evaluation and rating for each enterprise for a year  
15 in the report for that year submitted pursuant to  
16 section 1319B(a).

17           “(3) SEPARATE EVALUATIONS.—In determining  
18 whether an enterprise has complied with the duty  
19 under subsection (a), the Director shall separately  
20 evaluate whether the enterprise has complied with  
21 such duty with respect to each of the underserved  
22 markets identified in subsection (a), taking into con-  
23 sideration—

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

1           “(B) the extent of outreach to qualified  
2           loan sellers in each of such underserved mar-  
3           kets; and

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

6           (b) ENFORCEMENT.—Section 1336(a) of the Federal  
7           Housing Enterprises Financial Safety and Soundness Act  
8           of 1992 (12 U.S.C. 4566(a)) is amended—

9           (1) in paragraph (1), by inserting before the pe-  
10          riod “and with the duty under section 1335A of  
11          each enterprise with respect to underserved mar-  
12          kets”; and

13          (2) by adding at the end the following:

14          “(4) ENFORCEMENT OF DUTY TO PROVIDE  
15          MORTGAGE CREDIT TO UNDERSERVED MARKETS.—  
16          Compliance with the duty under section 1335(a) of  
17          each enterprise to serve underserved markets (as de-  
18          termined in accordance with section 1335(c)) shall  
19          be enforceable under this section to the same extent  
20          and under the same provisions that the housing  
21          goals established under sections 1332, 1333, and  
22          1334 are enforceable. Such duty shall not be en-  
23          forceable under any provision of this title (including  
24          subpart C), other than this section, or under any  
25          provision of the Federal National Mortgage Associa-

1       tion Charter Act or the Federal Home Loan Mort-  
2       gage Corporation Act, as applicable.”.

3 **SEC. 129. HOME PURCHASE GOAL.**

4       The Federal Housing Enterprises Financial Safety  
5 and Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is  
6 amended—

7           (1) by inserting after section 1334 the fol-  
8       lowing:

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

10       “(a) ESTABLISHMENT.—

11           “(1) IN GENERAL.—The Director shall establish  
12       an annual home purchase goal for the purchase by  
13       each enterprise of mortgage financing of owner-occu-  
14       pied single family dwelling units.

15           “(2) COMPONENTS.—The Director may, by reg-  
16       ulation, establish components for the goal estab-  
17       lished under paragraph (1) to include any or all of  
18       the following:

19           “(A) First-time home buyers.

20           “(B) Low- and moderate-income home  
21       buyers.

22           “(C) Home buyers in central cities, rural  
23       areas, and other underserved areas.

1           “(D) Home buyers who obtain financing  
2           through State or local affordable or subsidized  
3           housing programs.

4           “(3) OTHER AUTHORITY.—The Director may,  
5           by regulation, establish the goal under paragraph  
6           (1) with components as percentages of enterprise  
7           business, or by such other means as necessary to in-  
8           crease the secondary market financing of mortgages  
9           by the enterprises for home purchases, consistent  
10          with the missions of the enterprises.

11          “(4) ENFORCEABILITY.—The components of  
12          the goal established by the Director under para-  
13          graph (1) shall be enforceable as goals under sub-  
14          part C.

15          “(b) FACTORS TO BE CONSIDERED.—In establishing  
16          the home purchase goal for an enterprise under this sec-  
17          tion, the Director shall consider—

18                 “(1) national housing needs;

19                 “(2) economic, housing, and demographic condi-  
20                 tions;

21                 “(3) the performance and effort of the enter-  
22                 prises toward achieving the home purchase goal in  
23                 previous years;



1 housing goals, to address national housing needs  
2 consistent with the missions, of the enterprises and  
3 the authorizing statutes, for the purchase of mort-  
4 gages, if the Director determines, by regulation, that  
5 the housing need is greatest.

6 “(2) METHODOLOGY.—The Director may issue  
7 a regulation which establishes or modifies any goal  
8 under this subsection—

9 “(A) as a percentage of the mortgage pur-  
10 chases of each enterprise;

11 “(B) as a dollar amount of each enter-  
12 prise’s mortgage purchases; or

13 “(C) by such other means as necessary to  
14 increase the enterprises’ secondary market fi-  
15 nancing of mortgages addressed by the goal.

16 “(b) FACTORS TO BE CONSIDERED.—In establishing  
17 any additional goals under this section, the Director shall  
18 consider—

19 “(1) national housing needs;

20 “(2) economic, housing, and demographic condi-  
21 tions;

22 “(3) the performance and effort of the enter-  
23 prises toward achieving the need addressed by any  
24 such additional goal in previous years;

1           “(4) the size of the conventional mortgage mar-  
2           ket serving the need addressed by the goal, relative  
3           to the size of the overall conventional mortgage mar-  
4           ket;

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

8           “(6) the need to maintain the sound financial  
9           condition of the enterprises.

10          “(c) TRANSITION.—In order to permit a transition  
11          to the establishment of any goal under this section, such  
12          goal shall not be effective or enforceable during the 1-year  
13          period beginning on the date of its establishment under  
14          subsection (a).”;

15          (2) in section 1335 (12 U.S.C. 4565(a)), by  
16          striking “meet the low-” and all that follows through  
17          “1334” and inserting “meet the goals under this  
18          subpart”;

19          (3) in section 1336 (12 U.S.C. 4566), by strik-  
20          ing subsections (b) and (c) and inserting the fol-  
21          lowing:

22          “(b) NOTICE AND PRELIMINARY DETERMINATION OF  
23          FAILURE TO MEET GOALS.—

24                 “(1) NOTICE.—If the Director preliminarily de-  
25                 termines that an enterprise has failed, or that there

1 is a substantial probability that an enterprise will  
2 fail, to meet any housing goal under this subpart,  
3 the Director shall provide written notice to the en-  
4 terprise of such a preliminary determination, the  
5 reasons for such determination, and the information  
6 on which the Director based the determination.

7 “(2) RESPONSE PERIOD.—

8 “(A) IN GENERAL.—During the 30-day pe-  
9 riod beginning on the date on which an enter-  
10 prise is provided notice under paragraph (1),  
11 the enterprise may submit to the Director any  
12 written information that the enterprise con-  
13 siders appropriate for consideration by the Di-  
14 rector in finally determining whether such fail-  
15 ure has occurred or whether the achievement of  
16 such goal was or is feasible.

17 “(B) EXTENDED PERIOD.—The Director  
18 may extend the period under subparagraph (A)  
19 for good cause for not more than 30 additional  
20 days.

21 “(C) SHORTENED PERIOD.—The Director  
22 may shorten the period under subparagraph (A)  
23 for good cause.

24 “(D) FAILURE TO RESPOND.—The failure  
25 of an enterprise to provide information during

1 the 30-day period under this paragraph (as ex-  
2 tended or shortened) shall waive any right of  
3 the enterprise to comment on the proposed de-  
4 termination or action of the Director.

5 “(3) CONSIDERATION OF INFORMATION AND  
6 FINAL DETERMINATION.—

7 “(A) IN GENERAL.—After the expiration of  
8 the response period under paragraph (2), or  
9 upon receipt of information provided during  
10 such period by the enterprise, whichever occurs  
11 earlier, the Director shall issue a final deter-  
12 mination on—

13 “(i) whether the enterprise has failed,  
14 or there is a substantial probability that  
15 the enterprise will fail, to meet the housing  
16 goal; and

17 “(ii) whether (taking into consider-  
18 ation market and economic conditions and  
19 the financial condition of the enterprise)  
20 the achievement of the housing goal was or  
21 is feasible.

22 “(B) CONSIDERATIONS.—In making a  
23 final determination under subparagraph (A),  
24 the Director shall take into consideration any

1 relevant information submitted by the enter-  
2 prise during the response period.

3 “(C) NOTICE.—The Director shall provide  
4 written notice, including a response to any in-  
5 formation submitted during the response period  
6 to the enterprise, the Committee on Banking,  
7 Housing, and Urban Affairs of the Senate, and  
8 the Committee on Financial Services of the  
9 House of Representatives, of—

10 “(i) each final determination under  
11 this paragraph that an enterprise has  
12 failed, or that there is a substantial prob-  
13 ability that the enterprise will fail, to meet  
14 a housing goal;

15 “(ii) each final determination that the  
16 achievement of a housing goal was or is  
17 feasible; and

18 “(iii) the reasons for each such final  
19 determination.

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

22 “(1) REQUIREMENT.—If the Director finds,  
23 pursuant to subsection (b), that there is a substan-  
24 tial probability that an enterprise will fail, or has ac-  
25 tually failed, to meet any housing goal under this

1 subpart, and that the achievement of the housing  
2 goal was or is feasible, the Director may require that  
3 the enterprise submit a housing plan under this sub-  
4 section. If the Director makes such a finding and  
5 the enterprise refuses to submit such a plan, sub-  
6 mits an unacceptable plan, fails to comply with the  
7 plan, or the Director finds that the enterprise has  
8 failed to meet any housing goal under this subpart,  
9 in addition to requiring an enterprise to submit a  
10 housing plan, the Director may issue a cease and de-  
11 sist order in accordance with section 1341, impose  
12 civil money penalties in accordance with section  
13 1345, or order other remedies as set forth in para-  
14 graph (7).

15 “(2) HOUSING PLAN.—If the Director requires  
16 a housing plan under this subsection, such a plan  
17 shall be—

18 “(A) a feasible plan describing the specific  
19 actions the enterprise will take—

20 “(i) to achieve the goal for the next  
21 calendar year; and

22 “(ii) if the Director determines that  
23 there is a substantial probability that the  
24 enterprise will fail to meet a goal in the  
25 current year, to make such improvements

1                   and changes in its operations as are rea-  
2                   sonable in the remainder of such year; and

3                   “(B) sufficiently specific to enable the Di-  
4                   rector to monitor compliance periodically.

5                   “(3) DEADLINE FOR SUBMISSION.—The Direc-  
6                   tor shall, by regulation, establish a deadline for an  
7                   enterprise to comply with any remedial action or  
8                   submit a housing plan to the Director, which may  
9                   not be more than 45 days after the enterprise is pro-  
10                  vided notice. The regulations shall provide that the  
11                  Director may extend the deadline to the extent that  
12                  the Director determines necessary. Any extension of  
13                  the deadline shall be in writing and for a time cer-  
14                  tain.

15                  “(4) APPROVAL.—The Director shall review  
16                  each submission by an enterprise, including a hous-  
17                  ing plan submitted under this subsection, and, not  
18                  later than 30 days after submission, approve or dis-  
19                  approve the plan or other action. The Director may  
20                  extend the period for approval or disapproval for a  
21                  single additional 30-day period if the Director deter-  
22                  mines it necessary. The Director shall approve any  
23                  plan that the Director determines is likely to suc-  
24                  ceed, and conforms with the Federal National Mort-  
25                  gage Association Charter Act or the Federal Home

1       Loan Mortgage Corporation Act (as applicable), this  
2       title, and any other applicable provision of law.

3           “(5) NOTICE OF APPROVAL AND DIS-  
4       APPROVAL.—The Director shall provide written no-  
5       tice to any enterprise submitting a housing plan of  
6       the approval or disapproval of the plan (which shall  
7       include the reasons for any disapproval of the plan)  
8       and of any extension of the period for approval or  
9       disapproval.

10          “(6) RESUBMISSION.—If the initial housing  
11       plan submitted by an enterprise under this section  
12       is disapproved, the enterprise shall submit an  
13       amended plan acceptable to the Director not later  
14       than 30 days after such disapproval, or such longer  
15       period that the Director determines is in the public  
16       interest.

17          “(7) ADDITIONAL REMEDIES FOR FAILURE TO  
18       MEET GOALS.—In addition to ordering a housing  
19       plan under this section, issuing a cease and desist  
20       order under section 1341, and ordering civil money  
21       penalties under section 1345, the Director may seek  
22       other actions when an enterprise fails to meet a  
23       goal, including requesting that the Director exercise  
24       appropriate enforcement authority available to the  
25       Director under this title to prohibit the enterprise

1 from entering into new activities, to freeze any pend-  
2 ing approval of new activities, and to order the en-  
3 terprise to suspend activities pending its achieve-  
4 ment of the goal.”;

5 (4) by striking section 1338 (12 U.S.C. 4568);

6 (5) by striking from the heading of subpart C  
7 **“of Housing Goals”**;

8 (6) by striking section 1341 (12 U.S.C. 4581)  
9 and inserting the following:

10 **“SEC. 1341. CEASE-AND-DESIST PROCEEDINGS.**

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

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

18 “(2) the enterprise has failed to submit a report  
19 under section 1327, following a notice of such fail-  
20 ure, an opportunity for comment by the enterprise,  
21 and a final determination by the Director;

22 “(3) the enterprise has failed to submit the in-  
23 formation required under subsection (m) or (n) of  
24 section 309 of the Federal National Mortgage Asso-  
25 ciation Charter Act, subsection (e) or (f) of section

1 307 of the Federal Home Loan Mortgage Corpora-  
2 tion Act, or section 1337 of this title;

3 “(4) the enterprise has violated any provision of  
4 part 2 of this title or any order, rule, or regulation  
5 under part 2;

6 “(5) the enterprise has failed to submit a hous-  
7 ing plan or perform its responsibilities under a reme-  
8 dial order that substantially complies with section  
9 1336(c) within the applicable period; or

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

12 “(b) PROCEDURE.—

13 “(1) NOTICE OF CHARGES.—Each notice of  
14 charges issued under this section shall contain a  
15 statement of the facts constituting the alleged con-  
16 duct and shall fix a time and place at which a hear-  
17 ing will be held to determine on the record whether  
18 an order to cease and desist from such conduct  
19 should issue.

20 “(2) ISSUANCE OF ORDER.—If the Director  
21 finds on the record made at a hearing described in  
22 paragraph (1) that any conduct specified in the no-  
23 tice of charges has been established (or the enter-  
24 prise consents pursuant to section 1342(a)(4)), the

1 Director may issue and serve upon the enterprise an  
2 order requiring the enterprise to—

3 “(A) comply with the goals;

4 “(B) submit a report under section 1327;

5 “(C) comply with any provision of part 2  
6 of this title or any order, rule, or regulation  
7 under part 2;

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

10 “(E) comply with the housing plan in com-  
11 pliance with section 1336(c); or

12 “(F) provide the information required  
13 under subsection (m) or (n) of section 309 of  
14 the Federal National Mortgage Association  
15 Charter Act, or subsection (e) or (f) of section  
16 307 of the Federal Home Loan Mortgage Cor-  
17 poration Act.

18 “(c) EFFECTIVE DATE.—An order under this section  
19 shall become effective upon the expiration of the 30-day  
20 period beginning on the date of service of the order upon  
21 the enterprise (except in the case of an order issued upon  
22 consent, which shall become effective at the time specified  
23 therein), and shall remain effective and enforceable as pro-  
24 vided in the order, except to the extent that the order is

1 stayed, modified, terminated, or set aside by action of the  
2 Director of or otherwise, as provided in this subpart.”; and

3 (7) by striking section 1345 and inserting the  
4 following:

5 **“SEC. 1345. CIVIL MONEY PENALTIES.**

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

9 “(1) meet any housing goal established under  
10 subpart B, following a written notice and determina-  
11 tion of such failure in accordance with section  
12 1336(b);

13 “(2) submit a report under section 1327, fol-  
14 lowing a notice of such failure, an opportunity for  
15 comment by the enterprise, and a final determina-  
16 tion by the Director;

17 “(3) submit the information required under  
18 subsection (m) or (n) of section 309 of the Federal  
19 National Mortgage Association Charter Act or sub-  
20 section (e) or (f) of section 307 of the Federal Home  
21 Loan Mortgage Corporation Act;

22 “(4) comply with any provision of part 2 of this  
23 title or any order, rule, or regulation under part 2;

1           “(5) submit a housing plan or perform its re-  
2           responsibilities under a remedial order issued pursuant  
3           to section 1336(c) within the required period; or

4           “(6) comply with a housing plan for the enter-  
5           prise under section 1336(c).

6           “(b) AMOUNT OF PENALTY.—The amount of a pen-  
7           alty under this section, as determined by the Director,  
8           may not exceed—

9           “(1) for any failure described in paragraph (1),  
10          (5), or (6) of subsection (a), \$100,000 for each day  
11          that the failure occurs; and

12          “(2) for any failure described in paragraph (2),  
13          (3), or (4) of subsection (a), \$50,000 for each day  
14          that the failure occurs.

15          “(c) PROCEDURES.—

16          “(1) ESTABLISHMENT.—The Director shall es-  
17          tablish standards and procedures governing the im-  
18          position of civil money penalties under this section.  
19          Such standards and procedures—

20                 “(A) shall provide for the Director to no-  
21                 tify the enterprise in writing of the determina-  
22                 tion of the Director to impose the penalty,  
23                 which shall be made on the record;

24                 “(B) shall provide for the imposition of a  
25                 penalty only after the enterprise has been given

1 an opportunity for a hearing on the record pur-  
 2 suant to section 1342; and

3 “(C) may provide for review by the Direc-  
 4 tor of any determination or order, or interlocu-  
 5 tory ruling, arising from a hearing.

6 “(2) FACTORS IN DETERMINING AMOUNT OF  
 7 PENALTY.—In determining the amount of a penalty  
 8 under this section, the Director shall give consider-  
 9 ation to factors including—

10 “(A) the gravity of the offense;

11 “(B) any history of prior offenses;

12 “(C) ability to pay the penalty;

13 “(D) injury to the public;

14 “(E) benefits received;

15 “(F) deterrence of future violations;

16 “(G) the length of time that the enterprise  
 17 should reasonably take to achieve the goal; and

18 “(H) such other factors as the Director  
 19 may determine, by regulation, to be appro-  
 20 priate.

21 “(d) ACTION TO COLLECT PENALTY.—If an enter-  
 22 prise fails to comply with an order by the Director impos-  
 23 ing a civil money penalty under this section, after the  
 24 order is no longer subject to review, as provided in sections  
 25 1342 and 1343, the Director may request the Attorney

1 General of the United States to bring an action in the  
 2 United States District Court for the District of Columbia  
 3 to obtain a monetary judgment against the enterprise, and  
 4 such other relief as may be available. The monetary judg-  
 5 ment may, in the court’s discretion, include the attorneys’  
 6 fees and other expenses incurred by the United States in  
 7 connection with the action. In an action under this sub-  
 8 section, the validity and appropriateness of the order im-  
 9 posing the penalty shall not be subject to review.

10 “(e) SETTLEMENT BY DIRECTOR.—The Director  
 11 may compromise, modify, or remit any civil money penalty  
 12 which may be, or has been, imposed under this section.

13 “(f) DEPOSIT OF PENALTIES.—The Director shall  
 14 deposit any civil money penalties collected under this sec-  
 15 tion into the General Fund of the Treasury.”.

## 16 **Subtitle C—Prompt Corrective** 17 **Action**

### 18 **SEC. 141. CRITICAL CAPITAL LEVELS.**

19 Section 1363 of the Federal Housing Enterprises Fi-  
 20 nancial Safety and Soundness Act of 1992 (12 U.S.C.  
 21 4613) is amended—

22 (1) by redesignating paragraphs (1) through  
 23 (3) as clauses (i) through (iii), respectively, and in-  
 24 denting appropriately;

1           (2) by striking “this subtitle, the critical capital  
2 level for each enterprise shall be the sum of—” and  
3 inserting the following: “this subtitle, the critical  
4 capital level—

5           “(1) for each enterprise shall be—

6           “(A) the sum of—”; and

7           (3) in paragraph (1)(A)(iii), as so designated by  
8 this section, by striking the period at the end and  
9 inserting the following: “; or

10           “(B) such other level as the Director shall  
11 establish, by regulation; and

12           “(2) for each Federal Home Loan Bank, shall  
13 be the level that the Director shall establish, by reg-  
14 ulation.”.

15 **SEC. 142. CAPITAL CLASSIFICATIONS.**

16           Section 1364 of the Federal Housing Enterprises Fi-  
17 nancial Safety and Soundness Act of 1992 (12 U.S.C.  
18 4614) is amended—

19           (1) in subsection (a)—

20           (A) in paragraph (3)(A)—

21           (i) by striking clause (i); and

22           (ii) by redesignating clauses (ii) and

23           (iii) as clauses (i) and (ii), respectively;

24           and

1 (B) in paragraph (4)(A), by striking “en-  
2 terprise—” and all that follows through “(ii)  
3 does” and inserting “enterprise does”;

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

6 “(b) DISCRETIONARY CLASSIFICATION.—

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

10 “(A) at any time, the Director determines  
11 in writing that a regulated entity is engaging in  
12 conduct that could result in a rapid depletion of  
13 core capital, or that the value of the property  
14 subject to mortgages held or securitized by an  
15 enterprise, or the value of collateral pledged as  
16 security, has decreased significantly;

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

21 “(C) pursuant to section 1371(b), the Di-  
22 rector determines that a regulated entity is en-  
23 gaging in an unsafe or unsound practice.

24 “(2) RECLASSIFICATION.—In addition to any  
25 other action authorized under this title, including

1 the reclassification of a regulated entity for any rea-  
2 son not specified in this subsection, if the Director  
3 takes any action described in paragraph (1), the Di-  
4 rector may reclassify a regulated entity—

5 “(A) as ‘undercapitalized’, if the regulated  
6 entity is otherwise classified as adequately cap-  
7 italized;

8 “(B) as ‘significantly undercapitalized’, if  
9 the regulated entity is otherwise classified as  
10 undercapitalized; and

11 “(C) as ‘critically undercapitalized’, if the  
12 regulated entity is otherwise classified as sig-  
13 nificantly undercapitalized.”; and

14 (3) by striking subsection (d) and inserting the  
15 following:

16 “(d) RESTRICTION ON CAPITAL DISTRIBUTIONS.—

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

21 “(2) EXCEPTION.—Notwithstanding paragraph  
22 (1), the Director may permit a regulated entity to  
23 repurchase, redeem, retire, or otherwise acquire  
24 shares or ownership interests if the repurchase, re-  
25 demption, retirement, or other acquisition—



1           “(A) closely monitor the condition of any  
2           undercapitalized regulated entity;

3           “(B) closely monitor compliance with the  
4           capital restoration plan, restrictions, and re-  
5           quirements imposed on an undercapitalized reg-  
6           ulated entity under this section; and

7           “(C) periodically review the plan, restric-  
8           tions, and requirements applicable to an under-  
9           capitalized regulated entity to determine wheth-  
10          er the plan, restrictions, and requirements are  
11          achieving the purpose of this section.”; and

12          (C) by adding at the end the following:

13          “(4) RESTRICTION OF ASSET GROWTH.—An  
14          undercapitalized regulated entity shall not permit its  
15          average total assets during any calendar quarter to  
16          exceed its average total assets during the preceding  
17          calendar quarter, unless—

18                 “(A) the Director has accepted the capital  
19                 restoration plan of the regulated entity;

20                 “(B) any increase in total assets is con-  
21                 sistent with the capital restoration plan; and

22                 “(C) the ratio of tangible equity to assets  
23                 of the regulated entity increases during the cal-  
24                 endar quarter at a rate sufficient to enable the

1 regulated entity to become adequately capital-  
2 ized within a reasonable time.

3 “(5) PRIOR APPROVAL OF ACQUISITIONS AND  
4 NEW ACTIVITIES.—An undercapitalized regulated en-  
5 tity shall not, directly or indirectly, acquire any in-  
6 terest in any entity or engage in any new activity,  
7 unless—

8 “(A) the Director has accepted the capital  
9 restoration plan of the regulated entity, the reg-  
10 ulated entity is implementing the plan, and the  
11 Director determines that the proposed action is  
12 consistent with and will further the achievement  
13 of the plan; or

14 “(B) the Director determines that the pro-  
15 posed action will further the purpose of this  
16 subtitle.”;

17 (5) in subsection (b)—

18 (A) in the subsection heading, by striking  
19 “DISCRETIONARY”;

20 (B) in the matter preceding paragraph (1),  
21 by striking “may” and inserting “shall”; and

22 (C) in paragraph (2)—

23 (i) by striking “make, in good faith,  
24 reasonable efforts necessary to”; and

1 (ii) by striking the period at the end  
2 and inserting “in any material respect.”;  
3 and

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

6 “(c) OTHER DISCRETIONARY SAFEGUARDS.—The  
7 Director may take, with respect to an undercapitalized  
8 regulated entity, any of the actions authorized to be taken  
9 under section 1366 with respect to a significantly under-  
10 capitalized regulated entity, if the Director determines  
11 that such actions are necessary to carry out the purpose  
12 of this subtitle.”.

13 **SEC. 144. SUPERVISORY ACTIONS APPLICABLE TO SIGNIFI-**  
14 **CANTLY UNDERCAPITALIZED REGULATED**  
15 **ENTITIES.**

16 Section 1366 of the Federal Housing Enterprises Fi-  
17 nancial Safety and Soundness Act of 1992 (12 U.S.C.  
18 4616) is amended—

19 (1) in subsection (a)(2), by striking “under-  
20 capitalized enterprise” and inserting “undercapital-  
21 ized”;

22 (2) by striking “the enterprise” each place that  
23 term appears and inserting “the regulated entity”;

24 (3) by striking “An enterprise” each place that  
25 term appears and inserting “A regulated entity”;

1 (4) by striking “an enterprise” each place that  
2 term appears and inserting “a regulated entity”;

3 (5) in subsection (b)—

4 (A) in the subsection heading, by striking  
5 “DISCRETIONARY SUPERVISORY” and inserting  
6 “SPECIFIC”;

7 (B) in the matter preceding paragraph (1),  
8 by striking “may, at any time, take any” and  
9 inserting “shall carry out this section by taking,  
10 at any time, 1 or more”;

11 (C) by striking paragraph (6);

12 (D) by redesignating paragraph (5) as  
13 paragraph (6);

14 (E) by inserting after paragraph (4) the  
15 following:

16 “(5) IMPROVEMENT OF MANAGEMENT.—Take 1  
17 or more of the following actions:

18 “(A) NEW ELECTION OF BOARD.—Order a  
19 new election for the board of directors of the  
20 regulated entity.

21 “(B) DISMISSAL OF DIRECTORS OR EXECU-  
22 TIVE OFFICERS.—Require the regulated entity  
23 to dismiss from office any director or executive  
24 officer who had held office for more than 180  
25 days immediately before the date on which the

1 regulated entity became undercapitalized. Dis-  
2 missal under this subparagraph shall not be  
3 construed to be a removal pursuant to the en-  
4 forcement powers of the Director under section  
5 1377.

6 “(C) EMPLOY QUALIFIED EXECUTIVE OF-  
7 FICERS.—Require the regulated entity to em-  
8 ploy qualified executive officers (who, if the Di-  
9 rector so specifies, shall be subject to approval  
10 by the Director).”; and

11 (F) by adding at the end the following:

12 “(7) OTHER ACTION.—Require the regulated  
13 entity to take any other action that the Director de-  
14 termines will better carry out the purpose of this  
15 section than any of the other actions specified in this  
16 subsection.”; and

17 (6) by striking subsection (e) and inserting the  
18 following:

19 “(c) RESTRICTION ON COMPENSATION OF EXECU-  
20 TIVE OFFICERS.—A regulated entity that is classified as  
21 significantly undercapitalized in accordance with section  
22 1364 may not, without prior written approval by the Di-  
23 rector—

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

1           “(2) provide compensation to any executive offi-  
 2           cer at a rate exceeding the average rate of com-  
 3           pensation of that officer (excluding bonuses, stock  
 4           options, and profit sharing) during the 12 calendar  
 5           months preceding the calendar month in which the  
 6           regulated entity became significantly undercapital-  
 7           ized.”.

8   **SEC. 145. AUTHORITY OVER CRITICALLY UNDERCAPITAL-**  
 9                           **IZED REGULATED ENTITIES.**

10          (a) IN GENERAL.—Section 1367 of the Federal  
 11          Housing Enterprises Financial Safety and Soundness Act  
 12          of 1992 (12 U.S.C. 4617) is amended to read as follows:

13   **“SEC. 1367. AUTHORITY OVER CRITICALLY UNDERCAPITAL-**  
 14                           **IZED REGULATED ENTITIES.**

15          “(a) APPOINTMENT OF THE AGENCY AS CONSER-  
 16          VATOR OR RECEIVER.—

17               “(1) IN GENERAL.—Notwithstanding any other  
 18               provision of Federal or State law, the Director may  
 19               appoint the Agency as conservator or receiver for a  
 20               regulated entity in the manner provided under para-  
 21               graph (2) or (4). All references to the conservator or  
 22               receiver under this section are references to the  
 23               Agency acting as conservator or receiver.

24               “(2) DISCRETIONARY APPOINTMENT.—The  
 25               Agency may, at the discretion of the Director, be ap-

1 pointed conservator or receiver for the purpose of re-  
2 organizing, rehabilitating, or winding up the affairs  
3 of a regulated entity.

4 “(3) GROUNDS FOR DISCRETIONARY APPOINT-  
5 MENT OF CONSERVATOR OR RECEIVER.—The  
6 grounds for appointing conservator or receiver for  
7 any regulated entity under paragraph (2) are as fol-  
8 lows:

9 “(A) SUBSTANTIAL DISSIPATION.—Sub-  
10 stantial dissipation of assets or earnings due  
11 to—

12 “(i) any violation of any provision of  
13 Federal or State law; or

14 “(ii) any unsafe or unsound practice.

15 “(B) UNSAFE OR UNSOUND CONDITION.—  
16 An unsafe or unsound condition to transact  
17 business.

18 “(C) CEASE-AND-DESIST ORDERS.—Any  
19 willful violation of a cease-and-desist order that  
20 has become final.

21 “(D) CONCEALMENT.—Any concealment of  
22 the books, papers, records, or assets of the regu-  
23 lated entity, or any refusal to submit the  
24 books, papers, records, or affairs of the regu-

1           lated entity, for inspection to any examiner or  
2           to any lawful agent of the Director.

3           “(E) INABILITY TO MEET OBLIGATIONS.—  
4           The regulated entity is likely to be unable to  
5           pay its obligations or meet the demands of its  
6           creditors in the normal course of business.

7           “(F) LOSSES.—The regulated entity has  
8           incurred or is likely to incur losses that will de-  
9           plete all or substantially all of its capital, and  
10          there is no reasonable prospect for the regu-  
11          lated entity to become adequately capitalized  
12          (as defined in section 1364(a)(1)).

13          “(G) VIOLATIONS OF LAW.—Any violation  
14          of any law or regulation, or any unsafe or un-  
15          sound practice or condition that is likely to—

16                 “(i) cause insolvency or substantial  
17                 dissipation of assets or earnings; or

18                 “(ii) weaken the condition of the regu-  
19                 lated entity.

20          “(H) CONSENT.—The regulated entity, by  
21          resolution of its board of directors or its share-  
22          holders or members, consents to the appoint-  
23          ment.

24          “(I) UNDERCAPITALIZATION.—The regu-  
25          lated entity is undercapitalized or significantly

1           undercapitalized (as defined in section  
2           1364(a)(3)), and—

3                   “(i) has no reasonable prospect of be-  
4                   coming adequately capitalized;

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

7                           “(I) section 1365(a)(1) with re-  
8                           spect to a regulated entity; or

9                           “(II) section 1366(a)(1) with re-  
10                          spect to a significantly undercapital-  
11                          ized regulated entity;

12                          “(iii) fails to submit a capital restora-  
13                          tion plan acceptable to the Agency within  
14                          the time prescribed under section 1369C;  
15                          or

16                          “(iv) materially fails to implement a  
17                          capital restoration plan submitted and ac-  
18                          cepted under section 1369C.

19                          “(J) CRITICAL UNDERCAPITALIZATION.—  
20                          The regulated entity is critically undercapital-  
21                          ized, as defined in section 1364(a)(4).

22                          “(K) MONEY LAUNDERING.—The Attorney  
23                          General notifies the Director in writing that the  
24                          regulated entity has been found guilty of a  
25                          criminal offense under section 1956 or 1957 of

1 title 18, United States Code, or section 5322 or  
2 5324 of title 31, United States Code.

3 “(4) MANDATORY RECEIVERSHIP.—

4 “(A) IN GENERAL.—The Director shall ap-  
5 point the Agency as receiver for a regulated en-  
6 tity if the Director determines, in writing,  
7 that—

8 “(i) the assets of the regulated entity  
9 are, and during the preceding 30 calendar  
10 days have been, less than the obligations of  
11 the regulated entity to its creditors and  
12 others; or

13 “(ii) the regulated entity is not, and  
14 during the preceding 30 calendar days has  
15 not been, generally paying the debts of the  
16 regulated entity (other than debts that are  
17 the subject of a bona fide dispute) as such  
18 debts become due.

19 “(B) PERIODIC DETERMINATION RE-  
20 QUIRED FOR CRITICALLY UNDERCAPITALIZED  
21 REGULATED ENTITY.—If a regulated entity is  
22 critically undercapitalized, the Director shall  
23 make a determination, in writing, as to whether  
24 the regulated entity meets the criteria specified  
25 in clause (i) or (ii) of subparagraph (A)—

1           “(i) not later than 30 calendar days  
2           after the regulated entity initially becomes  
3           critically undercapitalized; and

4           “(ii) at least once during each suc-  
5           ceeding 30-calendar day period.

6           “(C) DETERMINATION NOT REQUIRED IF  
7           RECEIVERSHIP ALREADY IN PLACE.—Subpara-  
8           graph (B) does not apply with respect to a reg-  
9           ulated entity in any period during which the  
10          Agency serves as receiver for the regulated enti-  
11          ty.

12          “(D) RECEIVERSHIP TERMINATES CON-  
13          SERVATORSHIP.—The appointment of the Agen-  
14          cy as receiver of a regulated entity under this  
15          section shall immediately terminate any con-  
16          servatorship established for the regulated entity  
17          under this title.

18          “(5) 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  
22          of such appointment, bring an action in the  
23          United States district court for the judicial dis-  
24          trict in which the home office of such regulated  
25          entity is located, or in the United States Dis-

1           trict Court for the District of Columbia, for an  
2           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           “(6) DIRECTORS NOT LIABLE FOR ACQUI-  
10          ESCING IN APPOINTMENT OF CONSERVATOR OR RE-  
11          CEIVER.—The members of the board of directors of  
12          a regulated entity shall not be liable to the share-  
13          holders or creditors of the regulated entity for acqui-  
14          escing in or consenting in good faith to the appoint-  
15          ment of the Agency as conservator or receiver for  
16          that regulated entity.

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

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

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

5           “(2) GENERAL POWERS.—

6           “(A) SUCCESSOR TO REGULATED ENTI-  
7           TY.—The Agency shall, as conservator or re-  
8           ceiver, and by operation of law, immediately  
9           succeed to—

10           “(i) all rights, titles, powers, and  
11           privileges of the regulated entity, and of  
12           any stockholder, officer, or director of such  
13           regulated entity with respect to the regu-  
14           lated entity and the assets of the regulated  
15           entity; and

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

19           “(B) OPERATE THE REGULATED ENTI-  
20           TY.—The Agency may, as conservator or re-  
21           ceiver—

22           “(i) take over the assets of and oper-  
23           ate the regulated entity with all the powers  
24           of the shareholders, the directors, and the

1 officers of the regulated entity and conduct  
2 all business of the regulated entity;

3 “(ii) collect all obligations and money  
4 due the regulated entity;

5 “(iii) perform all functions of the reg-  
6 ulated entity in the name of the regulated  
7 entity which are consistent with the ap-  
8 pointment as conservator or receiver;

9 “(iv) preserve and conserve the assets  
10 and property of the regulated entity; and

11 “(v) provide by contract for assistance  
12 in fulfilling any function, activity, action,  
13 or duty of the Agency as conservator or re-  
14 ceiver.

15 “(C) FUNCTIONS OF OFFICERS, DIREC-  
16 TORS, AND SHAREHOLDERS OF A REGULATED  
17 ENTITY.—The Agency may, by regulation or  
18 order, provide for the exercise of any function  
19 by any stockholder, director, or officer of any  
20 regulated entity for which the Agency has been  
21 named conservator or receiver.

22 “(D) POWERS AS CONSERVATOR.—The  
23 Agency may, as conservator, take such action  
24 as may be—

1           “(i) necessary to put the regulated en-  
2           tity in a sound and solvent condition; and

3           “(ii) appropriate to carry on the busi-  
4           ness of the regulated entity and preserve  
5           and conserve the assets and property of  
6           the regulated entity.

7           “(E) ADDITIONAL POWERS AS RE-  
8           CEIVER.—In any case in which the Agency is  
9           acting as receiver, the Agency shall place the  
10          regulated entity in liquidation and proceed to  
11          realize upon the assets of the regulated entity  
12          in such manner as the Agency deems appro-  
13          priate, including through the sale of assets, the  
14          transfer of assets to a limited-life regulated en-  
15          tity established under subsection (i), or the ex-  
16          ercise of any other rights or privileges granted  
17          to the Agency under this paragraph.

18          “(F) ORGANIZATION OF NEW ENTER-  
19          PRISE.—The Agency shall, as receiver for an  
20          enterprise, organize a successor enterprise that  
21          will operate pursuant to subsection (i).

22          “(G) TRANSFER OR SALE OF ASSETS AND  
23          LIABILITIES.—The Agency may, as conservator  
24          or receiver, transfer or sell any asset or liability  
25          of the regulated entity in default, and may do

1 so without any approval, assignment, or consent  
2 with respect to such transfer or sale.

3 “(H) PAYMENT OF VALID OBLIGATIONS.—  
4 The Agency, as conservator or receiver, shall, to  
5 the extent of proceeds realized from the per-  
6 formance of contracts or sale of the assets of a  
7 regulated entity, pay all valid obligations of the  
8 regulated entity that are due and payable at the  
9 time of the appointment of the Agency as con-  
10 servator or receiver, in accordance with the pre-  
11 scriptions and limitations of this section.

12 “(I) SUBPOENA AUTHORITY.—

13 “(i) IN GENERAL.—

14 “(I) AGENCY AUTHORITY.—The  
15 Agency may, as conservator or re-  
16 ceiver, and for purposes of carrying  
17 out any power, authority, or duty with  
18 respect to a regulated entity (includ-  
19 ing determining any claim against the  
20 regulated entity and determining and  
21 realizing upon any asset of any person  
22 in the course of collecting money due  
23 the regulated entity), exercise any  
24 power established under section 1348.

1                   “(II) APPLICABILITY OF LAW.—

2                   The provisions of section 1348 shall  
3                   apply with respect to the exercise of  
4                   any power under this subparagraph,  
5                   in the same manner as such provi-  
6                   sions apply under that section.

7                   “(ii) SUBPOENA.—A subpoena or sub-  
8                   poena duces tecum may be issued under  
9                   clause (i) only by, or with the written ap-  
10                  proval of, the Director, or the designee of  
11                  the Director.

12                  “(iii) RULE OF CONSTRUCTION.—This  
13                  subsection shall not be construed to limit  
14                  any rights that the Agency, in any capac-  
15                  ity, might otherwise have under section  
16                  1317 or 1379B.

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

19                         “(i) exercise all powers and authori-  
20                         ties specifically granted to conservators or  
21                         receivers, respectively, under this section,  
22                         and such incidental powers as shall be nec-  
23                         essary to carry out such powers; and

24                         “(ii) take any action authorized by  
25                         this section, which the Agency determines

1 is in the best interests of the regulated en-  
2 tity or the Agency.

3 “(K) OTHER PROVISIONS.—

4 “(i) SHAREHOLDERS AND CREDITORS  
5 OF FAILED REGULATED ENTITY.—Not-  
6 withstanding any other provision of law,  
7 the appointment of the Agency as receiver  
8 for a regulated entity pursuant to para-  
9 graph (2) or (4) of subsection (a) and its  
10 succession, by operation of law, to the  
11 rights, titles, powers, and privileges de-  
12 scribed in subsection (b)(2)(A) shall termi-  
13 nate all rights and claims that the stock-  
14 holders and creditors of the regulated enti-  
15 ty may have against the assets or charter  
16 of the regulated entity or the Agency aris-  
17 ing as a result of their status as stock-  
18 holders or creditors, except for their right  
19 to payment, resolution, or other satisfac-  
20 tion of their claims, as permitted under  
21 subsections (b)(9), (c), and (e).

22 “(ii) ASSETS OF REGULATED ENTI-  
23 TY.—Notwithstanding any other provision  
24 of law, for purposes of this section, the

1 charter of a regulated entity shall not be  
2 considered an asset of the regulated entity.

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

5 “(A) IN GENERAL.—The Agency may, as  
6 receiver, determine claims in accordance with  
7 the requirements of this subsection and any  
8 regulations prescribed under paragraph (4).

9 “(B) NOTICE REQUIREMENTS.—The re-  
10 ceiver, in any case involving the liquidation or  
11 winding up of the affairs of a closed regulated  
12 entity, shall—

13 “(i) promptly publish a notice to the  
14 creditors of the regulated entity to present  
15 their claims, together with proof, to the re-  
16 ceiver by a date specified in the notice  
17 which shall be not less than 90 days after  
18 the date of publication of such notice; and

19 “(ii) republish such notice approxi-  
20 mately 1 month and 2 months, respec-  
21 tively, after the date of publication under  
22 clause (i).

23 “(C) MAILING REQUIRED.—The receiver  
24 shall mail a notice similar to the notice pub-  
25 lished under subparagraph (B)(i) at the time of

1 such publication to any creditor shown on the  
2 books of the regulated entity—

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

5 “(ii) upon discovery of the name and  
6 address of a claimant not appearing on the  
7 books of the regulated entity, within 30  
8 days after the discovery of such name and  
9 address.

10 “(4) RULEMAKING AUTHORITY RELATING TO  
11 DETERMINATION OF CLAIMS.—Subject to subsection  
12 (c), the Director may prescribe regulations regarding  
13 the allowance or disallowance of claims by the re-  
14 ceiver and providing for administrative determina-  
15 tion of claims and review of such determination.

16 “(5) PROCEDURES FOR DETERMINATION OF  
17 CLAIMS.—

18 “(A) DETERMINATION PERIOD.—

19 “(i) IN GENERAL.—Before the end of  
20 the 180-day period beginning on the date  
21 on which any claim against a regulated en-  
22 tity is filed with the Agency as receiver,  
23 the Agency shall determine whether to  
24 allow or disallow the claim and shall notify

1 the claimant of any determination with re-  
2 spect to such claim.

3 “(ii) EXTENSION OF TIME.—The pe-  
4 riod described in clause (i) may be ex-  
5 tended by a written agreement between the  
6 claimant and the Agency.

7 “(iii) MAILING OF NOTICE SUFFI-  
8 CIENT.—The requirements of clause (i)  
9 shall be deemed to be satisfied if the notice  
10 of any determination with respect to any  
11 claim is mailed to the last address of the  
12 claimant which appears—

13 “(I) on the books of the regu-  
14 lated entity;

15 “(II) in the claim filed by the  
16 claimant; or

17 “(III) in documents submitted in  
18 proof of the claim.

19 “(iv) CONTENTS OF NOTICE OF DIS-  
20 ALLOWANCE.—If any claim filed under  
21 clause (i) is disallowed, the notice to the  
22 claimant shall contain—

23 “(I) a statement of each reason  
24 for the disallowance; and

1                   “(II) the procedures available for  
2                   obtaining agency review of the deter-  
3                   mination to disallow the claim or judi-  
4                   cial determination of the claim.

5                   “(B) ALLOWANCE OF PROVEN CLAIM.—  
6                   The receiver shall allow any claim received on  
7                   or before the date specified in the notice pub-  
8                   lished under paragraph (3)(B)(i) by the receiver  
9                   from any claimant which is proved to the satis-  
10                  faction of the receiver.

11                  “(C) DISALLOWANCE OF CLAIMS FILED  
12                  AFTER FILING PERIOD.—Claims filed after the  
13                  date specified in the notice published under  
14                  paragraph (3)(B)(i), or the date specified under  
15                  paragraph (3)(C), shall be disallowed and such  
16                  disallowance shall be final.

17                  “(D) AUTHORITY TO DISALLOW CLAIMS.—

18                         “(i) IN GENERAL.—The receiver may  
19                         disallow any portion of any claim by a  
20                         creditor or claim of security, preference, or  
21                         priority which is not proved to the satisfac-  
22                         tion of the receiver.

23                         “(ii) PAYMENTS TO LESS THAN  
24                         FULLY SECURED CREDITORS.—In the case  
25                         of a claim of a creditor against a regulated

1 entity which is secured by any property or  
2 other asset of such regulated entity, the re-  
3 ceiver—

4 “(I) may treat the portion of  
5 such claim which exceeds an amount  
6 equal to the fair market value of such  
7 property or other asset as an unse-  
8 cured claim against the regulated en-  
9 tity; and

10 “(II) may not make any payment  
11 with respect to such unsecured por-  
12 tion of the claim, other than in con-  
13 nection with the disposition of all  
14 claims of unsecured creditors of the  
15 regulated entity.

16 “(iii) EXCEPTIONS.—No provision of  
17 this paragraph shall apply with respect  
18 to—

19 “(I) any extension of credit from  
20 any Federal Reserve Bank or the  
21 United States Treasury; or

22 “(II) any security interest in the  
23 assets of the regulated entity securing  
24 any such extension of credit.

1           “(E) NO JUDICIAL REVIEW OF DETER-  
 2           MINATION PURSUANT TO SUBPARAGRAPH (d).—  
 3           No court may review the determination of the  
 4           Agency under subparagraph (D) to disallow a  
 5           claim.

6           “(F) LEGAL EFFECT OF FILING.—

7                   “(i) STATUTE OF LIMITATION  
 8                   TOLLED.—For purposes of any applicable  
 9                   statute of limitations, the filing of a claim  
 10                  with the receiver shall constitute a com-  
 11                  mencement of an action.

12                   “(ii) NO PREJUDICE TO OTHER AC-  
 13                   TIONS.—Subject to paragraph (10), the fil-  
 14                   ing of a claim with the receiver shall not  
 15                   prejudice any right of the claimant to con-  
 16                   tinue any action which was filed before the  
 17                   date of the appointment of the receiver,  
 18                   subject to the determination of claims by  
 19                   the receiver.

20           “(6) PROVISION FOR JUDICIAL DETERMINATION  
 21           OF CLAIMS.—

22                   “(A) IN GENERAL.—The claimant may file  
 23                   suit on a claim (or continue an action com-  
 24                   menced before the appointment of the receiver)  
 25                   in the district or territorial court of the United

1 States for the district within which the prin-  
2 cipal place of business of the regulated entity is  
3 located or the United States District Court for  
4 the District of Columbia (and such court shall  
5 have jurisdiction to hear such claim), before the  
6 end of the 60-day period beginning on the ear-  
7 lier of—

8 “(i) the end of the period described in  
9 paragraph (5)(A)(i) with respect to any  
10 claim against a regulated entity for which  
11 the Agency is receiver; or

12 “(ii) the date of any notice of dis-  
13 allowance of such claim pursuant to para-  
14 graph (5)(A)(i).

15 “(B) STATUTE OF LIMITATIONS.—A claim  
16 shall be deemed to be disallowed (other than  
17 any portion of such claim which was allowed by  
18 the receiver), and such disallowance shall be  
19 final, and the claimant shall have no further  
20 rights or remedies with respect to such claim,  
21 if the claimant fails, before the end of the 60-  
22 day period described under subparagraph (A),  
23 to file suit on such claim (or continue an action  
24 commenced before the appointment of the re-  
25 ceiver).

1 “(7) REVIEW OF CLAIMS.—

2 “(A) OTHER REVIEW PROCEDURES.—

3 “(i) IN GENERAL.—The Agency shall  
4 establish such alternative dispute resolu-  
5 tion processes as may be appropriate for  
6 the resolution of claims filed under para-  
7 graph (5)(A)(i).

8 “(ii) CRITERIA.—In establishing alter-  
9 native dispute resolution processes, the  
10 Agency shall strive for procedures which  
11 are expeditious, fair, independent, and low  
12 cost.

13 “(iii) VOLUNTARY BINDING OR NON-  
14 BINDING PROCEDURES.—The Agency may  
15 establish both binding and nonbinding  
16 processes under this subparagraph, which  
17 may be conducted by any government or  
18 private party. All parties, including the  
19 claimant and the Agency, must agree to  
20 the use of the process in a particular case.

21 “(B) CONSIDERATION OF INCENTIVES.—

22 The Agency shall seek to develop incentives for  
23 claimants to participate in the alternative dis-  
24 pute resolution process.

1           “(8)   EXPEDITED   DETERMINATION   OF  
2   CLAIMS.—

3           “(A)   ESTABLISHMENT   REQUIRED.—The  
4   Agency shall establish a procedure for expedited  
5   relief outside of the routine claims process es-  
6   tablished under paragraph (5) for claimants  
7   who—

8           “(i)   allege the existence of legally  
9   valid and enforceable or perfected security  
10   interests in assets of any regulated entity  
11   for which the Agency has been appointed  
12   receiver; and

13          “(ii)   allege that irreparable injury will  
14   occur if the routine claims procedure is fol-  
15   lowed.

16          “(B)   DETERMINATION   PERIOD.—Before  
17   the end of the 90-day period beginning on the  
18   date on which any claim is filed in accordance  
19   with the procedures established under subpara-  
20   graph (A), the Director shall—

21          “(i)   determine—

22                  “(I)   whether to allow or disallow  
23   such claim; or

24                  “(II)   whether such claim should  
25   be determined pursuant to the proce-

1           dures established under paragraph  
2           (5); and

3           “(ii) notify the claimant of the deter-  
4           mination, and if the claim is disallowed,  
5           provide a statement of each reason for the  
6           disallowance and the procedure for obtain-  
7           ing agency review or judicial determina-  
8           tion.

9           “(C) PERIOD FOR FILING OR RENEWING  
10          SUIT.—Any claimant who files a request for ex-  
11          pedited relief shall be permitted to file a suit,  
12          or to continue a suit filed before the date of ap-  
13          pointment of the receiver, seeking a determina-  
14          tion of the rights of the claimant with respect  
15          to such security interest after the earlier of—

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

19                 “(ii) the date on which the Agency de-  
20                 nies the claim.

21          “(D) STATUTE OF LIMITATIONS.—If an  
22          action described under subparagraph (C) is not  
23          filed, or the motion to renew a previously filed  
24          suit is not made, before the end of the 30-day  
25          period beginning on the date on which such ac-

1           tion or motion may be filed under subparagraph  
2           (B), the claim shall be deemed to be disallowed  
3           as of the end of such period (other than any  
4           portion of such claim which was allowed by the  
5           receiver), such disallowance shall be final, and  
6           the claimant shall have no further rights or  
7           remedies with respect to such claim.

8           “(E) LEGAL EFFECT OF FILING.—

9           “(i) STATUTE OF LIMITATION  
10           TOLLED.—For purposes of any applicable  
11           statute of limitations, the filing of a claim  
12           with the receiver shall constitute a com-  
13           mencement of an action.

14           “(ii) NO PREJUDICE TO OTHER AC-  
15           TIONS.—Subject to paragraph (10), the fil-  
16           ing of a claim with the receiver shall not  
17           prejudice any right of the claimant to con-  
18           tinue any action that was filed before the  
19           appointment of the receiver, subject to the  
20           determination of claims by the receiver.

21           “(9) PAYMENT OF CLAIMS.—

22           “(A) IN GENERAL.—The receiver may, in  
23           the discretion of the receiver, and to the extent  
24           that funds are available from the assets of the  
25           regulated entity, pay creditor claims, in such

1 manner and amounts as are authorized under  
2 this section, which are—

3 “(i) allowed by the receiver;

4 “(ii) approved by the Agency pursuant  
5 to a final determination pursuant to para-  
6 graph (7) or (8); or

7 “(iii) determined by the final judg-  
8 ment of any court of competent jurisdic-  
9 tion.

10 “(B) AGREEMENTS AGAINST THE INTER-  
11 EST OF THE AGENCY.—No agreement that  
12 tends to diminish or defeat the interest of the  
13 Agency in any asset acquired by the Agency as  
14 receiver under this section shall be valid against  
15 the Agency unless such agreement is in writing  
16 and executed by an authorized officer or rep-  
17 resentative of the regulated entity.

18 “(C) PAYMENT OF DIVIDENDS ON  
19 CLAIMS.—The receiver may, in the sole discre-  
20 tion of the receiver, pay from the assets of the  
21 regulated entity dividends on proved claims at  
22 any time, and no liability shall attach to the  
23 Agency by reason of any such payment, for fail-  
24 ure to pay dividends to a claimant whose claim  
25 is not proved at the time of any such payment.

1           “(D) RULEMAKING AUTHORITY OF THE  
2 DIRECTOR.—The Director may prescribe such  
3 rules, including definitions of terms, as the Di-  
4 rector deems appropriate to establish a single  
5 uniform interest rate for, or to make payments  
6 of post-insolvency interest to creditors holding  
7 proven claims against the receivership estates of  
8 regulated entity, following satisfaction by the  
9 receiver of the principal amount of all creditor  
10 claims.

11           “(10) SUSPENSION OF LEGAL ACTIONS.—

12           “(A) IN GENERAL.—After the appointment  
13 of a conservator or receiver for a regulated enti-  
14 ty, the conservator or receiver may, in any judi-  
15 cial action or proceeding to which such regu-  
16 lated entity is or becomes a party, request a  
17 stay for a period not to exceed—

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

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

22           “(B) GRANT OF STAY BY ALL COURTS RE-  
23 QUIRED.—Upon receipt of a request by the con-  
24 servator or receiver under subparagraph (A) for  
25 a stay of any judicial action or proceeding in

1 any court with jurisdiction of such action or  
2 proceeding, the court shall grant such stay as  
3 to all parties.

4 “(11) ADDITIONAL RIGHTS AND DUTIES.—

5 “(A) PRIOR FINAL ADJUDICATION.—The  
6 Agency shall abide by any final unappealable  
7 judgment of any court of competent jurisdiction  
8 which was rendered before the appointment of  
9 the Agency as conservator or receiver.

10 “(B) RIGHTS AND REMEDIES OF CONSER-  
11 VATOR OR RECEIVER.—In the event of any ap-  
12 pealable judgment, the Agency as conservator  
13 or receiver—

14 “(i) shall have all of the rights and  
15 remedies available to the regulated entity  
16 (before the appointment of such conser-  
17 vator or receiver) and the Agency, includ-  
18 ing removal to Federal court and all appel-  
19 late rights; and

20 “(ii) shall not be required to post any  
21 bond in order to pursue such remedies.

22 “(C) NO ATTACHMENT OR EXECUTION.—  
23 No attachment or execution may issue by any  
24 court upon assets in the possession of the re-  
25 ceiver, or upon the charter, of a regulated enti-

1 ty for which the Agency has been appointed re-  
2 ceiver.

3 “(D) LIMITATION ON JUDICIAL REVIEW.—  
4 Except as otherwise provided in this subsection,  
5 no court shall have jurisdiction over—

6 “(i) any claim or action for payment  
7 from, or any action seeking a determina-  
8 tion of rights with respect to, the assets or  
9 charter of any regulated entity for which  
10 the Agency has been appointed receiver; or

11 “(ii) any claim relating to any act or  
12 omission of such regulated entity or the  
13 Agency as receiver.

14 “(E) DISPOSITION OF ASSETS.—In exer-  
15 cising any right, power, privilege, or authority  
16 as conservator or receiver in connection with  
17 any sale or disposition of assets of a regulated  
18 entity for which the Agency has been appointed  
19 conservator or receiver, the Agency shall con-  
20 duct its operations in a manner which—

21 “(i) maximizes the net present value  
22 return from the sale or disposition of such  
23 assets;

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

1           “(iii) ensures adequate competition  
2           and fair and consistent treatment of  
3           offerors.

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

6           “(A) IN GENERAL.—Notwithstanding any  
7           provision of any contract, the applicable statute  
8           of limitations with regard to any action brought  
9           by the Agency as conservator or receiver shall  
10          be—

11                  “(i) in the case of any contract claim,  
12                  the longer of—

13                          “(I) the 6-year period beginning  
14                          on the date on which the claim ac-  
15                          crues; or

16                          “(II) the period applicable under  
17                          State law; and

18                  “(ii) in the case of any tort claim, the  
19                  longer of—

20                          “(I) the 3-year period beginning  
21                          on the date on which the claim ac-  
22                          crues; or

23                          “(II) the period applicable under  
24                          State law.

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

7                   “(i) the date of the appointment of  
8 the Agency as conservator or receiver; or

9                   “(ii) the date on which the cause of  
10 action accrues.

11           “(13) REVIVAL OF EXPIRED STATE CAUSES OF  
12 ACTION.—

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

23           “(B) CLAIMS DESCRIBED.—A tort claim  
24 referred to under subparagraph (A) is a claim  
25 arising from fraud, intentional misconduct re-

1           sulting in unjust enrichment, or intentional mis-  
2           conduct resulting in substantial loss to the reg-  
3           ulated entity.

4           “(14) ACCOUNTING AND RECORDKEEPING RE-  
5           QUIREMENTS.—

6                   “(A) IN GENERAL.—The Agency as conser-  
7           vator or receiver shall, consistent with the ac-  
8           counting and reporting practices and proce-  
9           dures established by the Agency, maintain a full  
10          accounting of each conservatorship and receiv-  
11          ership or other disposition of a regulated entity  
12          in default.

13                   “(B) ANNUAL ACCOUNTING OR REPORT.—  
14          With respect to each conservatorship or receiv-  
15          ership, the Agency shall make an annual ac-  
16          counting or report available to the Board, the  
17          Comptroller General of the United States, the  
18          Committee on Banking, Housing, and Urban  
19          Affairs of the Senate, and the Committee on  
20          Financial Services of the House of Representa-  
21          tives.

22                   “(C) AVAILABILITY OF REPORTS.—Any re-  
23          port prepared under subparagraph (B) shall be  
24          made available by the Agency upon request to

1 any shareholder of a regulated entity or any  
2 member of the public.

3 “(D) RECORDKEEPING REQUIREMENT.—

4 After the end of the 6-year period beginning on  
5 the date on which the conservatorship or receiv-  
6 ership is terminated by the Director, the Agen-  
7 cy may destroy any records of such regulated  
8 entity which the Agency, in the discretion of the  
9 Agency, determines to be unnecessary, unless  
10 directed not to do so by a court of competent  
11 jurisdiction or governmental agency, or prohib-  
12 ited by law.

13 “(15) FRAUDULENT TRANSFERS.—

14 “(A) IN GENERAL.—The Agency, as con-  
15 servator or receiver, may avoid a transfer of  
16 any interest of an entity-affiliated party, or any  
17 person determined by the conservator or re-  
18 ceiver to be a debtor of the regulated entity, in  
19 property, or any obligation incurred by such  
20 party or person, that was made within 5 years  
21 of the date on which the Agency was appointed  
22 conservator or receiver, if such party or person  
23 voluntarily or involuntarily made such transfer  
24 or incurred such liability with the intent to

1 hinder, delay, or defraud the regulated entity,  
2 the Agency, the conservator, or receiver.

3 “(B) RIGHT OF RECOVERY.—To the extent  
4 a transfer is avoided under subparagraph (A),  
5 the conservator or receiver may recover, for the  
6 benefit of the regulated entity, the property  
7 transferred, or, if a court so orders, the value  
8 of such property (at the time of such transfer)  
9 from—

10 “(i) the initial transferee of such  
11 transfer or the entity-affiliated party or  
12 person for whose benefit such transfer was  
13 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  
20 value, including satisfaction or securing of  
21 a present or antecedent debt, in good faith;  
22 or

23 “(ii) any immediate or mediate good  
24 faith transferee of such transferee.

1           “(D) RIGHTS UNDER THIS PARAGRAPH.—

2           The rights under this paragraph of the conser-  
3           vator or receiver described under subparagraph  
4           (A) shall be superior to any rights of a trustee  
5           or any other party (other than any party which  
6           is a Federal agency) under title 11, United  
7           States Code.

8           “(16) ATTACHMENT OF ASSETS AND OTHER IN-  
9           JUNCTIVE RELIEF.—Subject to paragraph (17), any  
10          court of competent jurisdiction may, at the request  
11          of the conservator or receiver, issue an order in ac-  
12          cordance with Rule 65 of the Federal Rules of Civil  
13          Procedure, including an order placing the assets of  
14          any person designated by the conservator or receiver  
15          under the control of the court, and appointing a  
16          trustee to hold such assets.

17          “(17) STANDARDS OF PROOF.—Rule 65 of the  
18          Federal Rules of Civil Procedure shall apply with re-  
19          spect to any proceeding under paragraph (16) with-  
20          out regard to the requirement of such rule that the  
21          applicant show that the injury, loss, or damage is ir-  
22          reparable and immediate.

23          “(18) TREATMENT OF CLAIMS ARISING FROM  
24          BREACH OF CONTRACTS EXECUTED BY THE CON-  
25          SERVATOR OR RECEIVER.—

1           “(A) IN GENERAL.—Notwithstanding any  
2 other provision of this subsection, any final and  
3 unappealable judgment for monetary damages  
4 entered against the conservator or receiver for  
5 the breach of an agreement executed or ap-  
6 proved in writing by the conservator or receiver  
7 after the date of its appointment, shall be paid  
8 as an administrative expense of the conservator  
9 or receiver.

10           “(B) NO LIMITATION OF POWER.—Nothing  
11 in this paragraph shall be construed to limit the  
12 power of the conservator or receiver to exercise  
13 any rights under contract or law, including to  
14 terminate, breach, cancel, or otherwise dis-  
15 continue such agreement.

16           “(19) GENERAL EXCEPTIONS.—

17           “(A) LIMITATIONS.—The rights of the  
18 conservator or receiver appointed under this  
19 section shall be subject to the limitations on the  
20 powers of a receiver under sections 402 through  
21 407 of the Federal Deposit Insurance Corpora-  
22 tion Improvement Act of 1991 (12 U.S.C. 4402  
23 through 4407).

24           “(B) MORTGAGES HELD IN TRUST.—

1           “(i) IN GENERAL.—Any mortgage,  
2           pool of mortgages, or interest in a pool of  
3           mortgages held in trust, custodial, or agen-  
4           cy capacity by an enterprise for the benefit  
5           of any person other than the enterprise  
6           shall not be available to satisfy the claims  
7           of creditors generally.

8           “(ii) HOLDING OF MORTGAGES.—Any  
9           mortgage, pool of mortgages, or interest in  
10          a pool of mortgages described in clause (i)  
11          shall be held by the conservator or receiver  
12          appointed under this section for the bene-  
13          ficial owners of such mortgage, pool of  
14          mortgages, or interest in accordance with  
15          the terms of the agreement creating such  
16          trust, custodial, or other agency arrange-  
17          ment.

18          “(iii) LIABILITY OF CONSERVATOR OR  
19          RECEIVER.—The liability of the conser-  
20          vator or receiver appointed under this sec-  
21          tion for damages shall, in the case of any  
22          contingent or unliquidated claim relating  
23          to the mortgages held in trust, be esti-  
24          mated in accordance with in the regula-  
25          tions of the Director.

1       “(c) PRIORITY OF EXPENSES AND UNSECURED  
2 CLAIMS.—

3           “(1) IN GENERAL.—Unsecured claims against a  
4 regulated entity, or the receiver therefor, that are  
5 proven to the satisfaction of the receiver shall have  
6 priority in the following order:

7           “(A) Administrative expenses of the re-  
8 ceiver.

9           “(B) Any other general or senior liability  
10 of the regulated entity (which is not a liability  
11 described under subparagraph (C) or (D)).

12           “(C) Any obligation subordinated to gen-  
13 eral creditors (which is not an obligation de-  
14 scribed under subparagraph (D)).

15           “(D) Any obligation to shareholders or  
16 members arising as a result of their status as  
17 shareholder or members.

18           “(2) CREDITORS SIMILARLY SITUATED.—All  
19 creditors that are similarly situated under paragraph  
20 (1) shall be treated in a similar manner, except that  
21 the receiver may take any action (including making  
22 payments) that does not comply with this subsection,  
23 if—

24           “(A) the Director determines that such ac-  
25 tion is necessary to maximize the value of the

1 assets of the regulated entity, to maximize the  
2 present value return from the sale or other dis-  
3 position of the assets of the regulated entity, or  
4 to minimize the amount of any loss realized  
5 upon the sale or other disposition of the assets  
6 of the regulated entity assets; and

7 “(B) all creditors that are similarly situ-  
8 ated under paragraph (1) receive not less than  
9 the amount provided in subsection (e)(2).

10 “(3) DEFINITION.—As used in this subsection,  
11 the term ‘administrative expenses of the receiver’ in-  
12 cludes—

13 “(A) the actual, necessary costs and ex-  
14 penses incurred by the receiver in preserving  
15 the assets of a failed regulated entity or liqui-  
16 dating or otherwise resolving the affairs of a  
17 failed regulated entity; and

18 “(B) any obligations that the receiver de-  
19 termines are necessary and appropriate to fa-  
20 cilitate the smooth and orderly liquidation or  
21 other resolution of the regulated entity.

22 “(d) PROVISIONS RELATING TO CONTRACTS EN-  
23 TERED INTO BEFORE APPOINTMENT OF CONSERVATOR  
24 OR RECEIVER.—

1           “(1) AUTHORITY TO REPUDIATE CONTRACTS.—

2           In addition to any other rights a conservator or re-  
3           ceiver may have, the conservator or receiver for any  
4           regulated entity may disaffirm or repudiate any con-  
5           tract or lease—

6                   “(A) to which such regulated entity is a  
7           party;

8                   “(B) the performance of which the conser-  
9           vator or receiver, in its sole discretion, deter-  
10          mines to be burdensome; and

11                   “(C) the disaffirmance or repudiation of  
12          which the conservator or receiver determines, in  
13          its sole discretion, will promote the orderly ad-  
14          ministration of the affairs of the regulated enti-  
15          ty.

16           “(2) TIMING OF REPUDIATION.—The conser-  
17          vator or receiver shall determine whether or not to  
18          exercise the rights of repudiation under this sub-  
19          section within a reasonable period following such ap-  
20          pointment.

21           “(3) CLAIMS FOR DAMAGES FOR REPUDI-  
22          ATION.—

23                   “(A) IN GENERAL.—Except as otherwise  
24          provided under subparagraph (C) and para-  
25          graphs (4), (5), and (6), the liability of the con-

1 servator or receiver for the disaffirmance or re-  
2 pudiation of any contract pursuant to para-  
3 graph (1) shall be—

4 “(i) limited to actual direct compen-  
5 satory damages; and

6 “(ii) determined as of—

7 “(I) the date of the appointment  
8 of the conservator or receiver; or

9 “(II) in the case of any contract  
10 or agreement referred to in paragraph  
11 (8), the date of the disaffirmance or  
12 repudiation of such contract or agree-  
13 ment.

14 “(B) NO LIABILITY FOR OTHER DAM-  
15 AGES.—For purposes of subparagraph (A), the  
16 term ‘actual direct compensatory damages’ shall  
17 not include—

18 “(i) punitive or exemplary damages;

19 “(ii) damages for lost profits or op-  
20 portunity; or

21 “(iii) damages for pain and suffering.

22 “(C) MEASURE OF DAMAGES FOR REPUDI-  
23 ATION OF FINANCIAL CONTRACTS.—In the case  
24 of any qualified financial contract or agreement

1 to which paragraph (8) applies, compensatory  
2 damages shall be—

3 “(i) deemed to include normal and  
4 reasonable costs of cover or other reason-  
5 able measures of damages utilized in the  
6 industries for such contract and agreement  
7 claims; and

8 “(ii) paid in accordance with this sub-  
9 section and subsection (e), except as other-  
10 wise specifically provided in this section.

11 “(4) LEASES UNDER WHICH THE REGULATED  
12 ENTITY IS THE LESSEE.—

13 “(A) IN GENERAL.—If the conservator or  
14 receiver disaffirms or repudiates a lease under  
15 which the regulated entity was the lessee, the  
16 conservator or receiver shall not be liable for  
17 any damages (other than damages determined  
18 under subparagraph (B)) for the disaffirmance  
19 or repudiation of such lease.

20 “(B) PAYMENTS OF RENT.—Notwith-  
21 standing subparagraph (A), the lessor under a  
22 lease to which that subparagraph applies  
23 shall—

1           “(i) be entitled to the contractual rent  
2 accruing before the later of the date on  
3 which—

4                   “(I) the notice of disaffirmance  
5 or repudiation is mailed; or

6                   “(II) the disaffirmance or repudi-  
7 ation becomes effective, unless the les-  
8 sor is in default or breach of the  
9 terms of the lease;

10           “(ii) have no claim for damages under  
11 any acceleration clause or other penalty  
12 provision in the lease; and

13           “(iii) have a claim for any unpaid  
14 rent, subject to all appropriate offsets and  
15 defenses, due as of the date of the appoint-  
16 ment, which shall be paid in accordance  
17 with this subsection and subsection (e).

18           “(5) LEASES UNDER WHICH THE REGULATED  
19 ENTITY IS THE LESSOR.—

20                   “(A) IN GENERAL.—If the conservator or  
21 receiver repudiates an unexpired written lease  
22 of real property of the regulated entity under  
23 which the regulated entity is the lessor and the  
24 lessee is not, as of the date of such repudiation,

1 in default, the lessee under such lease may ei-  
2 ther—

3 “(i) treat the lease as terminated by  
4 such repudiation; or

5 “(ii) remain in possession of the lease-  
6 hold interest for the balance of the term of  
7 the lease, unless the lessee defaults under  
8 the terms of the lease after the date of  
9 such repudiation.

10 “(B) PROVISIONS APPLICABLE TO LESSEE  
11 REMAINING IN POSSESSION.—If any lessee  
12 under a lease described under subparagraph (A)  
13 remains in possession of a leasehold interest  
14 under clause (ii) of subparagraph (A)—

15 “(i) the lessee—

16 “(I) shall continue to pay the  
17 contractual rent pursuant to the  
18 terms of the lease after the date of  
19 the repudiation of such lease; and

20 “(II) may offset against any rent  
21 payment which accrues after the date  
22 of the repudiation of the lease, and  
23 any damages which accrue after such  
24 date due to the nonperformance of

1 any obligation of the regulated entity  
2 under the lease after such date; and

3 “(ii) the conservator or receiver shall  
4 not be liable to the lessee for any damages  
5 arising after such date as a result of the  
6 repudiation, other than the amount of any  
7 offset allowed under clause (i)(II).

8 “(6) CONTRACTS FOR THE SALE OF REAL  
9 PROPERTY.—

10 “(A) IN GENERAL.—If the conservator or  
11 receiver repudiates any contract for the sale of  
12 real property and the purchaser of such real  
13 property under such contract is in possession,  
14 and is not, as of the date of such repudiation,  
15 in default, such purchaser may either—

16 “(i) treat the contract as terminated  
17 by such repudiation; or

18 “(ii) remain in possession of such real  
19 property.

20 “(B) PROVISIONS APPLICABLE TO PUR-  
21 CHASER REMAINING IN POSSESSION.—If any  
22 purchaser of real property under any contract  
23 described under subparagraph (A) remains in  
24 possession of such property under clause (ii) of  
25 subparagraph (A)—

1 “(i) the purchaser—

2 “(I) shall continue to make all  
3 payments due under the contract after  
4 the date of the repudiation of the con-  
5 tract; and

6 “(II) may offset against any such  
7 payments any damages which accrue  
8 after such date due to the non-  
9 performance (after such date) of any  
10 obligation of the regulated entity  
11 under the contract; and

12 “(ii) the conservator or receiver  
13 shall—

14 “(I) not be liable to the pur-  
15 chaser for any damages arising after  
16 such date as a result of the repudi-  
17 ation, other than the amount of any  
18 offset allowed under clause (i)(II);

19 “(II) deliver title to the pur-  
20 chaser in accordance with the provi-  
21 sions of the contract; and

22 “(III) have no obligation under  
23 the contract other than the perform-  
24 ance required under subclause (II).

25 “(C) ASSIGNMENT AND SALE ALLOWED.—

1           “(i) IN GENERAL.—No provision of  
2           this paragraph shall be construed as lim-  
3           iting the right of the conservator or re-  
4           ceiver to assign the contract described  
5           under subparagraph (A), and sell the prop-  
6           erty subject to the contract and the provi-  
7           sions of this paragraph.

8           “(ii) NO LIABILITY AFTER ASSIGN-  
9           MENT AND SALE.—If an assignment and  
10          sale described under clause (i) is con-  
11          summated, the conservator or receiver  
12          shall have no further liability under the  
13          contract described under subparagraph  
14          (A), or with respect to the real property  
15          which was the subject of such contract.

16          “(7) SERVICE CONTRACTS.—

17               “(A) SERVICES PERFORMED BEFORE AP-  
18               POINTMENT.—In the case of any contract for  
19               services between any person and any regulated  
20               entity for which the Agency has been appointed  
21               conservator or receiver, any claim of such per-  
22               son for services performed before the appoint-  
23               ment of the conservator or receiver shall be—

24                       “(i) a claim to be paid in accordance  
25                       with subsections (b) and (e); and

1           “(ii) deemed to have arisen as of the  
2           date on which the conservator or receiver  
3           was appointed.

4           “(B) SERVICES PERFORMED AFTER AP-  
5           POINTMENT AND PRIOR TO REPUDIATION.—If,  
6           in the case of any contract for services de-  
7           scribed under subparagraph (A), the conser-  
8           vator or receiver accepts performance by the  
9           other person before the conservator or receiver  
10          makes any determination to exercise the right  
11          of repudiation of such contract under this sec-  
12          tion—

13                 “(i) the other party shall be paid  
14                 under the terms of the contract for the  
15                 services performed; and

16                 “(ii) the amount of such payment  
17                 shall be treated as an administrative ex-  
18                 pense of the conservatorship or receiver-  
19                 ship.

20           “(C) ACCEPTANCE OF PERFORMANCE NO  
21           BAR TO SUBSEQUENT REPUDIATION.—The ac-  
22           ceptance by the conservator or receiver of serv-  
23           ices referred to under subparagraph (B) in con-  
24           nection with a contract described in such sub-  
25           paragraph shall not affect the right of the con-

1 servator or receiver to repudiate such contract  
2 under this section at any time after such per-  
3 formance.

4 “(8) CERTAIN QUALIFIED FINANCIAL CON-  
5 TRACTS.—

6 “(A) RIGHTS OF PARTIES TO CON-  
7 TRACTS.—Subject to paragraphs (9) and (10),  
8 and notwithstanding any other provision of this  
9 title (other than subsection (b)(9)(B) of this  
10 section), any other Federal law, or the law of  
11 any State, no person shall be stayed or prohib-  
12 ited from exercising—

13 “(i) any right of that person to cause  
14 the termination, liquidation, or acceleration  
15 of any qualified financial contract with a  
16 regulated entity that arises upon the ap-  
17 pointment of the Agency as receiver for  
18 such regulated entity at any time after  
19 such appointment;

20 “(ii) any right under any security  
21 agreement or arrangement or other credit  
22 enhancement relating to one or more quali-  
23 fied financial contracts; or

24 “(iii) any right to offset or net out  
25 any termination value, payment amount, or

1 other transfer obligation arising under or  
2 in connection with 1 or more contracts and  
3 agreements described in clause (i), includ-  
4 ing any master agreement for such con-  
5 tracts or agreements.

6 “(B) APPLICABILITY OF OTHER PROVI-  
7 SIONS.—Subsection (b)(10) shall apply in the  
8 case of any judicial action or proceeding  
9 brought against any receiver referred to under  
10 subparagraph (A), or the regulated entity for  
11 which such receiver was appointed, by any  
12 party to a contract or agreement described  
13 under subparagraph (A)(i) with such regulated  
14 entity.

15 “(C) CERTAIN TRANSFERS NOT AVOID-  
16 ABLE.—

17 “(i) IN GENERAL.—Notwithstanding  
18 paragraph (11), or any other provision of  
19 Federal or State law relating to the avoid-  
20 ance of preferential or fraudulent trans-  
21 fers, the Agency, whether acting as such or  
22 as conservator or receiver of a regulated  
23 entity, may not avoid any transfer of  
24 money or other property in connection with

1 any qualified financial contract with a reg-  
2 ulated entity.

3 “(ii) EXCEPTION FOR CERTAIN  
4 TRANSFERS.—Clause (i) shall not apply to  
5 any transfer of money or other property in  
6 connection with any qualified financial con-  
7 tract with a regulated entity if the Agency  
8 determines that the transferee had actual  
9 intent to hinder, delay, or defraud such  
10 regulated entity, the creditors of such reg-  
11 ulated entity, or any conservator or re-  
12 ceiver appointed for such regulated entity.

13 “(D) CERTAIN CONTRACTS AND AGREE-  
14 MENTS DEFINED.—In this subsection the fol-  
15 lowing definitions shall apply:

16 “(i) QUALIFIED FINANCIAL CON-  
17 TRACT.—The term ‘qualified financial con-  
18 tract’ means any securities contract, com-  
19 modity contract, forward contract, repur-  
20 chase agreement, swap agreement, and any  
21 similar agreement that the Agency deter-  
22 mines by regulation, resolution, or order to  
23 be a qualified financial contract for pur-  
24 poses of this paragraph.

1           “(ii) SECURITIES CONTRACT.—The  
2 term ‘securities contract’—

3           “(I) means a contract for the  
4 purchase, sale, or loan of a security, a  
5 certificate of deposit, a mortgage loan,  
6 or any interest in a mortgage loan, a  
7 group or index of securities, certifi-  
8 cates of deposit, or mortgage loans or  
9 interests therein (including any inter-  
10 est therein or based on the value  
11 thereof) or any option on any of the  
12 foregoing, including any option to  
13 purchase or sell any such security,  
14 certificate of deposit, mortgage loan,  
15 interest, group or index, or option,  
16 and including any repurchase or re-  
17 verse repurchase transaction on any  
18 such security, certificate of deposit,  
19 mortgage loan, interest, group or  
20 index, or option;

21           “(II) does not include any pur-  
22 chase, sale, or repurchase obligation  
23 under a participation in a commercial  
24 mortgage loan, unless the Agency de-  
25 termines by regulation, resolution, or

1 order to include any such agreement  
2 within the meaning of such term;

3 “(III) means any option entered  
4 into on a national securities exchange  
5 relating to foreign currencies;

6 “(IV) means the guarantee by or  
7 to any securities clearing agency of  
8 any settlement of cash, securities, cer-  
9 tificates of deposit, mortgage loans or  
10 interests therein, group or index of se-  
11 curities, certificates of deposit, or  
12 mortgage loans or interests therein  
13 (including any interest therein or  
14 based on the value thereof) or option  
15 on any of the foregoing, including any  
16 option to purchase or sell any such se-  
17 curity, certificate of deposit, mortgage  
18 loan, interest, group or index, or op-  
19 tion;

20 “(V) means any margin loan;

21 “(VI) means any other agree-  
22 ment or transaction that is similar to  
23 any agreement or transaction referred  
24 to in this clause;

1           “(VII) means any combination of  
2 the agreements or transactions re-  
3 ferred to in this clause;

4           “(VIII) means any option to  
5 enter into any agreement or trans-  
6 action referred to in this clause;

7           “(IX) means a master agreement  
8 that provides for an agreement or  
9 transaction referred to in subclause  
10 (I), (III), (IV), (V), (VI), (VII), or  
11 (VIII), together with all supplements  
12 to any such master agreement, with-  
13 out regard to whether the master  
14 agreement provides for an agreement  
15 or transaction that is not a securities  
16 contract under this clause, except that  
17 the master agreement shall be consid-  
18 ered to be a securities contract under  
19 this clause only with respect to each  
20 agreement or transaction under the  
21 master agreement that is referred to  
22 in subclause (I), (III), (IV), (V), (VI),  
23 (VII), or (VIII); and

24           “(X) means any security agree-  
25 ment or arrangement or other credit

1 enhancement related to any agree-  
2 ment or transaction referred to in this  
3 clause, including any guarantee or re-  
4 imbursement obligation in connection  
5 with any agreement or transaction re-  
6 ferred to in this clause.

7 “(iii) COMMODITY CONTRACT.—The  
8 term ‘commodity contract’ means—

9 “(I) with respect to a futures  
10 commission merchant, a contract for  
11 the purchase or sale of a commodity  
12 for future delivery on, or subject to  
13 the rules of, a contract market or  
14 board of trade;

15 “(II) with respect to a foreign fu-  
16 tures commission merchant, a foreign  
17 future;

18 “(III) with respect to a leverage  
19 transaction merchant, a leverage  
20 transaction;

21 “(IV) with respect to a clearing  
22 organization, a contract for the pur-  
23 chase or sale of a commodity for fu-  
24 ture delivery on, or subject to the  
25 rules of, a contract market or board

1 of trade that is cleared by such clear-  
2 ing organization, or commodity option  
3 traded on, or subject to the rules of,  
4 a contract market or board of trade  
5 that is cleared by such clearing orga-  
6 nization;

7 “(V) with respect to a commodity  
8 options dealer, a commodity option;

9 “(VI) any other agreement or  
10 transaction that is similar to any  
11 agreement or transaction referred to  
12 in this clause;

13 “(VII) any combination of the  
14 agreements or transactions referred to  
15 in this clause;

16 “(VIII) any option to enter into  
17 any agreement or transaction referred  
18 to in this clause;

19 “(IX) a master agreement that  
20 provides for an agreement or trans-  
21 action referred to in subclause (I),  
22 (II), (III), (IV), (V), (VI), (VII), or  
23 (VIII), together with all supplements  
24 to any such master agreement, with-  
25 out regard to whether the master

1 agreement provides for an agreement  
2 or transaction that is not a com-  
3 modity contract under this clause, ex-  
4 cept that the master agreement shall  
5 be considered to be a commodity con-  
6 tract under this clause only with re-  
7 spect to each agreement or trans-  
8 action under the master agreement  
9 that is referred to in subclause (I),  
10 (II), (III), (IV), (V), (VI), (VII), or  
11 (VIII); or

12 “(X) any security agreement or  
13 arrangement or other credit enhance-  
14 ment related to any agreement or  
15 transaction referred to in this clause,  
16 including any guarantee or reimburse-  
17 ment obligation in connection with  
18 any agreement or transaction referred  
19 to in this clause.

20 “(iv) FORWARD CONTRACT.—The  
21 term ‘forward contract’ means—

22 “(I) a contract (other than a  
23 commodity contract) for the purchase,  
24 sale, or transfer of a commodity or  
25 any similar good, article, service,

1 right, or interest which is presently or  
2 in the future becomes the subject of  
3 dealing in the forward contract trade,  
4 or product or byproduct thereof, with  
5 a maturity date more than 2 days  
6 after the date on which the contract is  
7 entered into, including a repurchase  
8 transaction, reverse repurchase trans-  
9 action, consignment, lease, swap,  
10 hedge transaction, deposit, loan, op-  
11 tion, allocated transaction, unallocated  
12 transaction, or any other similar  
13 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  
9 in 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  
14 (I), (II), (III), or (IV), including any  
15 guarantee or reimbursement obliga-  
16 tion in connection with any agreement  
17 or transaction referred to in any such  
18 subclause.

19 “(v) REPURCHASE AGREEMENT.—The  
20 term ‘repurchase agreement’ (including a  
21 reverse repurchase agreement)—

22 “(I) means an agreement, includ-  
23 ing related terms, which provides for  
24 the transfer of one or more certifi-  
25 cates of deposit, mortgage-related se-

1 securities (as such term is defined in  
2 section 3 of the Securities Exchange  
3 Act of 1934), mortgage loans, inter-  
4 ests in mortgage-related securities or  
5 mortgage loans, eligible bankers' ac-  
6 ceptances, qualified foreign govern-  
7 ment securities (defined for purposes  
8 of this clause as a security that is a  
9 direct obligation of, or that is fully  
10 guaranteed by, the central government  
11 of a member of the Organization for  
12 Economic Cooperation and Develop-  
13 ment, as determined by regulation or  
14 order adopted by the appropriate Fed-  
15 eral banking authority), or securities  
16 that are direct obligations of, or that  
17 are fully guaranteed by, the United  
18 States or any agency of the United  
19 States against the transfer of funds  
20 by the transferee of such certificates  
21 of deposit, eligible bankers' accept-  
22 ances, securities, mortgage loans, or  
23 interests with a simultaneous agree-  
24 ment by such transferee to transfer to  
25 the transferor thereof certificates of

1 deposit, eligible bankers' acceptances,  
2 securities, mortgage loans, or interests  
3 as described above, at a date certain  
4 not later than 1 year after such trans-  
5 fers or on demand, against the trans-  
6 fer of funds, or any other similar  
7 agreement;

8 “(II) does not include any repur-  
9 chase obligation under a participation  
10 in a commercial mortgage loan, unless  
11 the Agency determines by regulation,  
12 resolution, or order to include any  
13 such participation within the meaning  
14 of such term;

15 “(III) means any combination of  
16 agreements or transactions referred to  
17 in subclauses (I) and (IV);

18 “(IV) means any option to enter  
19 into any agreement or transaction re-  
20 ferred to in subclause (I) or (III);

21 “(V) means a master agreement  
22 that provides for an agreement or  
23 transaction referred to in subclause  
24 (I), (III), or (IV), together with all  
25 supplements to any such master

1 agreement, without regard to whether  
2 the master agreement provides for an  
3 agreement or transaction that is not a  
4 repurchase agreement under this  
5 clause, except that the master agree-  
6 ment shall be considered to be a re-  
7 purchase agreement under this sub-  
8 clause only with respect to each agree-  
9 ment or transaction under the master  
10 agreement that is referred to in sub-  
11 clause (I), (III), or (IV); and

12 “(VI) means any security agree-  
13 ment or arrangement or other credit  
14 enhancement related to any agree-  
15 ment or transaction referred to in  
16 subclause (I), (III), (IV), or (V), in-  
17 cluding any guarantee or reimburse-  
18 ment obligation in connection with  
19 any agreement or transaction referred  
20 to in any such subclause.

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,

1 which is an interest rate swap, option,  
2 future, or forward agreement, includ-  
3 ing a rate floor, rate cap, rate collar,  
4 cross-currency rate swap, and basis  
5 swap; a spot, same day-tomorrow, to-  
6 morrow-next, forward, or other for-  
7 eign exchange or precious metals  
8 agreement; a currency swap, option,  
9 future, or forward agreement; an eq-  
10 uity index or equity swap, option, fu-  
11 ture, or forward agreement; a debt  
12 index or debt swap, option, future, or  
13 forward agreement; a total return,  
14 credit spread or credit swap, option,  
15 future, or forward agreement; a com-  
16 modity index or commodity swap, op-  
17 tion, future, or forward agreement; or  
18 a weather swap, weather derivative, or  
19 weather option;

20 “(II) any agreement or trans-  
21 action that is similar to any other  
22 agreement or transaction referred to  
23 in this clause and that is of a type  
24 that has been, is presently, or in the  
25 future becomes, the subject of recur-

1           rent dealings in the swap markets (in-  
2           cluding terms and conditions incor-  
3           porated by reference in such agree-  
4           ment) and that is a forward, swap, fu-  
5           ture, or option on one or more rates,  
6           currencies, commodities, equity securi-  
7           ties or other equity instruments, debt  
8           securities or other debt instruments,  
9           quantitative measures associated with  
10          an occurrence, extent of an occur-  
11          rence, or contingency associated with  
12          a financial, commercial, or economic  
13          consequence, or economic or financial  
14          indices or measures of economic or fi-  
15          nancial risk or value;

16                 “(III) any combination of agree-  
17                 ments or transactions referred to in  
18                 this clause;

19                 “(IV) any option to enter into  
20                 any agreement or transaction referred  
21                 to in this clause;

22                 “(V) a master agreement that  
23                 provides for an agreement or trans-  
24                 action referred to in subclause (I),  
25                 (II), (III), or (IV), together with all

1 supplements to any such master  
2 agreement, without regard to whether  
3 the master agreement contains an  
4 agreement or transaction that is not a  
5 swap agreement under this clause, ex-  
6 cept that the master agreement shall  
7 be considered to be a swap agreement  
8 under this clause only with respect to  
9 each agreement or transaction under  
10 the master agreement that is referred  
11 to in subclause (I), (II), (III), or (IV);  
12 and

13 “(VI) any security agreement or  
14 arrangement or other credit enhance-  
15 ment related to any agreements or  
16 transactions referred to in subclause  
17 (I), (II), (III), (IV), or (V), including  
18 any guarantee or reimbursement obli-  
19 gation in connection with any agree-  
20 ment or transaction referred to in any  
21 such subclause.

22 “(vii) TREATMENT OF MASTER  
23 AGREEMENT AS ONE AGREEMENT.—Any  
24 master agreement for any contract or  
25 agreement described in any preceding

1 clause of this subparagraph (or any master  
2 agreement for such master agreement or  
3 agreements), together with all supplements  
4 to such master agreement, shall be treated  
5 as a single agreement and a single quali-  
6 fied financial contract. If a master agree-  
7 ment contains provisions relating to agree-  
8 ments or transactions that are not them-  
9 selves qualified financial contracts, the  
10 master agreement shall be deemed to be a  
11 qualified financial contract only with re-  
12 spect to those transactions that are them-  
13 selves qualified financial contracts.

14 “(viii) TRANSFER.—The term ‘trans-  
15 fer’ means every mode, direct or indirect,  
16 absolute or conditional, voluntary or invol-  
17 untary, of disposing of or parting with  
18 property or with an interest in property,  
19 including retention of title as a security in-  
20 terest and foreclosure of the equity of re-  
21 demption of the regulated entity.

22 “(E) CERTAIN PROTECTIONS IN EVENT OF  
23 APPOINTMENT OF CONSERVATOR.—Notwith-  
24 standing any other provision of this section, any  
25 other Federal law, or the law of any State

1 (other than paragraph (10) of this subsection  
2 and subsection (b)(9)(B)), no person shall be  
3 stayed or prohibited from exercising—

4 “(i) any right such person has to  
5 cause the termination, liquidation, or accel-  
6 eration of any qualified financial contract  
7 with a regulated entity in a conservator-  
8 ship based upon a default under such fi-  
9 nancial contract which is enforceable under  
10 applicable noninsolvency law;

11 “(ii) any right under any security  
12 agreement or arrangement or other credit  
13 enhancement relating to 1 or more such  
14 qualified financial contracts; or

15 “(iii) any right to offset or net out  
16 any termination values, payment amounts,  
17 or other transfer obligations arising under  
18 or in connection with such qualified finan-  
19 cial contracts.

20 “(F) CLARIFICATION.—No provision of law  
21 shall be construed as limiting the right or  
22 power of the Agency, or authorizing any court  
23 or agency to limit or delay in any manner, the  
24 right or power of the Agency to transfer any  
25 qualified financial contract in accordance with

1 paragraphs (9) and (10), or to disaffirm or re-  
2 pudiate any such contract in accordance with  
3 subsection (d)(1).

4 “(G) WALKAWAY CLAUSES NOT EFFEC-  
5 TIVE.—

6 “(i) IN GENERAL.—Notwithstanding  
7 the provisions of subparagraphs (A) and  
8 (E), and sections 403 and 404 of the Fed-  
9 eral Deposit Insurance Corporation Im-  
10 provement Act of 1991, no walkaway  
11 clause shall be enforceable in a qualified fi-  
12 nancial contract of a regulated entity in  
13 default.

14 “(ii) WALKAWAY CLAUSE DEFINED.—  
15 For purposes of this subparagraph, the  
16 term ‘walkaway clause’ means a provision  
17 in a qualified financial contract that, after  
18 calculation of a value of a party’s position  
19 or an amount due to or from 1 of the par-  
20 ties in accordance with its terms upon ter-  
21 mination, liquidation, or acceleration of the  
22 qualified financial contract, either does not  
23 create a payment obligation of a party or  
24 extinguishes a payment obligation of a  
25 party in whole or in part solely because of

1           the status of such party as a nondefaulting  
2           party.

3           “(9) TRANSFER OF QUALIFIED FINANCIAL CON-  
4           TRACTS.—In making any transfer of assets or liabil-  
5           ities of a regulated entity in default which includes  
6           any qualified financial contract, the conservator or  
7           receiver for such regulated entity shall either—

8           “(A) transfer to 1 person—

9           “(i) all qualified financial contracts  
10           between any person (or any affiliate of  
11           such person) and the regulated entity in  
12           default;

13           “(ii) all claims of such person (or any  
14           affiliate of such person) against such regu-  
15           lated entity under any such contract (other  
16           than any claim which, under the terms of  
17           any such contract, is subordinated to the  
18           claims of general unsecured creditors of  
19           such regulated entity);

20           “(iii) all claims of such regulated enti-  
21           ty against such person (or any affiliate of  
22           such person) under any such contract; and

23           “(iv) all property securing, or any  
24           other credit enhancement for any contract  
25           described in clause (i), or any claim de-

1           scribed in clause (ii) or (iii) under any  
2           such contract; or

3           “(B) transfer none of the financial con-  
4           tracts, claims, or property referred to under  
5           subparagraph (A) (with respect to such person  
6           and any affiliate of such person).

7           “(10) NOTIFICATION OF TRANSFER.—

8           “(A) IN GENERAL.—The conservator or re-  
9           ceiver shall notify any person that is a party to  
10          a contract or transfer by 5:00 p.m. (Eastern  
11          Standard Time) on the business day following  
12          the date of the appointment of the receiver in  
13          the case of a receivership, or the business day  
14          following such transfer in the case of a con-  
15          servatorship, if—

16               “(i) the conservator or receiver for a  
17               regulated entity in default makes any  
18               transfer of the assets and liabilities of such  
19               regulated entity; and

20               “(ii) such transfer includes any quali-  
21               fied financial contract.

22           “(B) CERTAIN RIGHTS NOT ENFORCE-  
23           ABLE.—

24               “(i) RECEIVERSHIP.—A person who is  
25               a party to a qualified financial contract

1 with a regulated entity may not exercise  
2 any right that such person has to termi-  
3 nate, liquidate, or net such contract under  
4 paragraph (8)(A) of this subsection or  
5 under section 403 or 404 of the Federal  
6 Deposit Insurance Corporation Improve-  
7 ment Act of 1991, solely by reason of or  
8 incidental to the appointment of a receiver  
9 for the regulated entity (or the insolvency  
10 or financial condition of the regulated enti-  
11 ty for which the receiver has been ap-  
12 pointed)—

13 “(I) until 5:00 p.m. (Eastern  
14 Standard Time) on the business day  
15 following the date of the appointment  
16 of the receiver; or

17 “(II) after the person has re-  
18 ceived notice that the contract has  
19 been transferred pursuant to para-  
20 graph (9)(A).

21 “(ii) CONSERVATORSHIP.—A person  
22 who is a party to a qualified financial con-  
23 tract with a regulated entity may not exer-  
24 cise any right that such person has to ter-  
25 minate, liquidate, or net such contract

1 under paragraph (8)(E) of this subsection  
2 or under section 403 or 404 of the Federal  
3 Deposit Insurance Corporation Improve-  
4 ment Act of 1991, solely by reason of or  
5 incidental to the appointment of a conser-  
6 vator for the regulated entity (or the insol-  
7 vency or financial condition of the regu-  
8 lated entity for which the conservator has  
9 been appointed).

10 “(iii) NOTICE.—For purposes of this  
11 paragraph, the conservator or receiver of a  
12 regulated entity shall be deemed to have  
13 notified a person who is a party to a quali-  
14 fied financial contract with such regulated  
15 entity, if the conservator or receiver has  
16 taken steps reasonably calculated to pro-  
17 vide notice to such person by the time  
18 specified in subparagraph (A).

19 “(C) BUSINESS DAY DEFINED.—For pur-  
20 poses of this paragraph, the term ‘business day’  
21 means any day other than any Saturday, Sun-  
22 day, or any day on which either the New York  
23 Stock Exchange or the Federal Reserve Bank  
24 of New York is closed.

1           “(11) DISAFFIRMANCE OR REPUDIATION OF  
2 QUALIFIED FINANCIAL CONTRACTS.—In exercising  
3 the rights of disaffirmance or repudiation of a con-  
4 servator or receiver with respect to any qualified fi-  
5 nancial contract to which a regulated entity is a  
6 party, the conservator or receiver for such institution  
7 shall either—

8           “(A) disaffirm or repudiate all qualified fi-  
9 nancial contracts between—

10           “(i) any person or any affiliate of  
11 such person; and

12           “(ii) the regulated entity in default; or

13           “(B) disaffirm or repudiate none of the  
14 qualified financial contracts referred to in sub-  
15 paragraph (A) (with respect to such person or  
16 any affiliate of such person).

17           “(12) CERTAIN SECURITY INTERESTS NOT  
18 AVOIDABLE.—No provision of this subsection shall  
19 be construed as permitting the avoidance of any le-  
20 gally enforceable or perfected security interest in any  
21 of the assets of any regulated entity, except where  
22 such an interest is taken in contemplation of the in-  
23 solvency of the regulated entity, or with the intent  
24 to hinder, delay, or defraud the regulated entity or  
25 the creditors of such regulated entity.

1           “(13) AUTHORITY TO ENFORCE CONTRACTS.—

2                   “(A) IN GENERAL.—Notwithstanding any  
3 provision of a contract providing for termi-  
4 nation, default, acceleration, or exercise of  
5 rights upon, or solely by reason of, insolvency  
6 or the appointment of, or the exercise of rights  
7 or powers by, a conservator or receiver, the con-  
8 servator or receiver may enforce any contract,  
9 other than a contract for liability insurance for  
10 a director or officer, or a contract or a regu-  
11 lated entity bond, entered into by the regulated  
12 entity.

13                   “(B) CERTAIN RIGHTS NOT AFFECTED.—  
14 No provision of this paragraph may be con-  
15 strued as impairing or affecting any right of the  
16 conservator or receiver to enforce or recover  
17 under a liability insurance contract for an offi-  
18 cer or director, or regulated entity bond under  
19 other applicable law.

20                   “(C) CONSENT REQUIREMENT.—

21                           “(i) IN GENERAL.—Except as other-  
22 wise provided under this section, no person  
23 may exercise any right or power to termi-  
24 nate, accelerate, or declare a default under  
25 any contract to which a regulated entity is

1 a party, or to obtain possession of or exer-  
2 cise control over any property of the regu-  
3 lated entity, or affect any contractual  
4 rights of the regulated entity, without the  
5 consent of the conservator or receiver, as  
6 appropriate, for a period of—

7 “(I) 45 days after the date of ap-  
8 pointment of a conservator; or

9 “(II) 90 days after the date of  
10 appointment of a receiver.

11 “(ii) EXCEPTIONS.—This subpara-  
12 graph shall not—

13 “(I) apply to a contract for liabil-  
14 ity insurance for an officer or direc-  
15 tor;

16 “(II) apply to the rights of par-  
17 ties to certain qualified financial con-  
18 tracts under subsection (d)(8); and

19 “(III) be construed as permitting  
20 the conservator or receiver to fail to  
21 comply with otherwise enforceable  
22 provisions of such contracts.

23 “(14) SAVINGS CLAUSE.—The meanings of  
24 terms used in this subsection are applicable for pur-  
25 poses of this subsection only, and shall not be con-

1       strued or applied so as to challenge or affect the  
2       characterization, definition, or treatment of any  
3       similar terms under any other statute, regulation, or  
4       rule, including the Gramm-Leach-Bliley Act, the  
5       Legal Certainty for Bank Products Act of 2000, the  
6       securities laws (as that term is defined in section  
7       3(a)(47) of the Securities Exchange Act of 1934),  
8       and the Commodity Exchange Act.

9       “(e) VALUATION OF CLAIMS IN DEFAULT.—

10           “(1) IN GENERAL.—Notwithstanding any other  
11          provision of Federal law or the law of any State, and  
12          regardless of the method which the Agency deter-  
13          mines to utilize with respect to a regulated entity in  
14          default or in danger of default, including trans-  
15          actions authorized under subsection (i), this sub-  
16          section shall govern the rights of the creditors of  
17          such regulated entity.

18           “(2) MAXIMUM LIABILITY.—The maximum li-  
19          ability of the Agency, acting as receiver or in any  
20          other capacity, to any person having a claim against  
21          the receiver or the regulated entity for which such  
22          receiver is appointed shall be not more than the  
23          amount that such claimant would have received if  
24          the Agency had liquidated the assets and liabilities

1 of the regulated entity without exercising the author-  
2 ity of the Agency under subsection (i).

3 “(f) LIMITATION ON COURT ACTION.—Except as  
4 provided in this section or at the request of the Director,  
5 no court may take any action to restrain or affect the exer-  
6 cise of powers or functions of the Agency as a conservator  
7 or a receiver.

8 “(g) LIABILITY OF DIRECTORS AND OFFICERS.—

9 “(1) IN GENERAL.—A director or officer of a  
10 regulated entity may be held personally liable for  
11 monetary damages in any civil action described in  
12 paragraph (2) brought by, on behalf of, or at the re-  
13 quest or direction of the Agency, and prosecuted  
14 wholly or partially for the benefit of the Agency—

15 “(A) acting as conservator or receiver of  
16 such regulated entity; or

17 “(B) acting based upon a suit, claim, or  
18 cause of action purchased from, assigned by, or  
19 otherwise conveyed by such receiver or conser-  
20 vator.

21 “(2) ACTIONS ADDRESSED.—Paragraph (1) ap-  
22 plies in any civil action for gross negligence, includ-  
23 ing any similar conduct or conduct that dem-  
24 onstrates a greater disregard of a duty of care than  
25 gross negligence, including intentional tortious con-

1 duct, as such terms are defined and determined  
2 under applicable State law.

3 “(3) NO LIMITATION.—Nothing in this sub-  
4 section shall impair or affect any right of the Agency  
5 under other applicable law.

6 “(h) DAMAGES.—In any proceeding related to any  
7 claim against a director, officer, employee, agent, attorney,  
8 accountant, appraiser, or any other party employed by or  
9 providing services to a regulated entity, recoverable dam-  
10 ages determined to result from the improvident or other-  
11 wise improper use or investment of any assets of the regu-  
12 lated entity shall include principal losses and appropriate  
13 interest.

14 “(i) LIMITED-LIFE REGULATED ENTITIES.—

15 “(1) ORGANIZATION.—

16 “(A) PURPOSE.—The Agency, as receiver  
17 appointed pursuant to subsection (a)—

18 “(i) may, in the case of a Federal  
19 Home Loan Bank, organize a limited-life  
20 regulated entity with those powers and at-  
21 tributes of the Federal Home Loan Bank  
22 in default or in danger of default as the  
23 Director determines necessary, subject to  
24 the provisions of this subsection, and the  
25 Director shall grant a temporary charter to

1 that limited-life regulated entity, and that  
2 limited-life regulated entity shall operate  
3 subject to that charter; and

4 “(ii) shall, in the case of an enter-  
5 prise, organize a limited-life regulated enti-  
6 ty with respect to that enterprise in ac-  
7 cordance with this subsection.

8 “(B) AUTHORITIES.—Upon the creation of  
9 a limited-life regulated entity under subpara-  
10 graph (A), the limited-life regulated entity  
11 may—

12 “(i) assume such liabilities of the reg-  
13 ulated entity that is in default or in danger  
14 of default as the Agency may, in its discre-  
15 tion, determine to be appropriate, except  
16 that the liabilities assumed shall not exceed  
17 the amount of assets purchased or trans-  
18 ferred from the regulated entity to the lim-  
19 ited-life regulated entity;

20 “(ii) purchase such assets of the regu-  
21 lated entity that is in default, or in danger  
22 of default as the Agency may, in its discre-  
23 tion, determine to be appropriate; and

24 “(iii) perform any other temporary  
25 function which the Agency may, in its dis-

1                   cretion, prescribe in accordance with this  
2                   section.

3                   “(2) CHARTER AND ESTABLISHMENT.—

4                   “(A) TRANSFER OF CHARTER.—

5                   “(i) FANNIE MAE.—If the Agency is  
6                   appointed as receiver for the Federal Na-  
7                   tional Mortgage Association, the limited-  
8                   life regulated entity established under this  
9                   subsection with respect to such enterprise  
10                  shall, by operation of law and immediately  
11                  upon its organization—

12                  “(I) succeed to the charter of the  
13                  Federal National Mortgage Associa-  
14                  tion, as set forth in the Federal Na-  
15                  tional Mortgage Association Charter  
16                  Act; and

17                  “(II) thereafter operate in ac-  
18                  cordance with, and subject to, such  
19                  charter, this Act, and any other provi-  
20                  sion of law to which the Federal Na-  
21                  tional Mortgage Association is subject,  
22                  except as otherwise provided in this  
23                  subsection.

24                  “(ii) FREDDIE MAC.—If the Agency is  
25                  appointed as receiver for the Federal

1 Home Loan Mortgage Corporation, the  
2 limited-life regulated entity established  
3 under this subsection with respect to such  
4 enterprise shall, by operation of law and  
5 immediately upon its organization—

6 “(I) succeed to the charter of the  
7 Federal Home Loan Mortgage Cor-  
8 poration, as set forth in the Federal  
9 Home Loan Mortgage Corporation  
10 Charter Act; and

11 “(II) thereafter operate in ac-  
12 cordance with, and subject to, such  
13 charter, this Act, and any other provi-  
14 sion of law to which the Federal  
15 Home Loan Mortgage Corporation is  
16 subject, except as otherwise provided  
17 in this subsection.

18 “(B) INTERESTS IN AND ASSETS AND OB-  
19 LIGATIONS OF REGULATED ENTITY IN DE-  
20 FAULT.—Notwithstanding subparagraph (A) or  
21 any other provision of law—

22 “(i) a limited-life regulated entity  
23 shall assume, acquire, or succeed to the as-  
24 sets or liabilities of a regulated entity only  
25 to the extent that such assets or liabilities

1 are transferred by the Agency to the lim-  
2 ited-life regulated entity in accordance  
3 with, and subject to the restrictions set  
4 forth in, paragraph (1)(B);

5 “(ii) a limited-life regulated entity  
6 shall not assume, acquire, or succeed to  
7 any obligation that a regulated entity for  
8 which a receiver has been appointed may  
9 have to any shareholder of the regulated  
10 entity that arises as a result of the status  
11 of that person as a shareholder of the reg-  
12 ulated entity; and

13 “(iii) no shareholder or creditor of a  
14 regulated entity shall have any right or  
15 claim against the charter of the regulated  
16 entity once the Agency has been appointed  
17 receiver for the regulated entity and a lim-  
18 ited-life regulated entity succeeds to the  
19 charter pursuant to subparagraph (A).

20 “(C) LIMITED-LIFE REGULATED ENTITY  
21 TREATED AS BEING IN DEFAULT FOR CERTAIN  
22 PURPOSES.—A limited-life regulated entity shall  
23 be treated as a regulated entity in default at  
24 such times and for such purposes as the Agency  
25 may, in its discretion, determine.

1           “(D) MANAGEMENT.—Upon its establish-  
2 ment, a limited-life regulated entity shall be  
3 under the management of a board of directors  
4 consisting of not fewer than 5 nor more than  
5 10 members appointed by the Agency.

6           “(E) BYLAWS.—The board of directors of  
7 a limited-life regulated entity shall adopt such  
8 bylaws as may be approved by the Agency.

9           “(3) CAPITAL STOCK.—

10           “(A) NO AGENCY REQUIREMENT.—  
11           The Agency is not required to pay capital  
12 stock into a limited-life regulated entity or  
13 to issue any capital stock on behalf of a  
14 limited-life regulated entity established  
15 under this subsection.

16           “(B) AUTHORITY.—If the Director  
17 determines that such action is advisable,  
18 the Agency may cause capital stock or  
19 other securities of a limited-life regulated  
20 entity established with respect to an enter-  
21 prise to be issued and offered for sale, in  
22 such amounts and on such terms and con-  
23 ditions as the Director may determine, in  
24 the discretion of the Director.

1           “(4) INVESTMENTS.—Funds of a limited-life  
2 regulated entity shall be kept on hand in cash, in-  
3 vested in obligations of the United States or obliga-  
4 tions guaranteed as to principal and interest by the  
5 United States, or deposited with the Agency, or any  
6 Federal reserve bank.

7           “(5) EXEMPT TAX STATUS.—Notwithstanding  
8 any other provision of Federal or State law, a lim-  
9 ited-life regulated entity, its franchise, property, and  
10 income shall be exempt from all taxation now or  
11 hereafter imposed by the United States, by any ter-  
12 ritory, dependency, or possession thereof, or by any  
13 State, county, municipality, or local taxing authority.

14           “(6) WINDING UP.—

15           “(A) IN GENERAL.—Subject to subpara-  
16 graphs (B) and (C), not later than 2 years after  
17 the date of its organization, the Agency shall  
18 wind up the affairs of a limited-life regulated  
19 entity.

20           “(B) EXTENSION.—The Director may, in  
21 the discretion of the Director, extend the status  
22 of a limited-life regulated entity for 3 additional  
23 1-year periods.

24           “(C) TERMINATION OF STATUS AS LIM-  
25 ITED-LIFE REGULATED ENTITY.—

1           “(i) IN GENERAL.—Upon the sale by  
2 the Agency of 80 percent or more of the  
3 capital stock of a limited-life regulated en-  
4 tity, as defined in clause (iv), to 1 or more  
5 persons (other than the Agency)—

6                   “(I) the status of the limited-life  
7 regulated entity as such shall termi-  
8 nate; and

9                   “(II) the entity shall cease to be  
10 a limited-life regulated entity for pur-  
11 poses of this subsection.

12           “(ii) DIVESTITURE OF REMAINING  
13 STOCK, IF ANY.—

14                   “(I) IN GENERAL.—Not later  
15 than 1 year after the date on which  
16 the status of a limited-life regulated  
17 entity is terminated pursuant to  
18 clause (i), the Agency shall sell to 1 or  
19 more persons (other than the Agency)  
20 any remaining capital stock of the  
21 former limited-life regulated entity.

22                   “(II) EXTENSION AUTHOR-  
23 IZED.—The Director may extend the  
24 period referred to in subclause (I) for  
25 not longer than an additional 2 years,

1 if the Director determines that such  
2 action would be in the public interest.

3 “(iii) SAVINGS CLAUSE.—Notwith-  
4 standing any provision of law, other than  
5 clause (ii), the Agency shall not be re-  
6 quired to sell the capital stock of an enter-  
7 prise or a limited-life regulated entity es-  
8 tablished with respect to an enterprise.

9 “(iv) APPLICABILITY.—This subpara-  
10 graph applies only with respect to a lim-  
11 ited-life regulated entity that is established  
12 with respect to an enterprise.

13 “(7) TRANSFER OF ASSETS AND LIABILITIES.—

14 “(A) IN GENERAL.—

15 “(i) TRANSFER OF ASSETS AND LI-  
16 ABILITIES.—The Agency, as receiver, may  
17 transfer any assets and liabilities of a reg-  
18 ulated entity in default, or in danger of de-  
19 fault, to the limited-life regulated entity in  
20 accordance with and subject to the restric-  
21 tions of paragraph (1).

22 “(ii) SUBSEQUENT TRANSFERS.—At  
23 any time after the establishment of a lim-  
24 ited-life regulated entity, the Agency, as  
25 receiver, may transfer any assets and li-

1 abilities of the regulated entity in default,  
2 or in danger of default, as the Agency  
3 may, in its discretion, determine to be ap-  
4 propriate in accordance with and subject to  
5 the restrictions of paragraph (1).

6 “(iii) EFFECTIVE WITHOUT AP-  
7 PROVAL.—The transfer of any assets or li-  
8 abilities of a regulated entity in default or  
9 in danger of default to a limited-life regu-  
10 lated entity shall be effective without any  
11 further approval under Federal or State  
12 law, assignment, or consent with respect  
13 thereto.

14 “(iv) EQUITABLE TREATMENT OF  
15 SIMILARLY SITUATED CREDITORS.—The  
16 Agency shall treat all creditors of a regu-  
17 lated entity in default or in danger of de-  
18 fault that are similarly situated under sub-  
19 section (c)(1) in a similar manner in exer-  
20 cising the authority of the Agency under  
21 this subsection to transfer any assets or li-  
22 abilities of the regulated entity to the lim-  
23 ited-life regulated entity established with  
24 respect to such regulated entity, except  
25 that the Agency may take actions (includ-

1 ing making payments) that do not comply  
2 with this clause, if—

3 “(I) the Director determines that  
4 such actions are necessary to maxi-  
5 mize the value of the assets of the  
6 regulated entity, to maximize the  
7 present value return from the sale or  
8 other disposition of the assets of the  
9 regulated entity, or to minimize the  
10 amount of any loss realized upon the  
11 sale or other disposition of the assets  
12 of the regulated entity; and

13 “(II) all creditors that are simi-  
14 larly situated under subsection (c)(1)  
15 receive not less than the amount pro-  
16 vided in subsection (e)(2).

17 “(v) LIMITATION ON TRANSFER OF  
18 LIABILITIES.—Notwithstanding any other  
19 provision of law, the aggregate amount of  
20 liabilities of a regulated entity that are  
21 transferred to, or assumed by, a limited-  
22 life regulated entity may not exceed the ag-  
23 gregate amount of assets of the regulated  
24 entity that are transferred to, or purchased  
25 by, the limited-life regulated entity.

1           “(8) REGULATIONS.—The Agency may promul-  
2           gate such regulations as the Agency determines to  
3           be necessary or appropriate to implement this sub-  
4           section.

5           “(9) POWERS OF LIMITED-LIFE REGULATED  
6           ENTITIES.—

7           “(A) IN GENERAL.—Each limited-life regu-  
8           lated entity created under this subsection shall  
9           have all corporate powers of, and be subject to  
10          the same provisions of law as, the regulated en-  
11          tity in default or in danger of default to which  
12          it relates, except that—

13                   “(i) the Agency may—

14                           “(I) remove the directors of a  
15                           limited-life regulated entity;

16                           “(II) fix the compensation of  
17                           members of the board of directors and  
18                           senior management, as determined by  
19                           the Agency in its discretion, of a lim-  
20                           ited-life regulated entity; and

21                           “(III) indemnify the representa-  
22                           tives for purposes of paragraph  
23                           (1)(B), and the directors, officers, em-  
24                           ployees, and agents of a limited-life  
25                           regulated entity on such terms as the

1 Agency determines to be appropriate;  
2 and

3 “(ii) the board of directors of a lim-  
4 ited-life regulated entity—

5 “(I) shall elect a chairperson who  
6 may also serve in the position of chief  
7 executive officer, except that such per-  
8 son shall not serve either as chair-  
9 person or as chief executive officer  
10 without the prior approval of the  
11 Agency; and

12 “(II) may appoint a chief execu-  
13 tive officer who is not also the chair-  
14 person, except that such person shall  
15 not serve as chief executive officer  
16 without the prior approval of the  
17 Agency.

18 “(B) STAY OF JUDICIAL ACTION.—Any ju-  
19 dicial action to which a limited-life regulated  
20 entity becomes a party by virtue of its acquisi-  
21 tion of any assets or assumption of any liabil-  
22 ities of a regulated entity in default shall be  
23 stayed from further proceedings for a period of  
24 not longer than 45 days, at the request of the

1 limited-life regulated entity. Such period may  
2 be modified upon the consent of all parties.

3 “(10) NO FEDERAL STATUS.—

4 “(A) AGENCY STATUS.—A limited-life reg-  
5 ulated entity is not an agency, establishment, or  
6 instrumentality of the United States.

7 “(B) EMPLOYEE STATUS.—Representa-  
8 tives for purposes of paragraph (1)(B), interim  
9 directors, directors, officers, employees, or  
10 agents of a limited-life regulated entity are not,  
11 solely by virtue of service in any such capacity,  
12 officers or employees of the United States. Any  
13 employee of the Agency or of any Federal in-  
14 strumentality who serves at the request of the  
15 Agency as a representative for purposes of  
16 paragraph (1)(B), interim director, director, of-  
17 ficer, employee, or agent of a limited-life regu-  
18 lated entity shall not—

19 “(i) solely by virtue of service in any  
20 such capacity lose any existing status as  
21 an officer or employee of the United States  
22 for purposes of title 5, United States Code,  
23 or any other provision of law; or

24 “(ii) receive any salary or benefits for  
25 service in any such capacity with respect to

1 a limited-life regulated entity in addition to  
2 such salary or benefits as are obtained  
3 through employment with the Agency or  
4 such Federal instrumentality.

5 “(11) AUTHORITY TO OBTAIN CREDIT.—

6 “(A) IN GENERAL.—A limited-life regu-  
7 lated entity may obtain unsecured credit and  
8 issue unsecured debt.

9 “(B) INABILITY TO OBTAIN CREDIT.—If a  
10 limited-life regulated entity is unable to obtain  
11 unsecured credit or issue unsecured debt, the  
12 Director may authorize the obtaining of credit  
13 or the issuance of debt by the limited-life regu-  
14 lated entity—

15 “(i) with priority over any or all of  
16 the obligations of the limited-life regulated  
17 entity;

18 “(ii) secured by a lien on property of  
19 the limited-life regulated entity that is not  
20 otherwise subject to a lien; or

21 “(iii) secured by a junior lien on prop-  
22 erty of the limited-life regulated entity that  
23 is subject to a lien.

24 “(C) LIMITATIONS.—

1           “(i) IN GENERAL.—The Director,  
2           after notice and a hearing, may authorize  
3           the obtaining of credit or the issuance of  
4           debt by a limited-life regulated entity that  
5           is secured by a senior or equal lien on  
6           property of the limited-life regulated entity  
7           that is subject to a lien (other than mort-  
8           gages that collateralize the mortgage-  
9           backed securities issued or guaranteed by  
10          an enterprise) only if—

11                   “(I) the limited-life regulated en-  
12                   tity is unable to otherwise obtain such  
13                   credit or issue such debt; and

14                   “(II) there is adequate protection  
15                   of the interest of the holder of the lien  
16                   on the property with respect to which  
17                   such senior or equal lien is proposed  
18                   to be granted.

19           “(12) BURDEN OF PROOF.—In any hearing  
20           under this subsection, the Director has the burden  
21           of proof on the issue of adequate protection.

22           “(13) AFFECT ON DEBTS AND LIENS.—The re-  
23           versal or modification on appeal of an authorization  
24           under this subsection to obtain credit or issue debt,  
25           or of a grant under this section of a priority or a

1       lien, does not affect the validity of any debt so  
2       issued, or any priority or lien so granted, to an enti-  
3       ty that extended such credit in good faith, whether  
4       or not such entity knew of the pendency of the ap-  
5       peal, unless such authorization and the issuance of  
6       such debt, or the granting of such priority or lien,  
7       were stayed pending appeal.

8       “(j) OTHER AGENCY EXEMPTIONS.—

9               “(1) APPLICABILITY.—The provisions of this  
10       subsection shall apply with respect to the Agency in  
11       any case in which the Agency is acting as a conser-  
12       vator or a receiver.

13              “(2) TAXATION.—The Agency, including its  
14       franchise, its capital, reserves, and surplus, and its  
15       income, shall be exempt from all taxation imposed  
16       by any State, county, municipality, or local taxing  
17       authority, except that any real property of the Agen-  
18       cy shall be subject to State, territorial, county, mu-  
19       nicipal, or local taxation to the same extent accord-  
20       ing to its value as other real property is taxed, ex-  
21       cept that, notwithstanding the failure of any person  
22       to challenge an assessment under State law of the  
23       value of such property, and the tax thereon, shall be  
24       determined as of the period for which such tax is im-  
25       posed.

1           “(3) PROPERTY PROTECTION.—No property of  
2           the Agency shall be subject to levy, attachment, gar-  
3           nishment, foreclosure, or sale without the consent of  
4           the Agency, nor shall any involuntary lien attach to  
5           the property of the Agency.

6           “(4) PENALTIES AND FINES.—The Agency  
7           shall not be liable for any amounts in the nature of  
8           penalties or fines, including those arising from the  
9           failure of any person to pay any real property, per-  
10          sonal property, probate, or recording tax or any re-  
11          cording or filing fees when due.

12          “(k) PROHIBITION OF CHARTER REVOCATION.—In  
13          no case may the receiver appointed pursuant to this sec-  
14          tion revoke, annul, or terminate the charter of an enter-  
15          prise.”.

16          (b) TECHNICAL AND CONFORMING AMENDMENTS.—  
17          The Federal Housing Enterprises Financial Safety and  
18          Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is amend-  
19          ed—

20                 (1) in section 1368 (12 U.S.C. 4618)—

21                         (A) by striking “an enterprise” each place  
22                         that term appears and inserting “a regulated  
23                         entity”; and

1 (B) by striking “the enterprise” each place  
 2 that term appears and inserting “the regulated  
 3 entity”;

4 (2) in section 1369C (12 U.S.C. 4622), by  
 5 striking “enterprise” each place that term appears  
 6 and inserting “regulated entity”;

7 (3) in section 1369D (12 U.S.C. 4623)—

8 (A) by striking “an enterprise” each place  
 9 that term appears and inserting “a regulated  
 10 entity”; and

11 (B) in subsection (a)(1), by striking “An  
 12 enterprise” and inserting “A regulated entity”;  
 13 and

14 (4) by striking sections 1369, 1369A, and  
 15 1369B (12 U.S.C. 4619, 4620, and 4621).

## 16 **Subtitle D—Enforcement Actions**

### 17 **SEC. 151. CEASE-AND-DESIST PROCEEDINGS.**

18 Section 1371 of the Federal Housing Enterprises Fi-  
 19 nancial Safety and Soundness Act of 1992 (12 U.S.C.  
 20 4631) is amended—

21 (1) by striking subsections (a) and (b) and in-  
 22 serting the following:

23 “(a) **ISSUANCE FOR UNSAFE OR UNSOUND PRAC-**  
 24 **TICES AND VIOLATIONS.**—If, in the opinion of the Direc-  
 25 tor, a regulated entity or any entity-affiliated party is en-

1 gaging or has engaged, or the Director has reasonable  
2 cause to believe that the regulated entity or any entity-  
3 affiliated party is about to engage, in an unsafe or un-  
4 sound practice in conducting the business of the regulated  
5 entity or the Finance Facility, or is violating or has vio-  
6 lated, or the Director has reasonable cause to believe is  
7 about to violate, a law, rule, regulation, or order, or any  
8 condition imposed in writing by the Director in connection  
9 with the granting of any application or other request by  
10 the regulated entity or the Finance Facility or any written  
11 agreement entered into with the Director, the Director  
12 may issue and serve upon the regulated entity or entity-  
13 affiliated party a notice of charges in respect thereof.

14       “(b) ISSUANCE FOR UNSATISFACTORY RATING.—If a  
15 regulated entity receives, in its most recent report of ex-  
16 amination, a less-than-satisfactory rating for credit risk,  
17 market risk, operations, or corporate governance, the Di-  
18 rector may (if the deficiency is not corrected) deem the  
19 regulated entity to be engaging in an unsafe or unsound  
20 practice for purposes of subsection (a).”;

21               (2) in subsection (c)—

22                       (A) in paragraph (1), by inserting before  
23                       the period at the end the following: “, unless  
24                       the party served with a notice of charges shall  
25                       appear at the hearing personally or by a duly

1 authorized representative, the party shall be  
2 deemed to have consented to the issuance of the  
3 cease-and-desist order”; and

4 (B) in paragraph (2)—

5 (i) by striking “or director” and in-  
6 serting “director, or entity-affiliated  
7 party”; and

8 (ii) by inserting “or entity-affiliated  
9 party” before “consents”;

10 (3) in each of subsections (c), (d), and (e)—

11 (A) by striking “the enterprise” each place  
12 that term appears and inserting “the regulated  
13 entity”;

14 (B) by striking “an enterprise” each place  
15 that term appears and inserting “a regulated  
16 entity”; and

17 (C) by striking “conduct” each place that  
18 term appears and inserting “practice”;

19 (4) in subsection (d)—

20 (A) in the matter preceding paragraph  
21 (1)—

22 (i) by striking “or director” and in-  
23 serting “director, or entity-affiliated  
24 party”;

1 (ii) by inserting “to require a regu-  
2 lated entity or entity-affiliated party” after  
3 “includes the authority”;

4 (B) in paragraph (1)—

5 (i) by striking “to require an executive  
6 officer or a director to”; and

7 (ii) by striking “loss” and all that fol-  
8 lows through “person” and inserting “loss,  
9 if”;

10 (iii) in subparagraph (A), by inserting  
11 “such entity or party or finance facility”  
12 before “was”; and

13 (iv) by striking subparagraph (B) and  
14 inserting the following:

15 “(B) the violation or practice involved a  
16 reckless disregard for the law or any applicable  
17 regulations or prior order of the Director;”];  
18 and

19 (C) in paragraph (4), by inserting “loan  
20 or” before “asset”;

21 (5) in subsection (e), by inserting “or entity-af-  
22 filiated party”—

23 (A) before “or any executive”; and

24 (B) before the period at the end; and

25 (6) in subsection (f)—

1 (A) by striking “enterprise” and inserting  
2 “regulated entity, finance facility,”; and

3 (B) by striking “or director” and inserting  
4 “director, or entity-affiliated party”.

5 **SEC. 152. TEMPORARY CEASE-AND-DESIST PROCEEDINGS.**

6 Section 1372 of the Federal Housing Enterprises Fi-  
7 nancial Safety and Soundness Act of 1992 (12 U.S.C.  
8 4632) is amended—

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

11 “(a) **GROUNDS FOR ISSUANCE.**—

12 “(1) **IN GENERAL.**—If the Director determines  
13 that the actions specified in the notice of charges  
14 served upon a regulated entity or any entity-affili-  
15 ated party pursuant to section 1371(a), or the con-  
16 tinuation thereof, is likely to cause insolvency or sig-  
17 nificant dissipation of assets or earnings of that en-  
18 tity, or is likely to weaken the condition of that enti-  
19 ty prior to the completion of the proceedings con-  
20 ducted pursuant to sections 1371 and 1373, the Di-  
21 rector may—

22 “(A) issue a temporary order requiring  
23 that regulated entity or entity-affiliated party to  
24 cease and desist from any such violation or  
25 practice; and

1           “(B) require that regulated entity or enti-  
2           ty-affiliated party to take affirmative action to  
3           prevent or remedy such insolvency, dissipation,  
4           condition, or prejudice pending completion of  
5           such proceedings.

6           “(2) ADDITIONAL REQUIREMENTS.—An order  
7           issued under paragraph (1) may include any require-  
8           ment authorized under subsection 1371(d).”;

9           (2) in subsection (b)—

10           (A) by striking “or director” and inserting  
11           “director, or entity-affiliated party”; and

12           (B) by striking “enterprise” each place  
13           that term appears and inserting “regulated en-  
14           tity”;

15           (3) in subsection (c), by striking “enterprise”  
16           each place that term appears and inserting “regu-  
17           lated entity”;

18           (4) in subsection (d)—

19           (A) by striking “or director” each place  
20           that term appears and inserting “director, or  
21           entity-affiliated party”; and

22           (B) by striking “An enterprise” and insert-  
23           ing “A regulated entity”; and

24           (5) in subsection (e)—

1 (A) by striking “request the Attorney Gen-  
2 eral of the United States to”; and

3 (B) by striking “or may, under the direc-  
4 tion and control of the Attorney General, bring  
5 such action”.

6 **SEC. 153. REMOVAL AND PROHIBITION AUTHORITY.**

7 (a) IN GENERAL.—Part 1 of subtitle C of the Federal  
8 Housing Enterprises Financial Safety and Soundness Act  
9 of 1992 (12 U.S.C. 4631 et seq.) is amended—

10 (1) by redesignating sections 1377 through  
11 1379B (12 U.S.C. 4637–4641) as sections 1379  
12 through 1379D, respectively; and

13 (2) by inserting after section 1376 (12 U.S.C.  
14 4636) the following:

15 **“SEC. 1377. REMOVAL AND PROHIBITION AUTHORITY.**

16 **“(a) AUTHORITY TO ISSUE ORDER.—**

17 **“(1) IN GENERAL.—**The Director may serve  
18 upon a party described in paragraph (2), or any offi-  
19 cer, director, or management of the Finance Facility  
20 a written notice of the intention of the Director to  
21 suspend or remove such party from office, or pro-  
22 hibit any further participation by such party, in any  
23 manner, in the conduct of the affairs of the regu-  
24 lated entity.

1           “(2) APPLICABILITY.—A party described in this  
2 paragraph is an entity-affiliated party or any officer,  
3 director, or management of the Finance Facility, if  
4 the Director determines that—

5                   “(A) that party, officer, or director has, di-  
6 rectly or indirectly—

7                           “(i) violated—

8                                   “(I) any law or regulation;

9                                   “(II) any cease-and-desist order  
10 which has become final;

11                                   “(III) any condition imposed in  
12 writing by the Director in connection  
13 with the grant of any application or  
14 other request by such regulated enti-  
15 ty; or

16                                   “(IV) any written agreement be-  
17 tween such regulated entity and the  
18 Director;

19                           “(ii) engaged or participated in any  
20 unsafe or unsound practice in connection  
21 with any regulated entity or business insti-  
22 tution; or

23                           “(iii) committed or engaged in any  
24 act, omission, or practice which constitutes  
25 a breach of such party’s fiduciary duty;

1           “(B) by reason of the violation, practice, or  
2           breach described in subparagraph (A)—

3                   “(i) such regulated entity or business  
4                   institution has suffered or will probably  
5                   suffer financial loss or other damage; or

6                   “(ii) such party has received financial  
7                   gain or other benefit; and

8           “(C) the violation, practice, or breach de-  
9           scribed in subparagraph (A)—

10                   “(i) involves personal dishonesty on  
11                   the part of such party; or

12                   “(ii) demonstrates willful or con-  
13                   tinuing disregard by such party for the  
14                   safety or soundness of such regulated enti-  
15                   ty or business institution.

16           “(b) SUSPENSION ORDER.—

17                   “(1) SUSPENSION OR PROHIBITION AUTHOR-  
18                   ITY.—If the Director serves written notice under  
19                   subsection (a) upon a party subject to that sub-  
20                   section (a), the Director may, by order, suspend or  
21                   remove such party from office, or prohibit such  
22                   party from further participation in any manner in  
23                   the conduct of the affairs of the regulated entity, if  
24                   the Director—

1           “(A) determines that such action is nec-  
2           essary for the protection of the regulated entity;  
3           and

4           “(B) serves such party with written notice  
5           of the order.

6           “(2) EFFECTIVE PERIOD.—Any order issued  
7           under this subsection—

8           “(A) shall become effective upon service;  
9           and

10           “(B) unless a court issues a stay of such  
11           order under subsection (g), shall remain in ef-  
12           fect and enforceable until—

13           “(i) the date on which the Director  
14           dismisses the charges contained in the no-  
15           tice served under subsection (a) with re-  
16           spect to such party; or

17           “(ii) the effective date of an order  
18           issued under subsection (b).

19           “(3) COPY OF ORDER.—If the Director issues  
20           an order under subsection (b) to any party, the Di-  
21           rector shall serve a copy of such order on any regu-  
22           lated entity with which such party is affiliated at the  
23           time such order is issued.

24           “(c) NOTICE, HEARING, AND ORDER.—

1           “(1) NOTICE.—A notice under subsection (a) of  
2 the intention of the Director to issue an order under  
3 this section shall contain a statement of the facts  
4 constituting grounds for such action, and shall fix a  
5 time and place at which a hearing will be held on  
6 such action.

7           “(2) TIMING OF HEARING.—A hearing shall be  
8 fixed for a date not earlier than 30 days, nor later  
9 than 60 days, after the date of service of notice  
10 under subsection (a), unless an earlier or a later  
11 date is set by the Director at the request of—

12                   “(A) the party receiving such notice, and  
13 good cause is shown; or

14                   “(B) the Attorney General of the United  
15 States.

16           “(3) CONSENT.—Unless the party that is the  
17 subject of a notice delivered under subsection (a) ap-  
18 pears at the hearing in person or by a duly author-  
19 ized representative, such party shall be deemed to  
20 have consented to the issuance of an order under  
21 this section.

22           “(4) ISSUANCE OF ORDER OF SUSPENSION.—  
23 The Director may issue an order under this section,  
24 as the Director may deem appropriate, if—

1           “(A) a party is deemed to have consented  
2           to the issuance of an order under paragraph  
3           (3); or

4           “(B) upon the record made at the hearing,  
5           the Director finds that any of the grounds spec-  
6           ified in the notice have been established.

7           “(5) EFFECTIVENESS OF ORDER.—Any order  
8           issued under paragraph (4) shall become effective at  
9           the expiration of 30 days after the date of service  
10          upon the relevant regulated entity and party (except  
11          in the case of an order issued upon consent under  
12          paragraph (3), which shall become effective at the  
13          time specified therein). Such order shall remain ef-  
14          fective and enforceable except to such extent as it is  
15          stayed, modified, terminated, or set aside by action  
16          of the Director or a reviewing court.

17          “(d) PROHIBITION OF CERTAIN SPECIFIC ACTIVI-  
18          TIES.—Any person subject to an order issued under this  
19          section shall not—

20                 “(1) participate in any manner in the conduct  
21                 of the affairs of any regulated entity or the Finance  
22                 Facility;

23                 “(2) solicit, procure, transfer, attempt to trans-  
24                 fer, vote, or attempt to vote any proxy, consent, or

1 authorization with respect to any voting rights in  
2 any regulated entity;

3 “(3) violate any voting agreement previously  
4 approved by the Director; or

5 “(4) vote for a director, or serve or act as an  
6 entity-affiliated party of a regulated entity or as an  
7 officer or director of the Finance Facility.

8 “(e) INDUSTRY-WIDE PROHIBITION.—

9 “(1) IN GENERAL.—Except as provided in para-  
10 graph (2), any person who, pursuant to an order  
11 issued under this section, has been removed or sus-  
12 pended from office in a regulated entity or the Fi-  
13 nance Facility, or prohibited from participating in  
14 the conduct of the affairs of a regulated entity or  
15 the Finance Facility, may not, while such order is in  
16 effect, continue or commence to hold any office in,  
17 or participate in any manner in the conduct of the  
18 affairs of, any regulated entity or the Finance Facil-  
19 ity.

20 “(2) EXCEPTION IF DIRECTOR PROVIDES WRIT-  
21 TEN CONSENT.—If, on or after the date on which an  
22 order is issued under this section which removes or  
23 suspends from office any party, or prohibits such  
24 party from participating in the conduct of the affairs  
25 of a regulated entity or the Finance Facility, such

1 party receives the written consent of the Director,  
2 the order shall, to the extent of such consent, cease  
3 to apply to such party with respect to the regulated  
4 entity or such Finance Facility described in the writ-  
5 ten consent. Any such consent shall be publicly dis-  
6 closed.

7 “(3) VIOLATION OF PARAGRAPH (1) TREATED  
8 AS VIOLATION OF ORDER.—Any violation of para-  
9 graph (1) by any person who is subject to an order  
10 issued under subsection (h) shall be treated as a vio-  
11 lation of the order.

12 “(f) APPLICABILITY.—This section shall only apply  
13 to a person who is an individual, unless the Director spe-  
14 cifically finds that it should apply to a corporation, firm,  
15 or other business entity.

16 “(g) STAY OF SUSPENSION AND PROHIBITION OF  
17 ENTITY-AFFILIATED PARTY.—Not later than 10 days  
18 after the date on which any entity-affiliated party has been  
19 suspended from office or prohibited from participation in  
20 the conduct of the affairs of a regulated entity under this  
21 section, such party may apply to the United States Dis-  
22 trict Court for the District of Columbia, or the United  
23 States district court for the judicial district in which the  
24 headquarters of the regulated entity is located, for a stay  
25 of such suspension or prohibition pending the completion

1 of the administrative proceedings pursuant to subsection  
2 (c). The court shall have jurisdiction to stay such suspen-  
3 sion or prohibition.

4 “(h) SUSPENSION OR REMOVAL OF ENTITY-AFFILI-  
5 ATED PARTY CHARGED WITH FELONY.—

6 “(1) SUSPENSION OR PROHIBITION.—

7 “(A) IN GENERAL.—Whenever any entity-  
8 affiliated party is charged in any information,  
9 indictment, or complaint, with the commission  
10 of or participation in a crime involving dishon-  
11 esty or breach of trust which is punishable by  
12 imprisonment for a term exceeding 1 year  
13 under Federal or State law, the Director may,  
14 if continued service or participation by such  
15 party may pose a threat to the regulated entity  
16 or impair public confidence in the regulated en-  
17 tity, by written notice served upon such party,  
18 suspend such party from office or prohibit such  
19 party from further participation in any manner  
20 in the conduct of the affairs of any regulated  
21 entity.

22 “(B) PROVISIONS APPLICABLE TO NO-  
23 TICE.—

1           “(i) COPY.—A copy of any notice  
2           under subparagraph (A) shall be served  
3           upon the relevant regulated entity.

4           “(ii) EFFECTIVE PERIOD.—A suspen-  
5           sion or prohibition under subparagraph (A)  
6           shall remain in effect until the informa-  
7           tion, indictment, or complaint referred to  
8           in subparagraph (A) is finally disposed of,  
9           or until terminated by the Director.

10          “(2) REMOVAL OR PROHIBITION.—

11           “(A) IN GENERAL.—If a judgment of con-  
12           viction or an agreement to enter a pretrial di-  
13           version or other similar program is entered  
14           against an entity-affiliated party in connection  
15           with a crime described in paragraph (1)(A), at  
16           such time as such judgment is not subject to  
17           further appellate review, the Director may, if  
18           continued service or participation by such party  
19           may pose a threat to the regulated entity or im-  
20           pair public confidence in the regulated entity,  
21           issue and serve upon such party an order re-  
22           moving such party from office or prohibiting  
23           such party from further participation in any  
24           manner in the conduct of the affairs of the reg-

1           ulated entity without the prior written consent  
2           of the Director.

3           “(B)    PROVISIONS    APPLICABLE    TO  
4           ORDER.—

5           “(i) COPY.—A copy of any order  
6           under subparagraph (A) shall be served  
7           upon the relevant regulated entity, at  
8           which time the entity-affiliated party who  
9           is subject to the order (if a director or an  
10          officer) shall cease to be a director or offi-  
11          cer of such regulated entity.

12          “(ii) EFFECT OF ACQUITTAL.—A find-  
13          ing of not guilty or other disposition of the  
14          charge shall not preclude the Director from  
15          instituting proceedings after such finding  
16          or disposition to remove a party from of-  
17          fice or to prohibit further participation in  
18          the affairs of a regulated entity pursuant  
19          to subsection (a) or (b).

20          “(iii) EFFECTIVE PERIOD.—Unless  
21          terminated by the Director, any notice of  
22          suspension or order of removal issued  
23          under this subsection shall remain effective  
24          and outstanding until the completion of

1           any hearing or appeal authorized under  
2           paragraph (4).

3           “(3) AUTHORITY OF REMAINING BOARD MEM-  
4           BERS.—

5           “(A) IN GENERAL.—If at any time, be-  
6           cause of the suspension of 1 or more directors  
7           pursuant to this section, there shall be on the  
8           board of directors of a regulated entity less  
9           than a quorum of directors not so suspended,  
10          all powers and functions vested in or exercisable  
11          by such board shall vest in and be exercisable  
12          by the director or directors on the board not so  
13          suspended, until such time as there shall be a  
14          quorum of the board of directors.

15          “(B) APPOINTMENT OF TEMPORARY DI-  
16          RECTORS.—If all of the directors of a regulated  
17          entity are suspended pursuant to this section,  
18          the Director shall appoint persons to serve tem-  
19          porarily as directors pending the termination of  
20          such suspensions, or until such time as those  
21          who have been suspended cease to be directors  
22          of the regulated entity and their respective suc-  
23          cessors take office.

24          “(4) HEARING REGARDING CONTINUED PAR-  
25          TICIPATION.—

1           “(A) IN GENERAL.—Not later than 30  
2 days after the date of service of any notice of  
3 suspension or order of removal issued pursuant  
4 to paragraph (1) or (2), the entity-affiliated  
5 party may request in writing an opportunity to  
6 appear before the Director to show that the  
7 continued service or participation in the con-  
8 duct of the affairs of the regulated entity by  
9 such party does not, or is not likely to, pose a  
10 threat to the interests of the regulated entity,  
11 or threaten to impair public confidence in the  
12 regulated entity.

13           “(B) TIMING AND FORM OF HEARING.—  
14 Upon receipt of a request for a hearing under  
15 subparagraph (A), the Director shall fix a time  
16 (not later than 30 days after the date of receipt  
17 of such request, unless extended at the request  
18 of such party) and place at which the entity-af-  
19 filiated party may appear, personally or through  
20 counsel, before the Director or 1 or more des-  
21 ignated employees of the Director to submit  
22 written materials (or, at the discretion of the  
23 Director, oral testimony) and oral argument.

24           “(C) DETERMINATION.—Not later than 60  
25 days after the date of a hearing under subpara-

1 graph (B), the Director shall notify the entity-  
2 affiliated party whether the suspension or pro-  
3 hibition from participation in any manner in  
4 the conduct of the affairs of the regulated enti-  
5 ty will be continued, terminated, or otherwise  
6 modified, or whether the order removing such  
7 party from office or prohibiting such party from  
8 further participation in any manner in the con-  
9 duct of the affairs of the regulated entity will  
10 be rescinded or otherwise modified. Such notifi-  
11 cation shall contain a statement of the basis for  
12 any adverse decision of the Director.

13 “(5) RULES.—The Director is authorized to  
14 prescribe such rules as may be necessary to carry  
15 out this subsection.”.

16 (b) CONFORMING AMENDMENTS.—

17 (1) SAFETY AND SOUNDNESS ACT.—Subtitle C  
18 of title XIII of the Federal Housing Enterprises Fi-  
19 nancial Safety and Soundness Act of 1992 (42  
20 U.S.C. 4501 et seq.) is amended—

21 (A) in section 1317(f), by striking “section  
22 1379B” and inserting “section 1379D”;

23 (B) in section 1373(a)—

1 (i) in paragraph (1), by striking “or  
2 1376(c)” and inserting “, 1376(c), or  
3 1377”;

4 (ii) in paragraph (2), by inserting “or  
5 1377” after “1371”; and

6 (iii) in paragraph (4), by inserting “or  
7 removal or prohibition” after “cease and  
8 desist”; and

9 (C) in section 1374(a)—

10 (i) by striking “or 1376” and insert-  
11 ing “, 1376, or 1377”; and

12 (ii) by striking “such section” and in-  
13 serting “this title”.

14 (2) FANNIE MAE CHARTER ACT.—Section  
15 308(b) of the Federal National Mortgage Associa-  
16 tion Charter Act (12 U.S.C. 1723(b)) is amended in  
17 the second sentence, by striking “The” and inserting  
18 “Except to the extent that action under section  
19 1377 of the Federal Housing Enterprises Financial  
20 Safety and Soundness Act of 1992 temporarily re-  
21 sults in a lesser number, the”.

22 (3) FREDDIE MAC CHARTER ACT.—Section  
23 303(a)(2)(A) of the Federal Home Loan Mortgage  
24 Corporation Act (12 U.S.C. 1452(a)(2)(A)) is  
25 amended, in the second sentence, by striking “The”

1 and inserting “Except to the extent action under  
2 section 1377 of the Federal Housing Enterprises Fi-  
3 nancial Safety and Soundness Act of 1992 tempo-  
4 rarily results in a lesser number, the”.

5 **SEC. 154. ENFORCEMENT AND JURISDICTION.**

6 (a) IN GENERAL.—Section 1375 of the Federal  
7 Housing Enterprises Financial Safety and Soundness Act  
8 of 1992 (12 U.S.C. 4635) is amended—

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

11 “(a) ENFORCEMENT.—The Director may, in the dis-  
12 cretion of the Director, apply to the United States District  
13 Court for the District of Columbia, or the United States  
14 district court within the jurisdiction of which the head-  
15 quarters of the regulated entity is located, for the enforce-  
16 ment of any effective and outstanding notice, order, or  
17 subpoena issued under this title, or request that the Attor-  
18 ney General of the United States bring such an action.  
19 Such court shall have jurisdiction and power to order and  
20 require compliance with such notice, order, or subpoena.”;  
21 and

22 (2) in subsection (b)—

23 (A) by striking “section 1371, 1372, or  
24 1376 or”;

1 (B) by inserting “subtitle C, or section  
2 1313A” after “subtitle B,”; and

3 (C) by inserting “, standard,” after “no-  
4 tice” each place that term appears.

5 (b) CONFORMING AMENDMENT.—Section 1379B of  
6 the Federal Housing Enterprises Financial Safety and  
7 Soundness Act of 1992 (12 U.S.C. 4641) is amended by  
8 striking subsection (c) and redesignating subsection (d) as  
9 subsection (c).

10 **SEC. 155. CIVIL MONEY PENALTIES.**

11 Section 1376 of the Federal Housing Enterprises Fi-  
12 nancial Safety and Soundness Act of 1992 (12 U.S.C.  
13 4636) is amended—

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

16 “(a) IN GENERAL.—The Director may impose a civil  
17 money penalty in accordance with this section on any reg-  
18 ulated entity, or any executive offices of a regulated entity  
19 or any entity-affiliated party.”;

20 (2) by striking subsection (b) and inserting the  
21 following:

22 “(b) AMOUNT OF PENALTY.—

23 “(1) FIRST TIER.—A regulated entity or entity-  
24 affiliated party shall forfeit and pay a civil penalty  
25 of not more than \$10,000 for each day during which

1 a violation continues, if such regulated entity or  
2 party—

3 “(A) violates any provision of this title, the  
4 authorizing statutes, or any order, condition,  
5 rule, or regulation under this title or any au-  
6 thorizing statute;

7 “(B) violates any final or temporary order  
8 or notice issued pursuant to this title;

9 “(C) violates any condition imposed in  
10 writing by the Director in connection with the  
11 grant of any application or other request by  
12 such regulated entity;

13 “(D) violates any written agreement be-  
14 tween the regulated entity and the Director; or

15 “(E) engages in any conduct that the Di-  
16 rector determines to be an unsafe or unsound  
17 practice.

18 “(2) SECOND TIER.—Notwithstanding para-  
19 graph (1), a regulated entity or entity-affiliated  
20 party shall forfeit and pay a civil penalty of not  
21 more than \$50,000 for each day during which a vio-  
22 lation, practice, or breach continues, if—

23 “(A) the regulated entity or entity-affili-  
24 ated party, respectively—

1           “(i) commits any violation described  
2           in any subparagraph of paragraph (1);

3           “(ii) recklessly engages in an unsafe  
4           or unsound practice in conducting the af-  
5           fairs of the regulated entity; or

6           “(iii) breaches any fiduciary duty; and  
7           “(B) the violation, practice, or breach—

8           “(i) is part of a pattern of mis-  
9           conduct;

10           “(ii) causes or is likely to cause more  
11           than a minimal loss to the regulated entity;  
12           or

13           “(iii) results in pecuniary gain or  
14           other benefit to such party.

15           “(3) THIRD TIER.—Notwithstanding para-  
16           graphs (1) and (2), any regulated entity or entity-  
17           affiliated party shall forfeit and pay a civil penalty  
18           in an amount not to exceed the applicable maximum  
19           amount determined under paragraph (4) for each  
20           day during which such violation, practice, or breach  
21           continues, if such regulated entity or entity-affiliated  
22           party—

23           “(A) knowingly—

24           “(i) commits any violation described  
25           in any subparagraph of paragraph (1);

1                   “(ii) engages in any unsafe or un-  
2                   sound practice in conducting the affairs of  
3                   the regulated entity; or

4                   “(iii) breaches any fiduciary duty; and

5                   “(B) knowingly or recklessly causes a sub-  
6                   stantial loss to the regulated entity or a sub-  
7                   stantial pecuniary gain or other benefit to such  
8                   party by reason of such violation, practice, or  
9                   breach.

10                  “(4) MAXIMUM AMOUNTS OF PENALTIES FOR  
11                  ANY VIOLATION DESCRIBED IN PARAGRAPH (3).—  
12                  The maximum daily amount of any civil penalty  
13                  which may be assessed pursuant to paragraph (3)  
14                  for any violation, practice, or breach described in  
15                  paragraph (3) is—

16                         “(A) in the case of any entity-affiliated  
17                         party, an amount not to exceed \$2,000,000;  
18                         and

19                         “(B) in the case of any regulated entity,  
20                         \$2,000,000.”;

21                  (3) in subsection (c)—

22                         (A) by striking “enterprise” each place  
23                         that term appears and inserting “regulated en-  
24                         tity”;

1 (B) by inserting “or entity-affiliated  
2 party” before “in writing”; and

3 (C) by inserting “or entity-affiliated party”  
4 before “has been given”;

5 (4) in subsection (d)—

6 (A) by striking “or director” each place  
7 such term appears and inserting “director, or  
8 entity-affiliated party”;

9 (B) by striking “an enterprise” and insert-  
10 ing “a regulated entity”;

11 (C) by striking “the enterprise” and in-  
12 serting “the regulated entity”;

13 (D) by striking “request the Attorney Gen-  
14 eral of the United States to”;

15 (E) by inserting “, or the United States  
16 district court within the jurisdiction of which  
17 the headquarters of the regulated entity is lo-  
18 cated,” after “District of Columbia”;

19 (F) by striking “, or may, under the direc-  
20 tion and control of the Attorney General of the  
21 United States, bring such an action”; and

22 (G) by striking “and section 1374”; and

23 (5) in subsection (g), by striking “An enter-  
24 prise” and inserting “A regulated entity”.

1 **SEC. 156. CRIMINAL PENALTY.**

2 (a) IN GENERAL.—Subtitle C of the Federal Housing  
3 Enterprises Financial Safety and Soundness Act of 1992  
4 (12 U.S.C. 4631 et seq.), as amended by this Act, is  
5 amended by adding at the end the following:

6 **“SEC. 1378. CRIMINAL PENALTY.**

7 “Whoever, being subject to an order in effect under  
8 section 1377, without the prior written approval of the Di-  
9 rector, knowingly participates, directly or indirectly, in any  
10 manner (including by engaging in an activity specifically  
11 prohibited in such an order) in the conduct of the affairs  
12 of any regulated entity shall, notwithstanding section  
13 3571 of title 18, be fined not more than \$1,000,000, im-  
14 prisoned for not more than 5 years, or both.”.

15 (b) TECHNICAL AND CONFORMING AMENDMENTS.—  
16 The Federal Housing Enterprises Financial Safety and  
17 Soundness Act of 1992 (12 U.S.C. 4501 et seq.) is amend-  
18 ed—

19 (1) in section 1379 (as so designated by this  
20 Act)—

21 (A) by striking “an enterprise” and insert-  
22 ing “a regulated entity”; and

23 (B) by striking “the enterprise” and in-  
24 serting “the regulated entity”;

1           (2) in section 1379A (as so designated by this  
2 Act), by striking “an enterprise” and inserting “a  
3 regulated entity”;

4           (3) in section 1379B(c) (as so designated by  
5 this Act), by striking “enterprise” and inserting  
6 “regulated entity”; and

7           (4) in section 1379D (as so designated by this  
8 Act), by striking “enterprise” and inserting “regu-  
9 lated entity”.

10 **SEC. 157. NOTICE AFTER SEPARATION FROM SERVICE.**

11       Section 1379 of the Federal Housing Enterprises Fi-  
12 nancial Safety and Soundness Act of 1992 (12 U.S.C.  
13 4637), as so designated by this Act, is amended—

14           (1) by striking “2-year” and inserting “6-year”;  
15 and

16           (2) by inserting “or an entity-affiliated party”  
17 after “enterprise” each place that term appears.

18 **SEC. 158. SUBPOENA AUTHORITY.**

19       Section 1379B of the Federal Housing Enterprises  
20 Financial Safety and Soundness Act of 1992 (12 U.S.C.  
21 4641) is amended—

22           (1) in subsection (a)—

23                (A) in the matter preceding paragraph

24                (1)—

25                       (i) by striking “administrative”;

1 (ii) by inserting “, examination, or in-  
2 vestigation” after “proceeding”;

3 (iii) by striking “subchapter” and in-  
4 serting “title”; and

5 (iv) by inserting “or any designated  
6 representative thereof, including any per-  
7 son designated to conduct any hearing  
8 under this subtitle” after “Director”; and

9 (B) in paragraph (4), by striking “issued  
10 by the Director”;

11 (2) in subsection (b), by inserting “or in any  
12 territory or other place subject to the jurisdiction of  
13 the United States” after “State”;

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

16 “(c) ENFORCEMENT.—

17 “(1) IN GENERAL.—The Director, or any party  
18 to proceedings under this subtitle, may apply to the  
19 United States District Court for the District of Co-  
20 lumbia, or the United States district court for the  
21 judicial district of the United States in any territory  
22 in which such proceeding is being conducted, or  
23 where the witness resides or carries on business, for  
24 enforcement of any subpoena or subpoena duces  
25 tecum issued pursuant to this section.

1           “(2) POWER OF COURT.—The courts described  
2           under paragraph (1) shall have the jurisdiction and  
3           power to order and require compliance with any sub-  
4           poena issued under paragraph (1)”;

5           (4) in subsection (d), by inserting “enterprise-  
6           affiliated party” before “may allow”; and

7           (5) by adding at the end the following:

8           “(e) PENALTIES.—A person shall be guilty of a mis-  
9           demeanor, and upon conviction, shall be subject to a fine  
10          of not more than \$1,000 or to imprisonment for a term  
11          of not more than 1 year, or both, if that person willfully  
12          fails or refuses, in disobedience of a subpoena issued under  
13          subsection (e), to—

14               “(1) attend court;

15               “(2) testify in court;

16               “(3) answer any lawful inquiry; or

17               “(4) produce books, papers, correspondence,  
18          contracts, agreements, or such other records as re-  
19          quested in the subpoena.”.

## 20           **Subtitle E—General Provisions**

### 21           **SEC. 161. CONFORMING AND TECHNICAL AMENDMENTS.**

22           (a) AMENDMENTS TO 1992 ACT.—The Federal  
23          Housing Enterprises Financial Safety and Soundness Act  
24          of 1992 (12 U.S.C. 4501 et seq.), as amended by this Act,  
25          is amended—

- 1 (1) in section 1315 (12 U.S.C. 4515)—
- 2 (A) in subsection (a)—
- 3 (i) by striking “(a) **OFFICE PER-**
- 4 **SONNEL.—The**” and inserting “(a) **IN**
- 5 **GENERAL.—**Subject to title III of the
- 6 Federal Housing Enterprise Regulatory
- 7 Reform Act of 2007, the”; and
- 8 (ii) by striking “the Office” each place
- 9 that term appears and inserting “the
- 10 Agency”;
- 11 (B) in subsection (c), by striking “the Of-
- 12 fice” and inserting “the Agency”;
- 13 (C) in subsection (e), by striking “the Of-
- 14 fice” and inserting “the Agency”;
- 15 (D) by striking subsections (d) and (f);
- 16 and
- 17 (E) by redesignating subsection (e) as sub-
- 18 section (d);
- 19 (2) in section 1319A (12 U.S.C. 4520)—
- 20 (A) by striking “(a) **IN GENERAL.—**”;
- 21 and
- 22 (B) by striking subsection (b);
- 23 (3) in section 1364(e) (12 U.S.C. 4614(e)), by
- 24 striking the last sentence;

1           (4) by striking section 1383 (12 U.S.C. 1451  
2 note);

3           (5) in each of sections 1319D, 1319E, and  
4 1319F (12 U.S.C. 4523, 4524, 4525) by striking  
5 “the Office” each place that term appears and in-  
6 serting “the Agency”; and

7           (6) in each of sections 1319B and 1369(a)(3)  
8 (12 U.S.C. 4521, 4619(a)(3)), by striking “Com-  
9 mittee on Banking, Finance and Urban Affairs”  
10 each place that term appears and inserting “Com-  
11 mittee on Financial Services”.

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

15           (1) in each of sections 303(c)(2) (12 U.S.C.  
16 1718(c)(2)), 309(d)(3)(B) (12 U.S.C.  
17 1723a(d)(3)(B)), and 309(k)(1) (12 U.S.C.  
18 1723a(k)(1)), by striking “Director of the Office of  
19 Federal Housing Enterprise Oversight of the De-  
20 partment of Housing and Urban Development” each  
21 place that term appears, and inserting “Director of  
22 the Federal Housing Enterprise Regulatory Agen-  
23 cy”;

24           (2) in section 309—

1 (A) in subsection (m) (12 U.S.C.  
2 1723a(m))—

3 (i) in paragraph (1), by striking “to  
4 the Secretary, in a form determined by the  
5 Secretary” and inserting “to the Director  
6 of the Federal Housing Enterprise Regu-  
7 latory Agency, in a form determined by the  
8 Director”; and

9 (ii) in paragraph (2), by striking “to  
10 the Secretary, in a form determined by the  
11 Secretary” and inserting “to the Director  
12 of the Federal Housing Enterprise Regu-  
13 latory Agency, in a form determined by the  
14 Director”;

15 (B) in subsection (n) (12 U.S.C.  
16 1723a(n))—

17 (i) in paragraph (1), by striking “and  
18 the Secretary” and inserting “and the Di-  
19 rector of the Federal Housing Enterprise  
20 Regulatory Agency”; and

21 (ii) in paragraph (2), by striking  
22 “Secretary” each place that term appears  
23 and inserting “Director of the Federal  
24 Housing Enterprise Regulatory Agency”;  
25 and

1                   (C) in paragraph (3)(B), by striking “Sec-  
2                   retary” and inserting “Director of the Federal  
3                   Housing Enterprise Regulatory Agency”.

4           (c) AMENDMENTS TO FREDDIE MAC CHARTER  
5 ACT.—The Federal Home Loan Mortgage Corporation  
6 Act (12 U.S.C. 1451 et seq.) is amended—

7           (1) in each of sections 303(b)(2) (12 U.S.C.  
8           1452(b)(2)), 303(h)(2) (12 U.S.C. 1452(h)(2)), and  
9           section 307(c)(1) (12 U.S.C. 1456(c)(1)), by strik-  
10          ing “Director of the Office of Federal Housing En-  
11          terprise Oversight of the Department of Housing  
12          and Urban Development” each place that term ap-  
13          pears, and inserting “Director of the Federal Hous-  
14          ing Enterprise Regulatory Agency”;

15          (2) in section 306 (12 U.S.C. 1455)—

16                  (A) in subsection (c)(2), by inserting “the”  
17                  after “Secretary of”;

18                  (B) in subsection (i)—

19                          (i) by striking “section 1316(c)” and  
20                          inserting “section 306(c)”; and

21                          (ii) by striking “section 106” and in-  
22                          serting “section 1316”; and

23                  (C) in subsection (j), by striking “of sub-  
24          stantially” and inserting “or substantially”; and

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

1 (A) in subsection (e)—

2 (i) in paragraph (1), by striking “to  
3 the Secretary, in a form determined by the  
4 Secretary” and inserting “to the Director  
5 of the Federal Housing Enterprise Regu-  
6 latory Agency, in a form determined by the  
7 Director”; and

8 (ii) in paragraph (2), by striking “to  
9 the Secretary, in a form determined by the  
10 Secretary” and inserting “to the Director  
11 of the Federal Housing Enterprise Regu-  
12 latory Agency, in a form determined by the  
13 Director”; and

14 (B) in subsection (f)—

15 (i) in paragraph (1), by striking “and  
16 the Secretary” and inserting “and the Di-  
17 rector of the Federal Housing Enterprise  
18 Regulatory Agency”;

19 (ii) in paragraph (2), by striking “the  
20 Secretary” each place that term appears  
21 and inserting “the Director of the Federal  
22 Housing Enterprise Regulatory Agency”;  
23 and

24 (iii) in paragraph (3)(B), by striking  
25 “Secretary” and inserting “Director of the

1 Federal Housing Enterprise Regulatory  
2 Agency”.

3 (d) AMENDMENT TO TITLE 18, UNITED STATES  
4 CODE.—Section 1905 of title 18, United States Code, is  
5 amended by striking “Office of Federal Housing Enter-  
6 prise Oversight” and inserting “Federal Housing Enter-  
7 prise Regulatory Agency”.

8 (e) AMENDMENT TO FLOOD DISASTER PROTECTION  
9 ACT OF 1973.—Section 102(f)(3)(A) of the Flood Dis-  
10 aster Protection Act of 1973 (42 U.S.C. 4012a(f)(3)(A))  
11 is amended by striking “Director of the Office of Federal  
12 Housing Enterprise Oversight of the Department of Hous-  
13 ing and Urban Development” and inserting “Director of  
14 the Federal Housing Enterprise Regulatory Agency”.

15 (f) AMENDMENT TO DEPARTMENT OF HOUSING AND  
16 URBAN DEVELOPMENT ACT.—Section 5 of the Depart-  
17 ment of Housing and Urban Development Act (42 U.S.C.  
18 3534) is amended by striking subsection (d).

19 (g) AMENDMENT TO TITLE 5, UNITED STATES  
20 CODE.—Section 5313 of title 5, United States Code, is  
21 amended by striking the item relating to the Director of  
22 the Office of Federal Housing Enterprise Oversight, De-  
23 partment of Housing and Urban Development and insert-  
24 ing the following new item:

1           “Director of the Federal Housing Enterprise  
2           Regulatory Agency.”.

3           (h) AMENDMENT TO SARBANES-OXLEY ACT.—Sec-  
4           tion 105(b)(5)(B)(ii)(II) of the Sarbanes-Oxley Act of  
5           2002 (15 U.S.C. 7215(b)(5)(B)(ii)(II)) is amended by in-  
6           serting “and the Director of the Federal Housing Enter-  
7           prise Regulatory Agency,” after “Commission,”.

8           (i) AMENDMENT TO FEDERAL DEPOSIT INSURANCE  
9           ACT.—Section 11(t)(2)(A) of the Federal Deposit Insur-  
10          ance Act (12 U.S.C. 1821(t)(2)(A)) is amended by adding  
11          at the end the following:

12                           “(vii) The Federal Housing Enter-  
13                           prise Regulatory Agency.”.

14   **SEC. 162. PRESIDENTIALLY APPOINTED DIRECTORS OF EN-**  
15                           **TERPRISES.**

16          (a) FANNIE MAE.—

17                   (1) IN GENERAL.—Section 308(b) of the Fed-  
18                   eral National Mortgage Association Charter Act (12  
19                   U.S.C. 1723(b)) is amended—

20                           (A) in the first sentence, by striking  
21                           “eighteen persons, five of whom shall be ap-  
22                           pointed annually by the President of the United  
23                           States, and the remainder of whom” and insert-  
24                           ing “13 persons, or such other number that the  
25                           Director determines appropriate, who”;

1 (B) in the second sentence, by striking  
2 “appointed by the President”;

3 (C) in the third sentence—

4 (i) by striking “appointed or”; and

5 (ii) by striking “, except that any  
6 such appointed member may be removed  
7 from office by the President for good  
8 cause”;

9 (D) in the fourth sentence, by striking  
10 “elective”; and

11 (E) by striking the fifth sentence.

12 (2) TRANSITIONAL PROVISION.—The amend-  
13 ments made by paragraph (1) shall not apply to any  
14 appointed position of the board of directors of the  
15 Federal National Mortgage Association until the ex-  
16 piration of the annual term for such position during  
17 which the effective date under section 163 occurs.

18 (b) FREDDIE MAC.—

19 (1) IN GENERAL.—Section 303(a)(2) of the  
20 Federal Home Loan Mortgage Corporation Act (12  
21 U.S.C. 1452(a)(2)) is amended—

22 (A) in subparagraph (A)—

23 (i) in the first sentence, by striking  
24 “13 persons, 5 of whom shall be appointed  
25 annually by the President of the United

1 States and the remainder of whom” and  
2 inserting “13 persons, or such other num-  
3 ber as the Director determines appropriate,  
4 who”; and

5 (ii) in the second sentence, by striking  
6 “appointed by the President of the United  
7 States”;

8 (B) in subparagraph (B)—

9 (i) by striking “such or”; and

10 (ii) by striking “, except that any ap-  
11 pointed member may be removed from of-  
12 fice by the President for good cause”; and

13 (C) in subparagraph (C)—

14 (i) by striking the first sentence; and

15 (ii) by striking “elective”.

16 (2) TRANSITIONAL PROVISION.—The amend-  
17 ments made by paragraph (1) shall not apply to any  
18 appointed position of the board of directors of the  
19 Federal Home Loan Mortgage Corporation until the  
20 expiration of the annual term for such position dur-  
21 ing which the effective date under section 163 oc-  
22 curs.

23 **SEC. 163. EFFECTIVE DATE.**

24 Except as otherwise specifically provided in this title,  
25 this title and the amendments made by this title shall take

1 effect on, and shall apply beginning on, the date of enact-  
2 ment of this Act.

3 **TITLE II—FEDERAL HOME LOAN**  
4 **BANKS**

5 **SEC. 201. DIRECTORS.**

6 Section 7 of the Federal Home Loan Bank Act (12  
7 U.S.C. 1427) is amended—

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

10 “(a) NUMBER; ELECTION; QUALIFICATIONS; CON-  
11 Flicts OF INTEREST.—

12 “(1) IN GENERAL.—Subject to paragraphs (2)  
13 through (4), the management of each Federal Home  
14 Loan Bank shall be vested in a board of 13 direc-  
15 tors, or such other number as the Director deter-  
16 mines appropriate.

17 “(2) BOARD MAKEUP.—The board of directors  
18 of each Bank shall be comprised of—

19 “(A) member directors, who shall comprise  
20 at least the majority of the members of the  
21 board of directors; and

22 “(B) independent directors, who shall com-  
23 prise not fewer than  $\frac{1}{3}$  of the members of the  
24 board of directors.

25 “(3) SELECTION CRITERIA.—

1           “(A) IN GENERAL.—Each member of the  
2 board of directors shall be—

3                   “(i) elected by plurality vote of the  
4 members, in accordance with procedures  
5 established under this section; and

6                   “(ii) a citizen of the United States.

7           “(B) INDEPENDENT DIRECTOR CRI-  
8 TERIA.—

9                   “(i) PUBLIC INTEREST.—Not fewer  
10 than 2 of the independent directors shall  
11 be selected from among representatives of  
12 organizations having more than a 2-year  
13 history of representing consumer or com-  
14 munity interests on banking services, cred-  
15 it needs, housing, or financial consumer  
16 protections.

17                   “(ii) CONFLICTS OF INTEREST.—No  
18 independent director may, during the term  
19 of service on the board of directors, serve  
20 as an officer of any Federal Home Loan  
21 Bank or as a director or officer of any  
22 member Bank.

23           “(4) DEFINITIONS.—For purposes of this sec-  
24 tion, the following definitions shall apply:

1           “(A) INDEPENDENT DIRECTOR.—The  
 2 terms ‘independent director’ and ‘independent  
 3 directorship’ mean a member of the board of di-  
 4 rectors of a Federal Home Loan Bank who is  
 5 a bona fide resident of the district in which the  
 6 Federal Home Loan Bank is located, or the di-  
 7 rectorship held by such a person, respectively.

8           “(B) MEMBER DIRECTOR.—The terms  
 9 ‘member director’ and ‘member directorship’  
 10 mean a member of the board of directors of a  
 11 Federal Home Loan Bank who is an officer or  
 12 director of a member institution that is located  
 13 in the district in which the Federal Home Loan  
 14 Bank is located, or the directorship held by  
 15 such a person, respectively.”;

16           (2) by striking “elective” each place that term  
 17 appears, other than in subsections (d), (e), and (f),  
 18 and inserting “member”;

19           (3) in subsection (b)—

20           (A) by striking the subsection heading and  
 21 all that follows through “Each elective director-  
 22 ship” and inserting the following:

23           “(b) DIRECTORSHIPS.—

24           “(1) MEMBER DIRECTORSHIPS.—Each member  
 25 directorship”; and

1 (B) by adding at the end the following:

2 “(2) INDEPENDENT DIRECTORSHIPS.—

3 “(A) ELECTIONS.—Each independent di-  
4 rector—

5 “(i) shall be elected by the members  
6 entitled to vote, from among eligible per-  
7 sons nominated by the board of directors  
8 of the Bank; and

9 “(ii) shall be filled by a plurality of  
10 the votes of the members of the Bank at  
11 large, with each member having the num-  
12 ber of votes for each such directorship as  
13 it has under subsection (b)(1) in an elec-  
14 tion to fill member directorships.

15 “(B) CRITERIA.—Nominees shall meet all  
16 applicable requirements prescribed in this sec-  
17 tion.

18 “(C) NOMINATION AND ELECTION PROCE-  
19 DURES.—Procedures for nomination and elec-  
20 tion of independent directors shall be prescribed  
21 by the bylaws of each Federal Home Loan  
22 Bank, in a manner consistent with the rules  
23 and regulations of the Agency.”;

24 (4) in subsection (c), by striking the second,  
25 third, and fifth sentences;

- 1 (5) in subsection (d)—
- 2 (A) in the first sentence—
- 3 (i) by striking “, whether elected or
- 4 appointed,”; and
- 5 (ii) by striking “3 years” and insert-
- 6 ing “4 years”;
- 7 (B) in the second sentence—
- 8 (i) by striking “Federal Home Loan
- 9 Bank System Modernization Act of 1999”
- 10 and inserting “Federal Housing Enterprise
- 11 Regulatory Reform Act of 2007”;
- 12 (ii) by striking “ $\frac{1}{3}$ ” and inserting
- 13 “ $\frac{1}{4}$ ”; and
- 14 (iii) by striking “or appointed”; and
- 15 (C) in the third sentence—
- 16 (i) by striking “an elective” each place
- 17 that term appears and inserting “a”; and
- 18 (ii) by striking “in any elective direc-
- 19 torship or elective directorships”;
- 20 (6) in subsection (f)—
- 21 (A) by striking paragraph (2);
- 22 (B) by striking “appointed or” each place
- 23 that term appears; and
- 24 (C) in paragraph (3)—

1 (i) by striking “(3) **ELECTED BANK**  
2 **DIRECTORS.—**” and inserting “(2)  
3 **ELECTION PROCESS.—**”; and

4 (ii) by striking “elective” each place  
5 that term appears;

6 (7) in subsection (i)—

7 (A) in paragraph (1), by striking “(1) **IN**  
8 **GENERAL.—**Subject to paragraph (2), each”  
9 and inserting “Each”; and

10 (B) by striking paragraph (2); and

11 (8) by adding at the end the following:

12 “(1) **TRANSITION RULE.—**Any member of the board  
13 of directors of a Bank elected or appointed in accordance  
14 with this section prior to the date of enactment of this  
15 subsection may continue to serve as a member of that  
16 board of directors for the remainder of the existing term  
17 of service.”.

18 **SEC. 202. DEFINITIONS.**

19 Section 2 of the Federal Home Loan Bank Act (12  
20 U.S.C. 1422) is amended—

21 (1) by striking paragraphs (1), (10), and (11);

22 (2) by redesignating paragraphs (2) through  
23 (9) as paragraphs (1) through (8), respectively;

24 (3) by redesignating paragraphs (12) and (13)  
25 as paragraphs (9) and (10), respectively; and

1 (4) by adding at the end the following:

2 “(11) DIRECTOR.—The term ‘Director’ means  
3 the Director of the Federal Housing Enterprise Reg-  
4 ulatory Agency.

5 “(12) AGENCY.—The term ‘Agency’ means the  
6 Federal Housing Enterprise Regulatory Agency, es-  
7 tablished under section 1311 of the Federal Housing  
8 Enterprises Financial Safety and Soundness Act of  
9 1992.

10 “(13) FINANCE FACILITY.—The term ‘Finance  
11 Facility’ means the Federal Home Loan Bank Fi-  
12 nance Facility established under section 11A.”.

13 **SEC. 203. AGENCY OVERSIGHT OF FEDERAL HOME LOAN**  
14 **BANKS.**

15 The Federal Home Loan Bank Act (12 U.S.C. 1421  
16 et seq.), other than in provisions of that Act added or  
17 amended otherwise by this Act, is amended—

18 (1) by striking sections 2A, 2B, and 20 (12  
19 U.S.C. 1422a, 1422b, 1440);

20 (2) in section 18 (12 U.S.C. 1438), by striking  
21 subsection (b);

22 (3) in section 11 (12 U.S.C. 1431)—

23 (A) by striking subsections (b) and (c);

1 (B) by redesignating subsections (d)  
2 through (k) as subsections (c) through (j), re-  
3 spectively;

4 (C) in subsection (a)—

5 (i) by striking “Board” each place  
6 that term appears and inserting “Direc-  
7 tor”; and

8 (ii) by striking “upon such terms and  
9 conditions as the Board may approve”;  
10 and

11 (D) by inserting after subsection (a) the  
12 following:

13 “(b) ISSUANCE OF FEDERAL HOME LOAN BANK  
14 BONDS.—The Finance Facility may issue consolidated  
15 Federal Home Loan Bank debt, which shall be the joint  
16 and several obligations of all of the Federal Home Loan  
17 Banks, and shall be issued upon such terms and condi-  
18 tions as set by the Finance Facility for the Federal Home  
19 Loan Banks.”;

20 (4) in section 6 (12 U.S.C. 1426)—

21 (A) in subsection (b)(1), in the matter pre-  
22 ceding subparagraph (A), by striking “Finance  
23 Board approval” and inserting “approval by the  
24 Director”; and

1 (B) in each of subsections (c)(4)(B) and  
2 (d)(2), by striking “Finance Board regulations”  
3 each place that term appears and inserting  
4 “regulations of the Director”;

5 (5) in section 10(b) (12 U.S.C. 1430(b))—

6 (A) in the subsection heading, by striking  
7 “FORMAL BOARD RESOLUTION” and inserting  
8 “APPROVAL OF DIRECTOR”; and

9 (B) by striking “by formal resolution”;

10 (6) in section 21(b)(5) (12 U.S.C. 1441(b)(5)),  
11 by striking “Chairperson of the Federal Housing Fi-  
12 nance Board” and inserting “Director”;

13 (7) in section 15 (12 U.S.C. 1435), by striking  
14 “issued with the approval of the Board” and insert-  
15 ing “issued under section 11(b)”;

16 (8) by striking “the Board” each place that  
17 term appears and inserting “the Director”;

18 (9) by striking “The Board” each place that  
19 term appears and inserting “The Director”;

20 (10) by striking “the Finance Board” each  
21 place that term appears and inserting “the Direc-  
22 tor”;

23 (11) by striking “The Finance Board” each  
24 place that term appears and inserting “The Direc-  
25 tor”; and

1           (12) by striking “Federal Housing Finance  
2           Board” each place that term appears and inserting  
3           “Director”.

4 **SEC. 204. FEDERAL HOME LOAN BANK FINANCE FACILITY.**

5           The Federal Home Loan Bank Act (12 U.S.C. 1421  
6 et seq.) is amended by inserting after section 11 the fol-  
7 lowing:

8 **“SEC. 11A. FEDERAL HOME LOAN BANK FINANCE FACILITY.**

9           “(a) ESTABLISHMENT.—

10           “(1) IN GENERAL.—The Federal Home Loan  
11           Banks shall establish a Federal Home Loan Bank  
12           Finance Facility.

13           “(2) PURPOSES.—The purposes of the Finance  
14           Facility are—

15           “(A) to issue and service the consolidated  
16           obligations of the Federal Home Loan Banks in  
17           accordance with this Act; and

18           “(B) to perform all other necessary and  
19           proper functions in relation to the issuance and  
20           service of such obligations, as fiscal agent on  
21           behalf of the Federal Home Loan Banks, and  
22           any other functions performed by the Office of  
23           Finance on behalf of the Financing Corporation  
24           (established under section 21) and the Resolu-

1           tion Funding Corporation (established under  
2           section 21B).

3           “(3) TRANSFER OF FUNCTIONS.—

4                   “(A) IN GENERAL.—The functions of the  
5           Office of Finance of the Federal Home Loan  
6           Banks shall be transferred to the Finance Fa-  
7           cility on the effective time.

8                   “(B) ORGANIZATIONAL MEETING.—The  
9           organizational meeting of the management  
10          board of the Finance Facility shall occur as  
11          soon as practicable after the date of enactment  
12          of the Federal Housing Enterprise Regulatory  
13          Reform Act of 2007.

14                   “(C) INTERIM PROCEDURES.—Until the ef-  
15          fective time, the predecessor office shall con-  
16          tinue to operate as if this section had not been  
17          enacted.

18                   “(D) REFERENCES.—After the effective  
19          time, any reference under any provision of Fed-  
20          eral law to the Office of Finance and the Man-  
21          aging Director of the Office of Finance shall be  
22          deemed to be references to the Finance Facility  
23          and the chief executive officer of the Finance  
24          Facility, respectively.

25           “(4) SUCCESSION.—

1           “(A) ASSETS AND LIABILITIES.—On  
2           and after the effective time, the Finance  
3           Facility shall, by operation of law and  
4           without any further action by the Federal  
5           Housing Finance Board, the Director, the  
6           predecessor office, or any court, succeed to  
7           the assets of, and assume all debts, obliga-  
8           tions, contracts, and other liabilities of the  
9           predecessor office, matured or unmatured,  
10          accrued or absolute, contingent or other-  
11          wise, and whether or not reflected or re-  
12          served against on balance sheets, books of  
13          account, or records of the predecessor of-  
14          fice.

15          “(B) CONTRACTS.—On and after the  
16          effective time, the existing contractual obli-  
17          gations of the Federal Housing Finance  
18          Board, solely in its capacity as issuer of  
19          consolidated obligations of the Federal  
20          Home Loan Banks and the predecessor of-  
21          fice shall, by operation of law and without  
22          any further action by the Federal Housing  
23          Finance Board, the Director, the prede-  
24          cessor office, or any court, become obliga-

1                   tions, entitlements, and instruments of the  
2                   Finance Facility.

3                   “(C) TAXATION.—The succession to  
4                   assets, assumption of liabilities, conversion  
5                   of obligations and instruments, and effec-  
6                   tuation of any other transaction by the Fi-  
7                   nance Facility to carry out this subsection  
8                   shall not be treated as a taxable event  
9                   under the laws of any State, or any polit-  
10                  ical subdivision thereof.

11               “(b) POWERS.—Subject to the provisions of this Act,  
12 and such regulations as the Director may prescribe, the  
13 Finance Facility shall have the power—

14               “(1) to issue and service Federal Home Loan  
15               Bank consolidated notes, consolidated bonds, con-  
16               solidated debentures, and other consolidated obliga-  
17               tions authorized under section 11, as agent for the  
18               Federal Home Loan Banks;

19               “(2) to determine the amount, maturities, rate  
20               of interest, terms, and other conditions of Federal  
21               Home Loan Bank consolidated obligations;

22               “(3) to make contracts;

23               “(4) to determine the terms and conditions  
24               under which the Finance Facility may indemnify the

1 members of the management board, as well as offi-  
2 cers, employees, and agents of the Finance Facility;

3 “(5) to determine and implement the method-  
4 ology for assessments of the Federal Home Loan  
5 Banks to fund all of the expenses of the Finance  
6 Facility; and

7 “(6) to exercise such incidental powers not in-  
8 consistent with the provisions of this Act as are nec-  
9 essary or advisable to carry out the purposes of the  
10 Finance Facility.

11 “(c) MANAGEMENT OF THE FINANCE FACILITY.—

12 “(1) ESTABLISHMENT.—The management of  
13 the Finance Facility shall be vested in a manage-  
14 ment board composed of the president of each of the  
15 Federal Home Loan Banks, ex officio.

16 “(2) DUTIES.—The management board of the  
17 Finance Facility shall administer the affairs of the  
18 Finance Facility in accordance with the provisions of  
19 this section.

20 “(3) INTERIM APPOINTMENTS.—If the office of  
21 the president of any Federal Home Loan Bank is  
22 vacant, the person serving in such capacity on an  
23 acting basis shall serve on the management board of  
24 the Finance Facility until replaced by the next per-

1 son to fill the office of the president of that Federal  
2 Home Loan Bank.

3 “(4) POWERS.—The management board of the  
4 Finance Facility shall exercise such powers as may  
5 be necessary or advisable to carry out this section,  
6 including the power to—

7 “(A) set policies for the management and  
8 operation of the Finance Facility;

9 “(B) approve a strategic business plan for  
10 the Finance Facility;

11 “(C) review, adopt, and monitor annual  
12 operation and capital budgets of the Finance  
13 Facility;

14 “(D) constitute and perform the duties of  
15 an audit committee, which to the extent pos-  
16 sible shall operate consistent with—

17 “(i) the requirements established for  
18 the Federal Home Loan Banks; and

19 “(ii) the requirements pertaining to  
20 audit committee reports set forth in the  
21 rules of the Securities and Exchange Com-  
22 mission;

23 “(E) select, employ, determine the com-  
24 pensation for, and assign the duties and func-

1 tions of the President of the Finance Facility,  
2 who shall—

3 “(i) be the chief executive officer for  
4 the Finance Facility and shall direct the  
5 implementation of the policies adopted by  
6 the management board of the Finance Fa-  
7 cility;

8 “(ii) serve as a member of the Direc-  
9 torate of the Financing Corporation, under  
10 section 21(b)(1)(A); and

11 “(iii) serve as a member of the Direc-  
12 torate of the Resolution Funding Corpora-  
13 tion under section 21B(c)(1)(A);

14 “(F) provide for the review and approval  
15 of all contracts of the Finance Facility;

16 “(G) have the exclusive authority to em-  
17 ploy and contract for the services of an inde-  
18 pendent, external auditor for the annual and  
19 quarterly combined financial statements of the  
20 Federal Home Loan Banks; and

21 “(H) select, evaluate, determine the com-  
22 pensation of, and, as appropriate, replace the  
23 internal auditor of the Finance Facility, who  
24 may be removed only by vote of the manage-  
25 ment board of the Finance Facility.

1           “(5) PAY.—The members of the management  
2 board of the Finance Facility shall not receive com-  
3 pensation for their services as members of the man-  
4 agement board.

5           “(6) QUORUM REQUIREMENT.—

6           “(A) IN GENERAL.—No business of the Fi-  
7 nance Facility may be conducted by the man-  
8 agement board unless a quorum of the members  
9 of the management board is present in person  
10 or by telephone, or through action taken by  
11 written consent executed by all of the members  
12 of the management board.

13           “(B) NUMBER.—A quorum shall be a ma-  
14 jority of the members of the management  
15 board.

16           “(C) VOTE REQUIRED.—Action taken by  
17 the management board shall be approved by a  
18 majority of the members in attendance at any  
19 meeting at which a quorum is present, unless  
20 the management board adopts procedures re-  
21 quiring a greater voting requirement.

22           “(7) APPOINTMENT OF OFFICERS AND ADOP-  
23 TION OF RULES OF PROCEDURE.—The management  
24 board of the Finance Facility shall—

1           “(A) select, from among the members of  
2           such board, a Chairperson and a Vice Chair-  
3           person; and

4           “(B) adopt bylaws and other rules of pro-  
5           cedure for actions before the management  
6           board, including—

7                   “(i) the establishment of 1 or more  
8                   committees to take action on behalf of the  
9                   management board; and

10                   “(ii) the delegation of powers of the  
11                   management board to any committee or of-  
12                   ficer of the Finance Facility.

13           “(d) STATUS.—Except to the extent expressly pro-  
14           vided in this Act, or in rules or regulations promulgated  
15           by the Director, or unless the context clearly indicates oth-  
16           erwise, the Finance Facility shall be accorded the same  
17           status as a Federal Home Loan Bank for purposes of any  
18           other provision of law (including section 13), other than  
19           section 1369F of the Federal Housing Enterprises Finan-  
20           cial Safety and Soundness Act of 1992.

21           “(e) DEFINITIONS.—As used in this section—

22                   “(1) the term ‘effective time’ means the conclu-  
23                   sion of the organizational meeting of the manage-  
24                   ment board of the Finance Facility;

1           “(2) the term ‘Finance Facility’ includes a cor-  
2           poration, partnership, limited liability company, or  
3           joint venture that is jointly owned by the Federal  
4           Home Loan Banks;

5           “(3) the term ‘management board’ means the  
6           management board of the Finance Facility estab-  
7           lished in accordance with subsection (c); and

8           “(4) the term ‘predecessor office’ means the Of-  
9           fice of Finance established as a joint office of the  
10          Federal Home Loan Banks.”.

11 **SEC. 205. EXCLUSION FROM CERTAIN SECURITIES REPORT-**  
12 **ING REQUIREMENTS.**

13          (a) **IN GENERAL.**—The Federal Home Loan Banks  
14 shall be exempt from compliance with—

15           (1) sections 13(e), 14(a), 14(c), and 17A of the  
16          Securities Exchange Act of 1934, and related Com-  
17          mission regulations; and

18           (2) section 15 of the Securities Exchange Act  
19          of 1934, and related Commission regulations, with  
20          respect to transactions in the capital stock of a Fed-  
21          eral Home Loan Bank.

22          (b) **MEMBER EXEMPTION.**—The members of the  
23          Federal Home Loan Bank System shall be exempt from  
24          compliance with sections 13(d), 13(f), 13(g), 14(d), and  
25          16 of the Securities Exchange Act of 1934, and related

1 Commission regulations, with respect to ownership of or  
2 transactions in the capital stock of the Federal Home  
3 Loan Banks by such members.

4 (c) EXEMPTED AND GOVERNMENT SECURITIES.—

5 (1) CAPITAL STOCK.—The capital stock issued  
6 by each of the Federal Home Loan Banks under  
7 section 6 of the Federal Home Loan Bank Act are—

8 (A) exempted securities, within the mean-  
9 ing of section 3(a)(2) of the Securities Act of  
10 1933; and

11 (B) exempted securities, within the mean-  
12 ing of section 3(a)(12)(A) of the Securities Ex-  
13 change Act of 1934.

14 (2) OTHER OBLIGATIONS.—The debentures,  
15 bonds, and other obligations issued under section 11  
16 of the Federal Home Loan Bank Act (12 U.S.C.  
17 1431) are—

18 (A) exempted securities, within the mean-  
19 ing of section 3(a)(2) of the Securities Act of  
20 1933;

21 (B) government securities, within the  
22 meaning of section 3(a)(42) of the Securities  
23 Exchange Act of 1934; and

1 (C) government securities, within the  
2 meaning of section 2(a)(16) of the Investment  
3 Company Act of 1940.

4 (3) BROKERS AND DEALERS.—A person that  
5 effects transactions in the capital stock or other obli-  
6 gations of a Federal Home Loan Bank, for the ac-  
7 count of others or for his own account, as applicable,  
8 is excluded from the definition of—

9 (A) the term “government securities  
10 broker” under section 3(a)(43) of the Securities  
11 Exchange Act of 1934; and

12 (B) the term “government securities deal-  
13 er” under section 3(a)(44) of the Securities Ex-  
14 change Act of 1934.

15 (d) EXEMPTION FROM REPORTING REQUIRE-  
16 MENTS.—The Federal Home Loan Banks shall be exempt  
17 from periodic reporting requirements under the securities  
18 laws pertaining to the disclosure of—

19 (1) related party transactions that occur in the  
20 ordinary course of the business of the Banks with  
21 members; and

22 (2) the unregistered sales of equity securities.

23 (e) TENDER OFFERS.—Commission rules relating to  
24 tender offers shall not apply in connection with trans-

1 actions in the capital stock of the Federal Home Loan  
2 Banks.

3 (f) REGULATIONS.—

4 (1) FINAL RULES.—Not later than 1 year after  
5 the date of enactment of this Act, the Commission  
6 shall issue final rules to implement this section and  
7 the exemptions provided in this section.

8 (2) CONSIDERATIONS.—In issuing final regula-  
9 tions under this section, the Commission shall con-  
10 sider the distinctive characteristics of the Federal  
11 Home Loan Banks when evaluating—

12 (A) the accounting treatment with respect  
13 to the payment to the Resolution Funding Cor-  
14 poration;

15 (B) the role of the combined financial  
16 statements of the Federal Home Loan Banks;

17 (C) the accounting classification of redeem-  
18 able capital stock; and

19 (D) the accounting treatment related to  
20 the joint and several nature of the obligations  
21 of the Banks.

22 (g) DEFINITIONS.—As used in this section—

23 (1) the terms “Bank”, “Federal Home Loan  
24 Bank”, “member”, and “Federal Home Loan Bank  
25 System” have the same meanings as in section 2 of

1 the Federal Home Loan Bank Act (12 U.S.C.  
2 1422);

3 (2) the term “Commission” means the Securi-  
4 ties and Exchange Commission; and

5 (3) the term “securities laws” has the same  
6 meaning as in section 3(a)(47) of the Securities Ex-  
7 change Act of 1934 (15 U.S.C. 78c(a)(47)).

8 **SEC. 206. MERGERS.**

9 Section 26 of the Federal Home Loan Bank Act (12  
10 U.S.C. 1446) is amended—

11 (1) by striking “Whenever” and inserting “(a)  
12 **IN GENERAL.**—Whenever”; and

13 (2) by adding at the end the following:

14 “(b) **MERGERS AUTHORIZED.**—

15 “(1) **IN GENERAL.**—Any Federal Home Loan  
16 Bank may, with the approval of the Director and of  
17 the boards of directors of the Banks involved, merge  
18 with another Bank.

19 “(2) **REGULATIONS REQUIRED.**—The Director  
20 shall promulgate regulations establishing the condi-  
21 tions and procedures for the consideration and ap-  
22 proval of any voluntary merger described in para-  
23 graph (1).”.

1 **SEC. 207. AUTHORITY TO REDUCE DISTRICTS.**

2 Section 3 of the Federal Home Loan Bank Act (12  
3 U.S.C. 1423) is amended—

4 (1) by striking “As soon” and inserting “(a) **IN**  
5 **GENERAL.**—As soon”; and

6 (2) by adding at the end the following:

7 “(b) **AUTHORITY TO REDUCE DISTRICTS.**—Notwith-  
8 standing subsection (a), the number of districts may be  
9 reduced to a number less than 8—

10 “(1) pursuant to a voluntary merger between  
11 Banks, as approved pursuant to section 26(b); or

12 “(2) pursuant to a decision by the Director to  
13 liquidate a bank pursuant to section 1367 of the  
14 Federal Housing Enterprises Financial Safety and  
15 Soundness Act of 1992.”.

16 **SEC. 208. MANAGEMENT OF HOME LOAN BANKS.**

17 (a) **BOARD OF DIRECTORS.**—Section 7(a)(1) of the  
18 Federal Home Loan Bank Act (12 U.S.C. 1427(a)(1)) is  
19 amended to read as follows:

20 “(1) **IN GENERAL.**—Subject to paragraphs (2)  
21 through (4), and except to the extent that action  
22 under section 1377 of the Federal Housing Enter-  
23 prises Financial Safety and Soundness Act of 1992  
24 results in a lesser number, the management of each  
25 Federal home loan bank shall be vested in a board  
26 of 13 directors, or such other number as the board

1 of directors of each Federal home loan bank deter-  
2 mines appropriate.”.

3 (b) APPORTIONMENT AMONG STATES; DESIGNATION  
4 OF STATE LOCATION.—Section 7(c) of the Federal Home  
5 Loan Bank Act (12 U.S.C. 1427(c)) is amended to read  
6 s follows:

7 “(c) APPORTIONMENT AMONG STATES; DESIGNA-  
8 TION OF STATE LOCATION.—The number of elective direc-  
9 torships designated as representing the members located  
10 in each separate State in a bank district shall be deter-  
11 mined by the Director, in the approximate ratio of the per-  
12 centage of the required stock, as determined pursuant to  
13 regulation of the Director, of the members located in the  
14 State at the end of the calendar year next preceding the  
15 date of the election to the total required stock, as so deter-  
16 mined, of all members of such bank at the end of such  
17 year, except that in the case of each State, such number  
18 shall not be less than 1 or 2, as determined by the board  
19 of directors of each Federal home loan bank, and shall  
20 be not more than 6.”.

1 **TITLE III—TRANSFER OF FUNC-**  
2 **TIONS, PERSONNEL, AND**  
3 **PROPERTY OF OFHEO AND**  
4 **THE FEDERAL HOUSING FI-**  
5 **NANCE BOARD**

6 **Subtitle A—OFHEO**

7 **SEC. 301. ABOLISHMENT OF OFHEO.**

8 (a) IN GENERAL.—Effective at the end of the 1-year  
9 period beginning on the date of enactment of this Act, the  
10 Office of Federal Housing Enterprise Oversight of the De-  
11 partment of Housing and Urban Development and the po-  
12 sitions of the Director and Deputy Director of such Office  
13 are abolished.

14 (b) DISPOSITION OF AFFAIRS.—During the 1-year  
15 period beginning on the date of enactment of this Act, the  
16 Director of the Office of Federal Housing Enterprise  
17 Oversight, solely for the purpose of winding up the affairs  
18 of the Office of Federal Housing Enterprise Oversight—

19 (1) shall manage the employees of such Office  
20 and provide for the payment of the compensation  
21 and benefits of any such employee which accrue be-  
22 fore the effective date of the transfer of such em-  
23 ployee under section 303; and

24 (2) may take any other action necessary for the  
25 purpose of winding up the affairs of the Office.

1 (c) STATUS OF EMPLOYEES BEFORE TRANSFER.—

2 The amendments made by title I and the abolishment of  
3 the Office of Federal Housing Enterprise Oversight under  
4 subsection (a) of this section may not be construed to af-  
5 fect the status of any employee of such Office as an em-  
6 ployee of an agency of the United States for purposes of  
7 any other provision of law before the effective date of the  
8 transfer of any such employee under section 303.

9 (d) USE OF PROPERTY AND SERVICES.—

10 (1) PROPERTY.—The Director may use the  
11 property of the Office of Federal Housing Enter-  
12 prise Oversight to perform functions which have  
13 been transferred to the Director for such time as is  
14 reasonable to facilitate the orderly transfer of func-  
15 tions transferred under any other provision of this  
16 Act or any amendment made by this Act to any  
17 other provision of law.

18 (2) AGENCY SERVICES.—Any agency, depart-  
19 ment, or other instrumentality of the United States,  
20 and any successor to any such agency, department,  
21 or instrumentality, which was providing supporting  
22 services to the Office of Federal Housing Enterprise  
23 Oversight before the expiration of the period under  
24 subsection (a) in connection with functions that are  
25 transferred to the Director shall—

1           (A) continue to provide such services, on a  
2 reimbursable basis, until the transfer of such  
3 functions is complete; and

4           (B) consult with any such agency to co-  
5 ordinate and facilitate a prompt and reasonable  
6 transition.

7 (e) SAVINGS PROVISIONS.—

8           (1) EXISTING RIGHTS, DUTIES, AND OBLIGA-  
9 TIONS NOT AFFECTED.—Subsection (a) shall not af-  
10 fect the validity of any right, duty, or obligation of  
11 the United States, the Director of the Office of Fed-  
12 eral Housing Enterprise Oversight, or any other per-  
13 son, which—

14           (A) arises under—

15           (i) the Federal Housing Enterprises  
16 Financial Safety and Soundness Act of  
17 1992;

18           (ii) the Federal National Mortgage  
19 Association Charter Act;

20           (iii) the Federal Home Loan Mort-  
21 gage Corporation Act;

22           (iv) or any other provision of law ap-  
23 plicable with respect to such Office; and

24           (B) existed on the day before the date of  
25 abolishment under subsection (a).

1           (2) CONTINUATION OF SUITS.—No action or  
2           other proceeding commenced by or against the Di-  
3           rector of the Office of Federal Housing Enterprise  
4           Oversight in connection with functions that are  
5           transferred to the Director of the Federal Housing  
6           Enterprise Regulatory Agency shall abate by reason  
7           of the enactment of this Act, except that the Direc-  
8           tor of the Federal Housing Enterprise Regulatory  
9           Agency shall be substituted for the Director of the  
10          Office of Federal Housing Enterprise Oversight as a  
11          party to any such action or proceeding.

12 **SEC. 302. CONTINUATION AND COORDINATION OF CERTAIN**  
13 **REGULATIONS.**

14          (a) IN GENERAL.—All regulations, orders, and deter-  
15          minations described in subsection (b) shall remain in ef-  
16          fect according to the terms of such regulations, orders,  
17          and determinations, and shall be enforceable by or against  
18          the Director or the Secretary of Housing and Urban De-  
19          velopment, as the case may be, until modified, terminated,  
20          set aside, or superseded in accordance with applicable law  
21          by the Director or the Secretary, as the case may be, any  
22          court of competent jurisdiction, or operation of law.

23          (b) APPLICABILITY.—A regulation, order, or deter-  
24          mination is described in this subsection if it—

1           (1) was issued, made, prescribed, or allowed to  
2       become effective by—

3           (A) the Office of Federal Housing Enter-  
4       prise Oversight;

5           (B) the Secretary of Housing and Urban  
6       Development, and relates to the authority of  
7       the Secretary under—

8           (i) the Federal Housing Enterprises  
9       Financial Safety and Soundness Act of  
10      1992;

11          (ii) the Federal National Mortgage  
12      Association Charter Act, with respect to  
13      the Federal National Mortgage Associa-  
14      tion; or

15          (iii) the Federal Home Loan Mort-  
16      gage Corporation Act, with respect to the  
17      Federal Home Loan Mortgage Corpora-  
18      tion; or

19          (C) a court of competent jurisdiction, and  
20      relates to functions transferred by this Act; and

21      (2) is in effect on the effective date of the abol-  
22      ishment under section 301(a).

1 **SEC. 303. TRANSFER AND RIGHTS OF EMPLOYEES OF**  
2 **OFHEO.**

3 (a) TRANSFER.—Each employee of the Office of Fed-  
4 eral Housing Enterprise Oversight shall be transferred to  
5 the Agency for employment, not later than the effective  
6 date of the abolishment under section 301(a), and such  
7 transfer shall be deemed a transfer of function for pur-  
8 poses of section 3503 of title 5, United States Code.

9 (b) GUARANTEED POSITIONS.—

10 (1) IN GENERAL.—Each employee transferred  
11 under subsection (a) shall be guaranteed a position  
12 with the same status, tenure, grade, and pay as that  
13 held on the day immediately preceding the transfer.

14 (2) NO INVOLUNTARY SEPARATION OR REDUC-  
15 TION.—An employee transferred under subsection  
16 (a) holding a permanent position on the day imme-  
17 diately preceding the transfer may not be involun-  
18 tarily separated or reduced in grade or compensation  
19 during the 12-month period beginning on the date of  
20 transfer, except for cause, or, in the case of a tem-  
21 porary employee, separated in accordance with the  
22 terms of the appointment of the employee.

23 (c) APPOINTMENT AUTHORITY FOR EXCEPTED AND  
24 SENIOR EXECUTIVE SERVICE EMPLOYEES.—

25 (1) IN GENERAL.—In the case of an employee  
26 occupying a position in the excepted service or the

1 Senior Executive Service, any appointment authority  
2 established under law or by regulations of the Office  
3 of Personnel Management for filling such position  
4 shall be transferred, subject to paragraph (2).

5 (2) DECLINE OF TRANSFER.—The Director  
6 may decline a transfer of authority under paragraph  
7 (1) to the extent that such authority relates to—

8 (A) a position excepted from the competi-  
9 tive service because of its confidential, policy-  
10 making, policy-determining, or policy-advocating  
11 character; or

12 (B) a noncareer position in the Senior Ex-  
13 ecutive Service (within the meaning of section  
14 3132(a)(7) of title 5, United States Code).

15 (d) REORGANIZATION.—If the Director determines,  
16 after the end of the 1-year period beginning on the effec-  
17 tive date of the abolishment under section 301(a), that  
18 a reorganization of the combined workforce is required,  
19 that reorganization shall be deemed a major reorganiza-  
20 tion for purposes of affording affected employee retire-  
21 ment under section 8336(d)(2) or 8414(b)(1)(B) of title  
22 5, United States Code.

23 (e) EMPLOYEE BENEFIT PROGRAMS.—

24 (1) IN GENERAL.—Any employee of the Office  
25 of Federal Housing Enterprise Oversight accepting

1 employment with the Agency as a result of a trans-  
2 fer under subsection (a) may retain for 12 months  
3 after the date on which such transfer occurs mem-  
4 bership in any employee benefit program of the  
5 Agency or the Office of Federal Housing Enterprise  
6 Oversight of the Department of Housing and Urban  
7 Development, as applicable, including insurance, to  
8 which such employee belongs on the date of the abol-  
9 ishment under section 301(a), if—

10 (A) the employee does not elect to give up  
11 the benefit or membership in the program; and

12 (B) the benefit or program is continued by  
13 the Director of the Federal Housing Enterprise  
14 Regulatory Agency.

15 (2) COST DIFFERENTIAL.—

16 (A) IN GENERAL.—The difference in the  
17 costs between the benefits which would have  
18 been provided by the Office of Federal Housing  
19 Enterprise Oversight and those provided by this  
20 section shall be paid by the Director.

21 (B) HEALTH INSURANCE.—If any em-  
22 ployee elects to give up membership in a health  
23 insurance program or the health insurance pro-  
24 gram is not continued by the Director, the em-  
25 ployee shall be permitted to select an alternate

1 Federal health insurance program not later  
2 than 30 days after the date of such election or  
3 notice, without regard to any other regularly  
4 scheduled open season.

5 **SEC. 304. TRANSFER OF PROPERTY AND FACILITIES.**

6 Upon the effective date of its abolishment under sec-  
7 tion 301(a), all property of the Office of Federal Housing  
8 Enterprise Oversight shall transfer to the Agency.

9 **Subtitle B—Federal Housing**  
10 **Finance Board**

11 **SEC. 311. 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 subtitle referred  
16 to as the “Board”) is abolished.

17 (b) DISPOSITION OF AFFAIRS.—During the 1-year  
18 period beginning on the date of enactment of this Act, the  
19 Board, solely for the purpose of winding up the affairs  
20 of the Board—

21 (1) shall manage the employees of the Board  
22 and provide for the payment of the compensation  
23 and benefits of any such employee which accrue be-  
24 fore the effective date of the transfer of such em-  
25 ployee under section 313; 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.—

4           The amendments made by titles I and II and the abolish-  
5           ment of the Board under subsection (a) may not be con-  
6           strued to affect the status of any employee of the Board  
7           as an employee of an agency of the United States for pur-  
8           poses of any other provision of law before the effective  
9           date of the transfer of any such employee under section  
10          313.

11          (d) USE OF PROPERTY AND SERVICES.—

12           (1) PROPERTY.—The Director may use the  
13           property of the Board to perform functions which  
14           have been transferred to the Director, for such time  
15           as is reasonable to facilitate the orderly transfer of  
16           functions transferred under any other provision of  
17           this Act or any amendment made by this Act to any  
18           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,  
22           or 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  
2 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 co-  
7 ordinate 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 af-  
12 fect the validity of any right, duty, or obligation of  
13 the United States, a member of the Board, or any  
14 other 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 the 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  
22 Board in connection with functions that are trans-  
23 ferred under this Act to the Director shall abate by  
24 reason of the enactment of this Act, except that the  
25 Director shall be substituted for the Board or any

1 member thereof as a party to any such action or  
2 proceeding.

3 **SEC. 312. CONTINUATION AND COORDINATION OF CERTAIN**  
4 **REGULATIONS.**

5 (a) IN GENERAL.—All regulations, orders, and deter-  
6 minations described under subsection (b) shall remain in  
7 effect according to the terms of such regulations, orders,  
8 and determinations, and shall be enforceable by or against  
9 the Director until modified, terminated, set aside, or su-  
10 perseded in accordance with applicable law by the Direc-  
11 tor, any court of competent jurisdiction, or operation of  
12 law.

13 (b) APPLICABILITY.—A regulation, order, or deter-  
14 mination is described under this subsection if it—

15 (1) was issued, made, prescribed, or allowed to  
16 become effective by—

17 (A) the Board; or

18 (B) a court of competent jurisdiction, and  
19 relates to functions transferred by this Act; and

20 (2) is in effect on the effective date of the abol-  
21 ishment under section 311(a).

22 **SEC. 313. TRANSFER AND RIGHTS OF EMPLOYEES OF THE**  
23 **FEDERAL HOUSING FINANCE BOARD.**

24 (a) TRANSFER.—Each employee of the Board shall  
25 be transferred to the Agency for employment, not later

1 than the effective date of the abolishment under section  
2 311(a), and such transfer shall be deemed a transfer of  
3 function for purposes of section 3503 of title 5, United  
4 States Code.

5 (b) GUARANTEED POSITIONS.—

6 (1) IN GENERAL.—Each employee transferred  
7 under subsection (a) shall be guaranteed a position  
8 with the same status, tenure, grade, and pay as that  
9 held on the day immediately preceding the transfer.

10 (2) NO INVOLUNTARY SEPARATION OR REDUC-  
11 TION.—An employee holding a permanent position  
12 on the day immediately preceding the transfer may  
13 not be involuntarily separated or reduced in grade or  
14 compensation during the 12-month period beginning  
15 on the date of transfer, except for cause, or, if the  
16 employee is a temporary employee, separated in ac-  
17 cordance with the terms of the appointment of the  
18 employee.

19 (c) APPOINTMENT AUTHORITY FOR EXCEPTED AND  
20 SENIOR EXECUTIVE SERVICE EMPLOYEES.—

21 (1) IN GENERAL.—In the case of an employee  
22 occupying a position in the excepted service or the  
23 Senior Executive Service, any appointment authority  
24 established under law or by regulations of the Office

1 of Personnel Management for filling such position  
2 shall be transferred, subject to paragraph (2).

3 (2) DECLINE OF TRANSFER.—The Director  
4 may decline a transfer of authority under paragraph  
5 (1) to the extent that such authority relates to—

6 (A) a position excepted from the competi-  
7 tive service because of its confidential, policy-  
8 making, policy-determining, or policy-advocating  
9 character; or

10 (B) a noncareer position in the Senior Ex-  
11 ecutive Service (within the meaning of section  
12 3132(a)(7) of title 5, United States Code).

13 (d) REORGANIZATION.—If the Director determines,  
14 after the end of the 1-year period beginning on the effec-  
15 tive date of the abolishment under section 311(a), that  
16 a reorganization of the combined workforce is required,  
17 that reorganization shall be deemed a major reorganiza-  
18 tion for purposes of affording affected employee retire-  
19 ment under section 8336(d)(2) or 8414(b)(1)(B) of title  
20 5, United States Code.

21 (e) EMPLOYEE BENEFIT PROGRAMS.—

22 (1) IN GENERAL.—Any employee of the Board  
23 accepting employment with the Agency as a result of  
24 a 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 Agency or the Board, as applicable, including insur-  
3 ance, to which such employee belongs on the effec-  
4 tive date of the abolishment under section 311(a)  
5 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.

10 (2) COST DIFFERENTIAL.—

11 (A) IN GENERAL.—The difference in the  
12 costs between the benefits which would have  
13 been provided by the Board and those provided  
14 by this section shall be paid by the Director.

15 (B) HEALTH INSURANCE.—If any em-  
16 ployee elects to give up membership in a health  
17 insurance program or the health insurance pro-  
18 gram is not continued by the Director, the em-  
19 ployee shall be permitted to select an alternate  
20 Federal health insurance program not later  
21 than 30 days after the date of such election or  
22 notice, without regard to any other regularly  
23 scheduled open season.

1 **SEC. 314. TRANSFER OF PROPERTY AND FACILITIES.**

2       Upon the effective date of the abolishment under sec-  
3 tion 311(a), all property of the Board shall transfer to  
4 the Agency.

5                   **TITLE IV—STUDIES AND**  
6                   **REPORTS**

7 **SEC. 401. STUDY AND REPORT ON BASEL II AND ENTER-**  
8                   **PRISE DEBT.**

9       (a) **STUDY.**—The Board of Governors of the Federal  
10 Reserve System shall conduct a study on the effects on  
11 the regulated entities of the new Basel Capital Accord  
12 (Basel II), as endorsed by the Group of Ten countries in  
13 “The International Convergence of Capital Measurement  
14 and Capital Standards: a Revised Framework”. The study  
15 shall examine the debt of the regulated entities and the  
16 capital classification on financial institutions that hold  
17 such debt.

18       (b) **REPORT.**—The Chairman of the Board of Gov-  
19 ernors of the Federal Reserve System shall submit a re-  
20 port to Congress on the results of the study required by  
21 this section not later than 2 years after the date of enact-  
22 ment of this Act.

23 **SEC. 402. AFFORDABLE HOUSING AUDITS.**

24       The Inspector General of the Agency shall conduct  
25 an annual audit of the affordable housing activities, pro-  
26 grams, and partnerships of the Federal National Mort-

1 gage Association and the Federal Home Loan Mortgage  
2 Corporation, to ensure that such activities, programs, and  
3 partnerships support the affordable housing missions of  
4 those enterprises.

5 **SEC. 403. REPORT ON INSURED DEPOSITORY INSTITUTION**  
6 **HOLDINGS OF REGULATED ENTITY DEBT AND**  
7 **MORTGAGE-BACKED SECURITIES.**

8 Not later than 2 years after the date of enactment  
9 of this Act, the Director, the Secretary of the Treasury,  
10 the Board of Governors of the Federal Reserve System,  
11 the Board of Directors of the Federal Deposit Insurance  
12 Corporation, and the National Credit Union Administra-  
13 tion Board shall jointly submit a report to Congress re-  
14 garding—

15 (1) the extent to which obligations issued or  
16 guaranteed by the regulated entities (including mort-  
17 gage-backed securities) are held by federally insured  
18 depository institutions, including such extent by type  
19 of institution and such extent relative to the capital  
20 of the institution;

21 (2) the extent to which the unlimited holdings  
22 by federally insured depository institutions of the ob-  
23 ligations of the regulated entities could produce sys-  
24 temic risk issues, particularly for the safety and  
25 soundness of the banking system in the United

1 States, in the event of default or failure by a regu-  
2 lated entity;

3 (3) the effects on the regulated entities, the  
4 banking industry, and mortgage markets, if prudent  
5 limits on the holdings of the obligations of a regu-  
6 lated entity were placed on federally insured deposi-  
7 tory institutions; and

8 (4) the extent to which alternative investments  
9 are available to community depository institutions,  
10 and the impact that such alternative investments  
11 would have on the safety and soundness and capital  
12 levels of such community depository institutions.

13 **SEC. 404. REPORT ON RISK-BASED CAPITAL LEVELS.**

14 (a) IN GENERAL.—The Director shall submit a re-  
15 port to Congress at the end of each fiscal quarter regard-  
16 ing—

17 (1) the risk-based capital levels for the regu-  
18 lated entities under section 1361 of the Federal  
19 Housing Enterprises Financial Safety and Sound-  
20 ness Act of 1992, as amended by this Act, including  
21 a description of the risk-based capital test under  
22 that section 1361 and any assumptions of the Direc-  
23 tor and factors used by the Director in establishing  
24 the test; and

1           (2) the minimum and critical capital levels for  
2           the regulated entities pursuant to sections 1362 and  
3           1363, respectively, of that Act, as so amended.

4           (b) **TIMING.**—Each report under this section shall be  
5           submitted not later than 60 days after the end of each  
6           fiscal quarter.

7           **SEC. 405. REPORT ON RESOURCES AND ALLOCATIONS.**

8           The Comptroller General of the United States shall  
9           submit a report to Congress annually, on a fiscal year  
10          basis, regarding—

11           (1) the allocation of resources of the Agency by  
12          the Director; and

13           (2) the level of assessments collected by the Di-  
14          rector for the operation of the Agency.

15          **SEC. 406. STUDY AND REPORT ON GUARANTEE FEES.**

16           (a) **ONGOING STUDY OF FEES.**—The Director shall  
17          conduct an ongoing study of fees charged by enterprises  
18          for guaranteeing a mortgage.

19           (b) **COLLECTION OF DATA.**—The Director shall, by  
20          regulation or order, establish procedures for the collection  
21          of data from enterprises for purposes of this subsection,  
22          including the format and the process for collection of such  
23          data.

24           (c) **REPORT TO CONGRESS.**—The Director shall an-  
25          nually submit a report to Congress on the results of the

1 study conducted under subsection (a), based on the aggre-  
2 gated data collected under subsection (a) for the subject  
3 year, regarding the amount of such fees and the criteria  
4 used by the enterprises to determine such fees.

5 (d) CONTENTS OF REPORTS.—The reports required  
6 under subsection (c) shall identify and analyze—

7 (1) the factors considered in determining the  
8 amount of the guarantee fees charged;

9 (2) the total revenue earned by the enterprises  
10 from guarantee fees;

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

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

15 (5) an analysis of any increase or decrease in  
16 guarantee fees from the preceding year;

17 (6) a breakdown of the revenue and costs asso-  
18 ciated with providing guarantees, based on product  
19 type and risk classifications; and

20 (7) a breakdown of guarantee fees charged  
21 based on asset size of the originator and the number  
22 of loans sold or transferred to an enterprise.

23 (e) PROTECTION OF INFORMATION.—Nothing in this  
24 section may be construed to require or authorize the Di-

1 rector to publicly disclose information that is confidential  
2 or proprietary.

3 **SEC. 407. REPORT ON CONFORMING LOAN LIMITS.**

4 The Comptroller General of the United States shall  
5 submit a report to Congress on whether raising the loan  
6 limits under section 302(b) of the Federal National Mort-  
7 gage Association Act (12 U.S.C. 1717(b)) and section  
8 305(a) of the Federal Home Loan Mortgage Corporation  
9 Act (12 U.S.C. 1454(a)) would promote the availability  
10 of affordable housing.

11 **SEC. 408. REVIEWS AND STUDIES RELATING TO ENTER-  
12 PRISES AND RELATED FOUNDATIONS.**

13 (a) ANNUAL REVIEWS.—The Director shall annually  
14 conduct a review of the Freddie Mac Foundation and the  
15 Office of Corporate Giving of the Federal National Mort-  
16 gage Corporation (formerly known as the “Fannie Mae  
17 Foundation”), or any successors thereto, to ensure that  
18 such entities are not engaged in impermissible lobbying  
19 activities.

20 (b) STUDY ON LOBBYING ACTIVITIES TO OBSTRUCT  
21 SPECIAL EXAMINATION.—The Director shall conduct a  
22 study to determine whether any actions or inactions by  
23 an OFHEO-designated executive officer of a Government-  
24 Sponsored Enterprise, that was an employee of the Gov-  
25 ernment-Sponsored-Enterprise during the period of review

1 of the OFHEO Special Examination of Accounting Poli-  
2 cies and Practices of Fannie Mae for the years 1998  
3 through mid-2004 and remains an employee of such Gov-  
4 ernment-Sponsored Enterprise as of the date of enactment  
5 of this Act, were intended to obstruct the Special Exam-  
6 ination by OFHEO.

7 (c) REPORT.—The Director shall submit a report to  
8 Congress on the results of the reviews and study required  
9 under subsections (a) and (b), not later than 60 days after  
10 the date of enactment of this Act, and annually thereafter  
11 with respect to the reviews conducted under subsection  
12 (a).

13 **SEC. 409. RECOMMENDATIONS.**

14 Each report submitted pursuant to this title shall in-  
15 clude specific recommendations, if any, of appropriate  
16 policies, limitations, regulations, legislation, or other ac-  
17 tions to deal appropriately and effectively with the issues  
18 addressed by such report.

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